AGENDA
LOVELAND CITY COUNCIL MEETING
TUESDAY, AUGUST 6, 2013
CITY COUNCIL CHAMBERS
500 EAST THIRD STREET
LOVELAND, COLORADO

The City of Loveland is committed to providing an equal opportunity for citizens and does not discriminate on the basis of disability, race, age, color, national origin, religion, sexual orientation or gender. The City will make reasonable accommodations for citizens in accordance with the Americans with Disabilities Act. For more information, please contact the City's ADA Coordinator at bettie.greenberg@cityofloveland.org or 970-962-3319.

5:30 P.M. **DINNER - City Manager's Conference Room**
6:30 P.M. **REGULAR MEETING - City Council Chambers**

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

PROCLAMATION DECLARING THE SECOND WEEKEND IN AUGUST AS "LOVELAND ART WEEKEND" (Loveland Sculpture Invitational, Sculpture in the Park, Art in the Park)

Anyone in the audience will be given time to speak to any item on the Consent Agenda. Please ask for that item to be removed from the Consent Agenda. Items pulled will be heard at the beginning of the Regular Agenda. You will be given an opportunity to speak to the item before the Council acts upon it.

Public hearings remaining on the Consent Agenda are considered to have been opened and closed, with the information furnished in connection with these items considered as the only evidence presented. Adoption of the items remaining on the Consent Agenda is considered as adoption of the staff recommendation for those items.

Anyone making a comment during any portion of tonight's meeting should come forward to a microphone and identify yourself before being recognized by the Mayor. Please do not interrupt other speakers. Side conversations should be moved outside the Council Chambers. Please limit your comments to no more than three minutes.

CONSENT AGENDA

1. **CITY MANAGER** **(presenter: Bill Cahill)**
BOARDS & COMMISSION APPOINTMENTS
A motion appointing recommended members to the Community Marketing Commission, Construction Advisory Board, Golf Advisory Board, Transportation Advisory Board, Visual Arts Commission and Volunteer Firefighters' Pension Board of Trustees
This is an administrative action recommending appointment of members.

- **Motion to appoint Ben Price and Peggy Ziglin and to reappoint Brad Shannon to the Community Marketing Commission, each for a full term**

effective until June 30, 2016.

- **Motion to appoint Miki Roth to the Community Marketing Commission for a partial term effective until June 30, 2014.**
- **Motion to appoint Christine Forster as an Alternate member of the Community Marketing Commission for a term effective until June 30, 2014.**
- **Motion to reappoint Keith Benner, David Stamps and Christopher Rosenberger to the Construction Advisory Board, each for a term effective until June 30, 2016.**
- **Motion to appoint Jerry Weitzel to the Golf Advisory Board for a partial term effective until December 31, 2013.**
- **Motion to reappoint Bruce Croissant and Daniel Hill to the Transportation Advisory Board, each for a full term effective until June 30, 2016.**
- **Motion to appoint Charlie Jackson to the Visual Arts Commission for a partial term effective until December 31, 2013.**
- **Motion to reappoint Mike Alexander and Arthur Erickson as City Council Appointed members of the Volunteer Firefighters' Pension Board of Trustees, each for a full term effective until June 30, 2017.**

2. <u>DEVELOPMENT SERVICES</u> (presenter: Noreen Smyth)

GATEWAY PLANNED UNIT DEVELOPMENT GENERAL DEVELOPMENT PLAN AMENDMENT

A motion to approve and order published on second reading an Ordinance Amending the Gateway Planned Unit Development General Development Plan, City of Loveland

This is a quasi-judicial action to adopt an ordinance on second reading amending the Gateway General Development Plan (GDP). This will allow an increase in maximum density on Gateway Parcel A-1 from 16 units/acre to 22 units/acre and will increase the overall maximum number of multifamily residential units allowed in the GDP from 500 to 586. City Council unanimously approved the ordinance on first reading at the July 16, 2013 regular meeting.

3. <u>DEVELOPMENT SERVICES</u> (presenter: Kerri Burchett)

DAKOTA GLEN PUD - FIRST AMENDMENT (#P-98)

A motion to approve and order published on second reading an Ordinance Amending Section 18.04.040 of the Loveland Municipal Code, the Same Relating to Zoning Regulations for "Dakota Glen PUD - First Amendment (#P-98)", Approving the First Amendment to the Preliminary Development Plan for the Dakota Glen PUD

This is a quasi-judicial action to amend the Dakota Glen PUD Preliminary Development Plan. The amendment would allow the construction of an above ground public utility facility and natural gas pipeline within the PUD boundaries. The property is located north of and adjacent to 14th Street SW and west of South Wilson Avenue. The applicant is Public Service Company of Colorado. City Council unanimously adopted the ordinance on first reading on July 16, 2013.

4. <u>DEVELOPMENT SERVICES</u> (presenter: Troy Bliss)

AIRPARK NORTH ADDITION AMENDMENT

A motion to approve and order published on second reading an Ordinance Amending Ordinances 3380 and 3381 to Modify a Condition Set Forth Therein

Pertaining to the Annexation and Zoning of the Airpark North Addition to the City of Loveland, Larimer County, Colorado

This is a legislative action to adopt an ordinance on second reading modifying a condition on the annexation and zoning of the Airpark North Addition. City Council unanimously adopted the ordinance on first reading at the July 16, 2013 regular meeting.

5. DEVELOPMENT SERVICES (presenter: Bethany Clark)

SUPPLEMENTAL APPROPRIATION FOR CONSULTING SERVICES FOR HIGHWAY 287 BUSINESS DEVELOPMENT CORRIDOR

A motion to approve and order published on second reading an Ordinance Enacting a Supplemental Budget and Appropriation to the 2013 City of Loveland Budget for Consulting Services to Develop the Highway 287 Business Development Corridor Plan

This is an administrative action to appropriate $150,000 for consulting services to assist in developing a Highway 287 Business Development Corridor Plan. In January of 2012, City Council held their annual Council Advance to set the priorities for the year. One of the goals the Council set as a priority was to "Develop a Highway 287 Business Development Plan" to guide its development and improve the quality of development along the corridor. This goal was carried through as a priority in the 2013 annual Council Advance. As one of the main corridors into Loveland's downtown, the Highway 287 corridor has great potential for redevelopment and becoming a gateway to Downtown Loveland. The plan will serve as a guide for residents, property owners, developers, City staff, and elected officials in making good land use, design, and development decisions in the corridor. Funding is from reserves, which reduces the flexibility for funding other potential needs. The ordinance was unanimously passed on first reading by City Council on July 16, 2013.

6. PUBLIC WORKS (presenter: Ken Cooper)

SUPPLEMENTAL APPROPRIATION FOR PRELIMINARY PROGRAMMING AND DESIGN OF THE PUBLIC SAFETY TRAINING CAMPUS

A motion to approve and order published on second reading an Ordinance Enacting a Supplemental Budget and Appropriation to the 2013 City of Loveland Budget for Preliminary Programming and Design of the Public Safety Training Campus

This is an administrative action to appropriate $310,000. The ordinance appropriates funding from reserve funds for preliminary program and design of the Police Training Facility. Full design and construction of the facility are programmed in 2016-2019 in three phases in the 2014 Capital Program. The project is funded with reserves in the Police Capital Expansion Fee Fund that reduce the flexibility for use on other projects. City Council unanimously approved this ordinance on first reading at the July 16, 2013 regular meeting.

7. PUBLIC WORKS (presenter: Dave Klockeman)

SUPPLEMENTAL APPROPRIATION FOR SIGN AND SIGNAL MAINTENANCE

A motion to approve and order published on second reading an Ordinance Enacting a Supplemental Budget And Appropriation to the 2013 City of Loveland Budget for Sign and Signal Maintenance on State Highways

This is an administrative action. The ordinance appropriates $36,720 of additional revenue from a contract increase with the Colorado Department of Transportation (CDOT) for traffic sign, traffic signal, and pavement marking maintenance on State Highways within the City. The ordinance was approved unanimously on first reading by

City Council at the July 16, 2013 meeting.

8. CITY MANAGER (presenter: Rod Wensing)
SPECIAL MEETING REQUEST FOR AUGUST 13, 2013
A motion Setting a Special Meeting for August 13, 2013 of City Council, for the Purpose of Holding an Executive Session in Order to Receive a Report from the City Attorney and Outside Legal Counsel Regarding the City's Franchise Agreement with Comcast and to Instruct City Negotiators Going Forward
This is an administrative action. The motion will set a special Council meeting and waive the required notice in the City Charter 4.2(b).

9. DEVELOPMENT SERVICES (presenter: Alison Hade)
PUBLIC HEARING
HUD ANNUAL ACTION PLAN
A motion to adopt a Resolution #R-55-2013 of the City Council of the City of Loveland, Colorado Approving a Community Development Block Grant Annual Action Plan and Grant Application for 2013 – 2014
This is an administrative action. The resolution approves the 2013-2014 Community Development Block Grant (CDBG) Annual Action Plan. Adoption of the plan will allow the City to receive and distribute CDBG funds.

10. LOVELAND FIRE RESCUE AUTHORITY (presenter: Randy Mirowski)
INTERGOVERNMENTAL AUTOMATIC MUTUAL AID AGREEMENT- ESTES VALLEY
A motion to adopt a Resolution #R-56-2013 Approving an Intergovernmental Automatic Mutual Aid Agreement Between the Loveland Fire Rescue Authority and the Estes Valley Fire Protection District
This is an administrative action. The resolution approves an intergovernmental automatic mutual aid agreement between the Loveland Fire Rescue Authority (LFRA) and the Estes Valley Fire Protection District. The agreement was approved by the LFRA Board on July 11, 2013. The intergovernmental agreement that established the LFRA requires that auto and mutual aid agreements be approved by the City.

11. LOVELAND FIRE RESCUE AUTHORITY (presenter: Randy Mirowski)
INTERGOVERNMENTAL AUTOMATIC MUTUAL AID AGREEMENT- JOHNSTOWN
A motion to adopt a Resolution #R-57-2013 Approving an Intergovernmental Automatic Mutual Aid Agreement Between the Loveland Fire Rescue Authority and the Johnstown Fire Protection District
This is an administrative action. The resolution would approve an intergovernmental automatic mutual aid agreement between the Loveland Fire Rescue Authority (LFRA) and the Johnstown Fire Protection District. The agreement was approved by the LFRA Board on July 11, 2013. The intergovernmental agreement that established the LFRA requires that auto and mutual aid agreements be approved by the City.

12. PARKS & RECREATION (presenter: Janet-Meisel-Burns)
AMENDMENTS TO SERVICE CONTRACT FOR MEHAFFEY PARK PROJECT
1. **A motion to Amend the Services Contract with Logan Simpson Design, Inc., to Increase the Fees for Mehaffey Park Design and Engineering Services from a "not to Exceed Amount of $714,000" to a "not to Exceed Amount of $769,623" and to Authorize the City Manager to Execute the Contract Amendment on Behalf of the City**
   This is an administrative action. Logan Simpson Design, Inc. has completed the

Mehaffey Park Design & Master Plan and had to re-design and modify plan outside of their original scope. The amended contract will address the fee increases and set aside an allowance for construction administration during the yearlong construction process. These fees are typical for similar park construction projects. Staff feels additional administrative fees will be needed to complete the construction of the park. These fees will be billed on a time and materials basis.

2. **A motion to Authorize the City Manager to Amend the Contract with ECI, Site Construction Management, Inc. as the Construction Manager/General Contractor (CM/GC) for the Guaranteed Maximum Price (GMP #1) of $2.9 Million for Site Work and to Initiate Construction of the Mehaffey Park Project**

   This is an administrative action. Environmental Concerns, Inc., Site Construction Management, Inc. has completed the competitive bidding process to determine the Guaranteed Maximum Price for the construction of Mehaffey Park. The recommended action includes initiating construction of site work including: over lot grading, erosion control, primary and partial electric, all wet utilities and mobilization. This will be GMP #1 with a second GMP to be considered upon completion of an additional bid review.

   No supplemental funding is required for the design fee increases or GMP #1 Award Construction. The Mehaffey Park Project has a current budget of $7,669,500 sufficient for both administrative actions.

13. CITY CLERK (presenter: Terry Andrews)

PUBLIC HEARING

EMERGENCY ORDINANCE AMENDING CHAPTER 12.30 TEMPORARY VENDORS LICENSING

A motion to approve and order published on first and only reading an Emergency Ordinance of the City Council of the City of Loveland Authorizing the City Clerk to Issue Temporary Vendors Licenses Under Code Chapter 12.30 To Persons Operating Ice Cream Trucks

This is a legislative action. The ordinance will authorize the City Clerk to issue to ice cream truck operators a temporary license to sell their products from the City's streets. The licensees will not be allowed to sell product within City parks or on roads adjacent to City parks. Licensees will be subject to all other restrictions in Code Chapter 12.30 for vendors, as well as, additional restrictions in the ordinance.

14. WATER & POWER (presenter: Russel Jentges)

WHEELING AGREEMENT AMONG CITY, PSCo, & PLATTE RIVER POWER AUTHORITY

A motion to adopt a Resolution #R-58-2013 Approving a Wheeling Agreement Among the City of Loveland, Public Service Company of Colorado, and Platte River Power Authority

This is an administrative action. The resolution would approve a new Wheeling Agreement among the City, Public Service Company of Colorado (PSCo), and Platte River Power Authority (Platte River). This Wheeling Agreement will replace the existing agreement among the parties dated June 20, 2005. Both PSCo and Platte River have approved and signed the Wheeling Agreement. The Power Enterprise will benefit from this approval of the wheeling agreement by updating the rates and fees charged to PSCo for the use of our equipment and services. Pursuant to City Code, all utility rates, charges, and fees must be approved by City Council upon two readings of the resolution. Because the Wheeling Agreement sets an electric rate for PSCo, this

resolution is being presented to City Council for two readings.

15. PUBLIC WORKS (presenter: Ken Cooper)
PUBLIC HEARING
SUPPLEMENTAL APPROPRIATION FOR THE SERVICE CENTER PHASE III EXPANSION PROJECT
A motion to approve and order published on first reading an Ordinance Enacting a Supplemental Budget and Appropriation to the 2013 City of Loveland Budget for the Service Center Phase III Expansion Project
This is an administrative action. The ordinance appropriates funds to complete the project at the amount of bid price. Total project cost is expected to be $14,912,060. City Council previously appropriated project funding of $11,017,540, so an additional $3,894,520 is now required to complete the project. Public Works enterprise funds and general government capital expansion fees may be used for this additional appropriation request. The funding for the project is from reserves of $3,499,520 from the General Government CEF Fund and $395,000 from the Solid Waste Enterprise Fund and reduces the flexibility to complete other projects.

END OF CONSENT AGENDA

CITY CLERK READS TITLES OF ORDINANCES ON THE CONSENT AGENDA

CITY COUNCIL

a. **Citizens' Report** *Anyone who wishes to speak to an item NOT on the Agenda may address the Council at this time.*

b. **Business from Council** *This is an opportunity for Council Members to report on recent activities or introduce new business for discussion at this time or on a future City Council agenda.*

c. **City Manager Report**

d. **City Attorney Report**

PROCEDURAL INFORMATION
Anyone who wishes to address the Council on any item on this part of the agenda may do so when the Mayor calls for public comment. All public hearings are conducted in accordance with Council Policy. When Council is considering adoption of an ordinance on first reading, Loveland's Charter only requires that a majority of the Council quorum present vote in favor of the ordinance for it to be adopted on first reading. However, when an ordinance is being considered on second or final reading, at least five of the nine members of Council must vote in favor of the ordinance for it to become law.

REGULAR AGENDA
CONSIDERATION OF ITEMS REMOVED FROM CONSENT AGENDA

16. CITY CLERK (presenter: Terry Andrews)
APPROVAL OF CITY COUNCIL MEETING MINUTES
1. A motion to approve the Council Minutes from the July 9, 2013 Study Session.
This is an administrative action to approve the July 9, 2013 Study Session Minutes. Councilor Fogle was absent.
2. A motion to approve the Council Minutes from the July 16, 2013 Regular Meeting.

This is an administrative action to approve the July 16, 2013 meeting minutes. Councilor McKean was absent.

17. ECONOMIC DEVELOPMENT (presenter: Marcie Erion)
INCENTIVE AGREEMENT FOR SCHLOSSER SIGNS, INC.
A motion to adopt a Resolution #R-59-2013 Approving an Incentive Agreement for Schlosser Signs, Inc.
This is an administrative action. Schlosser Signs is requesting an incentive not to exceed $15,000 to upgrade electrical service at their new branch location, 418 E. 3rd Street. This includes a new transformer bank, frame, new pole, and installation of a new secondary cable. These expenditures will arise as part of their company expansion downtown. According to City Council Economic Incentive Policy, agreements that do not exceed $20,000 may be presented to Council without a prior informational meeting. The City of Loveland will fund no more than $15,000 from the Economic Development Incentive Fund contingent upon the purchase of the new facility.

18. DEVELOPMENT SERVICES (presenter: Greg George)
OIL & GAS FILING FEES
A motion to approve a Resolution #R-60-2013 Amending Resolution #R-68-2012 and the 2013 Schedule of Rates, Charges and Fees for City Services, Other than Services Provided by the Water and Power Department and the Stormwater Enterprise
This is an administrative action to adopt a resolution creating a new fee for processing planning applications and issuing permits for oil and gas facilities. The proposed fees are as follows:
1. Planning Commission Review Process - $4,370
2. Administrative Review Process - $1,738

19. DEVELOPMENT SERVICES (presenter: Greg George)
OIL & GAS CAPITAL EXPANSION FEES
A motion to approve a Resolution #R-61-2013 Amending Resolution #R-81-2012 Adopting the 2013 Schedule of Capital Expansion Fees for Fire and Rescue, Law Enforcement and General Government and Resolution #R-97-2012 Adopting the 2013 Schedule of Street Capital Expansion Fees to Include New Capital Expansion Fees for Oil and Gas Facilities Pursuant to Section Chapter 16.38 of the Loveland Municipal Code
This is an administrative action. This resolution establishes capital expansion fees (CEFs) for oil and gas development within the city limits of the City of Loveland. The fees for law enforcement and general government would be based on the same fee rate as currently applied to other types of industrial development within the City. However, it's proposed that the fee rate for fire protection be increased over that for law enforcement to reflect the likelihood that there would be a greater impact in emergency response and capital needs for fire protection than for law enforcement. The street CEF would also be based on the same rate currently being charged for other new development, which is $238.21 per trip end.

20. DEVELOPMENT SERVICES (presenter: Greg George)
PUBLIC HEARING
OIL & GAS OVERLAY ZONES AMENDMENT
A motion to approve and order published on first reading an Ordinance of the City Council of the City of Loveland Making Technical Amendments to Code Chapter

18.77 Relating to the Regulation of Oil and Gas Operations and Repealing and Reenacting Code Chapter 18.78 to Establish Overlay Zoning Districts for Development Setbacks from Existing Oil and Gas Facilities

This is a legislative action. Approval of this ordinance amends certain provisions in the oil and gas ordinance adopted on March 18, 2013. The amendments would revise the existing restrictions in Chapter 18.78 on new development within the setbacks for oil and gas facilities by creating three overlay zoning districts. The existing provisions in Chapter 18.78 would be revised to require variances from the restrictions established in the proposed overlay zoning district to be processed in accordance with the existing provisions of Chapter 18.60 governing zoning variances. Technical and procedural revisions would be made to Chapter 18.77, including notification of the director's decision in the administrative review process and who has standing to appeal that decision.

21. CITY MANAGER (presenter: Bill Cahill)

CITIZEN REQUEST: LETTER TO GOVERNOR HICKENLOOPER REGARDING HB 13-1224 & HB 13-1229

A motion to approve the Written Request from Local Businesses for Council to Send a Letter to the Governor's Office Urging a Stay of Enforcement Regarding HB 13-1224 and HB 13-1229

This is an administrative action. Council is asked to consider the attached letter from several concerned local shooting-sports businesses regarding the implementation of HB 13-1224 and HB 13-1229. Council previously approved a related letter on HB 13-1224. The requesting local businesses ask that the effects of both laws be considered together.

If the Council desires to send a letter, two options are attached:

Option A is drafted by staff and uses the Tall Guns material as an attachment.

Option B was submitted by Councilor McKean after the drafting of Option A.

22. CITY ATTORNEY (presenter: John Duval)

PUBLIC HEARING

ACTIONS RELATING TO AMENDMENT 64 MARIJUANA ESTABLISHMENTS

A motion to approve and order published on first reading an Ordinance to Add a New Chapter 7.65 to the Loveland Municipal Code to Prohibit Marijuana Establishments from Being Licensed, Located and Operated within the City of Loveland

This is legislative action to adopt on first reading an ordinance adding a new Chapter 7.65 to the Loveland Municipal Code to prohibit marijuana establishments from being licensed, located and operated within the City.

ADJOURN

City of Loveland

CITY COUNCIL

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PROCLAMATION

WHEREAS, each year on the second weekend in August, the City of Loveland is host to a weekend of art which includes the Loveland Sculpture Invitational, Sculpture in the Park and Art in the Park; and

WHEREAS, the Loveland Sculpture Invitational is presented by the Loveland Sculpture Group, a nonprofit organization dedicated to expanding opportunities and appreciation for sculpture in the Loveland community; and

WHEREAS, the Loveland High Plains Arts Council, organization and sponsorship of Sculpture in the Park, is a nonprofit organization that is committed to promoting sculptural arts for the cultural and economic benefit of the entire community; and

WHEREAS, Art in the Park and Crafts Festival has brought together many art forms and community members for almost 50 years and is sponsored by Thompson Valley Art League in cooperation with the City of Loveland Department of Parks and Recreation; and

WHEREAS, sculpture and the arts embody much of the accumulated wisdom, intellect and imagination of humankind; and

WHEREAS, sculpture and the arts enhance and enrich the lives of our community members; and

WHEREAS, the nonprofit arts industry strengthens our economy by generating $135.2 billion in total economic activity annually and by supporting the full-time equivalent of 4.13 million jobs; and

WHEREAS, Loveland Art Weekend serves as a reminder to all citizens of Loveland, Colorado that sculpture and arts play a unique and important role in the lives of our families, our communities and our country.

THEREFORE, BE IT RESOLVED we the City Council of Loveland do hereby proclaim the second weekend in August

LOVELAND ART WEEKEND

Signed this 6th day of August, 2013

Cecil A. Gutierrez
Mayor

Printed on
Recycled Paper

CITY OF LOVELAND
CITY MANAGER'S OFFICE
Civic Center • 500 East Third • Loveland, Colorado 80537
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AGENDA ITEM: **1**
MEETING DATE: 8/6/2013
TO: City Council
FROM: City Manager's Office
PRESENTER: Bill Cahill

TITLE:
Appointments of Members to Community Marketing Commission, Construction Advisory Board, Golf Advisory Board, Transportation Advisory Board, Visual Arts Commission and Volunteer Firefighters' Pension Board of Trustees

RECOMMENDED CITY COUNCIL ACTION:
Motion to appoint Ben Price and Peggy Ziglin and to reappoint Brad Shannon to the Community Marketing Commission, each for a full term effective until June 30, 2016.

Motion to appoint Miki Roth to the Community Marketing Commission for a partial term effective until June 30, 2014.

Motion to appoint Christine Forster as an Alternate member of the Community Marketing Commission for a term effective until June 30, 2014.

Motion to reappoint Keith Benner, David Stamps and Christopher Rosenberger to the Construction Advisory Board, each for a term effective until June 30, 2016.

Motion to appoint Jerry Weitzel to the Golf Advisory Board for a partial term effective until December 31, 2013.

Motion to reappoint Bruce Croissant and Daniel Hill to the Transportation Advisory Board, each for a full term effective until June 30, 2016.

Motion to appoint Charlie Jackson to the Visual Arts Commission for a partial term effective until December 31, 2013.

Motion to reappoint Mike Alexander and Arthur Erickson as City Council Appointed members of the Volunteer Firefighters' Pension Board of Trustees, each for a full term effective until June 30, 2017.

OPTIONS:
1. Adopt the action as recommended
2. Deny the action

SUMMARY:
This is an administrative action recommending appointment of members to the Community Marketing Commission, the Construction Advisory Board, the Golf Advisory Board, the Transportation Advisory Board, the Visual Arts Commission, and the Volunteer Firefighters' Pension Board of Trustees

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible

BACKGROUND:
The **Community Marketing Commission** has three term vacancies and one vacancy due to Linda Hughey's June resignation. During the Spring recruiting, seven applications were received and all applicants were interviewed. Ben Price and Peggy Ziglin are recommended for appointment for a term effective until June 30, 2016. Brad Shannon is recommended for reappointment to the CMC for a term effective until June 30, 2016. Miki Roth is recommended for appointment for a partial term effective until June 30, 2014. Christine Forster is recommended for appointment as an Alternate member of the CMC for a term effective until June 30, 2014.

During the Spring recruiting cycle, the **Construction Advisory Board** had four term vacancies. The two incumbents, Christopher Rosenberger and David Stamps, submitted applications, were interviewed and are recommended for reappointment, each for a full term effective until June 30, 2016. A third individual, Keith Benner, was appointed to the Construction Advisory Board to a partial term May 21, 2013. The *Handbook for Boards and Commissions* states:

> "Any person who has served less than 50% of a full term will be eligible for consecutive reappointment for a full term, pursuant to the following process:
>
> 1. 90 days prior to the partial term expiration, a letter will be sent by the City Manager's Office to the member advising the member that he or she must notify the City Manager's Office in writing within 15 days of the date of the letter if the member desires to be reappointed to the board or commission. If the member provides such notification and if the member remains otherwise eligible to serve on the board or commission, the member shall be recommended to the City Council for reappointment without the need for solicitation of applicants and interviews."

Mr. Benner indicated in writing his desire to be reappointed to the board for a full term. Keith Benner is recommended for appointment to Construction Advisory Board for a full term effective until June 30, 2016. Recruiting continues for the remaining vacancy.

Michael Ford has resigned from the **Golf Advisory Board**. Jerry Weitzel was appointed as an Alternate member on GAB with unanimous approval from City Council at the February 5, 2013 regular meeting. Mr. Weitzel is recommended for appointment to the board for the partial term effective until December 31, 2013.

The **Transportation Advisory Board** ("TAB") had two term vacancies during the Spring recruiting cycle. Applications were only received from the two incumbents. With the agreement of the Council liaison, chair, and staff liaison, Bruce Croissant and Daniel Hill are recommended for reappointment to TAB, each for a full term effective until June 30, 2016.

Due to Lynn Kincannon's resignation this Spring, a partial term vacancy on **Visual Arts Commission** ("VAC") was available. Six applicants were interviewed. The committee recommends the appointment of Charlie Jackson to VAC for a partial term effective until December 31, 2013. Abbie Powers and Sara Turner are recommended as Alternate members on VAC, each for a term effective until December 31, 2013.

The **Volunteer Firefighters' Pension Board of Trustees** has two City Council Appointed memberships that have expired. The incumbents were the only applications received during the Spring recruiting cycle. Mike Alexander and Arthur Erickson are recommended for reappointment to the board, each for a term effective until June 30, 2017.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

None

CITY OF LOVELAND
DEVELOPMENT SERVICES DEPARTMENT
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AGENDA ITEM: **2**
MEETING DATE: 8/6/2012
TO: City Council
FROM: Greg George, Development Services Director
PRESENTER: Noreen Smyth, Current Planning

TITLE:
An Ordinance Amending Section 18.04.040 of the Loveland Municipal Code, the Same Relating to Zoning Regulations for "Gateway PUD – Ninth Amendment (#P-98)," and Approving the Ninth Amendment to the General Development Plan for the Gateway PUD

RECOMMENDED CITY COUNCIL ACTION:
Adopt the ordinance on second reading.

OPTIONS:
1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adoption a motion continuing the item to a future Council meeting

SUMMARY:
This is a legislative action. This ordinance amends the Gateway General Development Plan (GDP) to allow an increase in maximum density on Gateway Parcel A-1; from 16 units/acre to 22 units/acre and increase the overall maximum number of multifamily residential units allowed in the GDP; from 500 to 586. City Council unanimously approved the ordinance on first reading at the July 16, 2013 regular meeting.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible

BACKGROUND:
This amendment is being sought because of an interest by a senior housing developer in constructing an independent senior living facility on a vacant parcel of land in Gateway near the intersection of Hahn's Peak Drive and McWhinney Boulevard. Under the current limit on

multifamily units in the GDP, 52 additional units could be built. The developer is interested in pursuing construction of an approximate 138-unit building.

The current owner of the property, Centerra Office Partners LLC, in conjunction with McWhinney Real Estate Services, is seeking the GDP amendment in advance on contracting with the senior housing developer, Asante Living LLC, for the property. It should be noted that the GDP amendment only concerns increasing the maximum number of multifamily units and density in the GDP; no specific development is being approved through the amendment. If the amendment is approved, there is no obligation for senior housing to be constructed on Parcel A-1; any development meeting the requirements of the GDP could be pursued on the parcel. A development application for senior housing or any other type of use that may locate on the property will undergo only administrative (staff) review, as no public hearing is required if the standards in the GDP are met.

The Planning Commission unanimously recommended approval of the request at a public hearing on June 10, 2013.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:
Ordinance
Staff memorandum

FIRST READING July 16, 2013

SECOND READING August 6, 2013

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 18.04.040 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO ZONING REGULATIONS FOR "GATEWAY PUD – NINTH AMENDMENT (#P-98)," AND APPROVING THE NINTH AMENDMENT TO THE GENERAL DEVELOPMENT PLAN FOR THE GATEWAY PUD

WHEREAS, McWhinney Real Estate Services (the "Applicant"), as owner of the below-described real property, has filed an application for amendment of the General Development Plan (the "GDP") pertaining to the Gateway PUD (#93-12) (the "PUD") to amend the legal description of the property included within the PUD and to increase the overall maximum number of dwelling units from 500 to 586 and to increase the multifamily residential density on Parcel A-1 from 16 dwelling units per acre to 22 dwelling units per acre; and

WHEREAS, the legal description of the property included within the Gateway PUD – Eighth Amendment (#P-12) as described in City of Loveland Ordinance #5067 (recorded on April 3, 2006 at Reception #2006-0024214 in the real property records of the Larimer County Clerk and Recorder) has since been modified by City of Loveland Ordinance #5684 which rezoned a portion of the PUD into the Millennium Addition PUD – 8th amendment (#P-49) and resulted in the real property legally described in Section 1. below remaining in the Gateway PUD; and

WHEREAS, the modified legal description and proposed increases in density are reflected in a proposed Ninth Amendment to the Gateway PUD GDP (the "Ninth Amendment"), a copy of which is on file with the City's Current Planning Division and is incorporated herein by this reference; and

WHEREAS, after holding a duly-noticed public hearing on June 10, 2013, the City of Loveland Planning Commission made the findings listed in the Planning Commission staff report dated June 10, 2013, and based on those findings recommended that City Council approve the Ninth Amendment; and

WHEREAS, the City desires to approve the Ninth Amendment to confirm the amended legal description and increase the overall maximum number of dwelling units from 500 to 586 and to increase the multifamily residential density on Parcel A-1 from 16 dwelling units per acre to 22 dwelling units per acre.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That Section 18.04.040 of the Loveland Municipal Code and the map referred to therein, said map being part of said Municipal Code and showing the boundaries of the district specified, shall be and the same is hereby amended in the following particulars, to wit:

That all of the real property included within the Gateway PUD (#93-12), City of Loveland, Larimer County, Colorado, described as:

GATEWAY PUD LEGAL DESCRIPTION

Parcels A-1 and A-6
Lots 1, 2, 3, and 4, Block 1, Outlots A and B, Rocky Mountain Village 16th Subdivision, Lots 1, 2, 3, and 4, Block 1, McWhinney 12th Subdivision, and Lot 1, Block 1, McWhinney 9th Subdivision. City of Loveland, County of Larimer, State of Colorado; **and**

Parcel A-2
Tract A, Rocky Mountain Village 5th Subdivision, Tract A, Rocky Mountain Village 15th Subdivision, and Tract A, McWhinney Eleventh Subdivision. City of Loveland, County of Larimer, State of Colorado; **and**

Parcel A-3, A-4, and A-5
Lot 1, Block 1, and Outlots A, B, C, D and E, Rocky Mountain Village 12th Subdivision, Lot 3, Block 1 Amended Plat of Lot 2 and 3, Block 1, Rocky Mountain Village 13th Subdivision, Lots 1 and 2 and Outlot A, Rocky Mountain Village 17th Subdivision, Lot 1, Rocky Mountain Village 8th Subdivision, Lot 1, Amended Plat of Tract A and Lot 2, Rocky Mountain Village 8th Subdivision, Lots 1, 2, 4, 5, and 8, Block 1, Outlots A, B, and C, McWhinney 10th Subdivision, and Lots 1 and 2, Block 1, McWhinney 13th Subdivision. City of Loveland, County of Larimer, State of Colorado; **and**

Parcel B-1
Tract E, McWhinney 11th Subdivision,
Less and except acreage granted by special warranty deed under reception number 20000086380, recorded on December 12th, 2000, and rights of way granted by reception number 2002004341, recorded on January 11, 2002. City of Loveland, County of Larimer, State of Colorado; **and**

Parcel B-2
Lot 1, Block 1 and Outlot A, McWhinney 15th Subdivision and Lot 1, Block 1, McWhinney 16th Subdivision. City of Loveland, County of Larimer, State of Colorado; **and**

Parcel B-3

Lot 6, Block 1, and Lot 1, Block 2, McWhinney 2nd Subdivision, Lot 2, McWhinney 3rd Subdivision, Lots 2 and 3, Block 1, McWhinney 5th Subdivision, Lot 1, Block 1, McWhinney 6th Subdivision, Lots 1 and 2, Block 1, and Outlot A, McWhinney 7th Subdivision, Lots 1 and 2, Block 1, McWhinney 14th Subdivision. City of Loveland, County of Larimer, State of Colorado;

shall be included within the boundaries of the district designated as follows:

GATEWAY PUD – NINTH AMENDMENT (#93-12):

Section 2. That the City Council hereby finds:

a. that the Ninth Amendment meets the intent and objectives of Chapter 18.41 of the Loveland Municipal Code and the factors set forth in Section 18.41.050D.4.a., b., and c., specifically:

1. the Ninth Amendment conforms to the requirements of Loveland Municipal Code Chapter 18.41, to the City's master plans, and to any applicable area plan;

2. development permitted by the Ninth Amendment will not negatively impact traffic in the area, city utilities, or otherwise have a detrimental impact on property that is in sufficient proximity to the proposed development to be affected by it; and

3. development permitted by the Ninth Amendment will be complementary to and in harmony with existing development and future development plans for the area in which the proposed development is to take place by:

i. incorporating natural physical features into the development design and providing sufficient open spaces considering the type and intensity of use;

ii. incorporating site planning techniques that will foster the implementation of the City's master plans, and encourage a land use pattern that will support a balanced transportation system, including auto, bike and pedestrian traffic, public or mass transit, and the cost effective delivery of other municipal services consistent with adopted plans, policies and regulations of the City;

iii. incorporating physical design features in the development that will provide a transition between the project and adjacent land uses through the provision of an attractive entryway, edges along public streets, architectural design, and appropriate height and bulk restrictions on structures;

iv. incorporating identified environmentally sensitive areas, including but not limited to, wetlands and wildlife corridors, into the project design;

v. incorporating elements of community-wide significance as identified in the town image map;

vi. incorporating public facilities or infrastructure, or cash-in-lieu, that are reasonably related to the proposed development so that the proposed development will not negatively impact the levels of service of the city's services and facilities; and

vii. incorporating an overall plan for the design of the streetscape within the project, including landscaping, auto parking, bicycle and pedestrian circulation, architecture, placement of buildings and street furniture.

; and

b. that the Ninth Amendment complies with applicable land use and development regulations in effect at the time the Ninth Amendment was approved by the City Council.

Section 3. That the City Council hereby approves the Ninth Amendment.

Section 4. That the **GATEWAY PUD - NINTH AMENDMENT** shall be subject to the Gateway PUD GDP, as amended by the Ninth Amendment.

Section 5. That the **GATEWAY PUD - NINTH AMENDMENT** remains subject to any applicable Annexation and/or Development Agreement, as the same may be or have been amended from time-to-time.

Section 6. That the **GATEWAY PUD - NINTH AMENDMENT** shall be subject to all applicable zoning regulations for the City of Loveland except where they conflict with the GDP, as amended by the Ninth Amendment, and any Final Development Plan applicable to the property.

Section 7. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

ADOPTED this 8th day of August, 2013.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

Shane L. Ellis
Assistant City Attorney

City of Loveland

Development Services
Current Planning
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www.cityofloveland.org

M E M O R A N D U M

TO: City Council

FROM: Noreen Smyth, Senior Planner, Current Planning Division

DATE: July 16, 2013

SUBJECT: Gateway GDP Amendment

I. EXHIBITS

A. Planning Commission packet
B. Planning Commission minutes
C. Letter of Support from Park Regency
D. Slide presentation

II. KEY ISSUES

Staff considers all key issues regarding the Gateway GDP amendment to have been resolved through the staff review process. The Planning Commission unanimously recommends approval of the amendment as proposed. Staff is supportive of the amendment and believes the proposed increase in density will not be detrimental to the parcel within Gateway to which it applies and that the increase in allowable multifamily units will have little impact on Gateway overall.

III. BACKGROUND

The attached ordinance concerns a request to amend the Gateway General Development Plan (GDP) to allow an increase in the number of multifamily units and an increase in the multifamily density. The request is prompted by an interest from a developer of senior housing in constructing a senior-targeted multifamily apartment development within Gateway with a greater number of units, and at a greater density, than is currently allowed by the multifamily limits within the Gateway GDP.

Exhibit 1

The Gateway PUD is a192-acre McWhinney development that was approved in 1994. It is located on the north side of Eisenhower Boulevard/US 34, south of Equalizer Lake/the Medical Center of the Rockies, east of Hahns Peak Drive and west of the Outlets of Loveland Mall/I-25. It includes the Marketplace shopping center on the north side of Eisenhower Boulevard containing many sizeable retail stores including Target and a number of restaurant outlots. Also within the Gateway development, to the north and east the Marketplace shopping center, are a variety of uses including office buildings, multifamily residential, and the City of Loveland Visitor's Center.

IV. AMENDMENT

The amendment request is a proposal to increase the maximum number of multifamily units, along with a corresponding increase in the maximum multifamily residential density, to allow the submittal of an application to construct an age-targeted multifamily development on undeveloped property located northwest of Hahn's Peak Drive and McWhinney Boulevard in Gateway Parcel A-1. The owner of the property, McWhinney, is pursing the GDP amendment request. The developer interested in constructing senior housing on the property, Asante Living LLC, would be eligible to apply for site plan and building permit approval if the amendment is approved.

The Gateway GDP limits the total number of multifamily units to 500 and multifamily density to 16 units/acre. Asante is interested in constructing an approximate 138 unit development at a density of 22 units/acre. Given the existing multifamily units in Gateway, this would put the total number of units at 586. To accommodate Asante's proposal, the property owner is requesting:

- To increase the overall maximum number of dwelling units in the Gateway GDP from 500 to 586; and
- To increase the multifamily residential density on Parcel A-1 from 16 DU/acre to 22 DU/acre. (The residential density would remain at 16 du/acre for the rest of Gateway.)

In addition to these amendments, minor changes to the Gateway document, centering on formatting changes and additional information within the GDP tables, are proposed for clarification purposes.

It should be noted that approval of the current request would approve only the GDP amendment to increase the maximum number of units and density, and does not approve any specific development proposal or obligate the applicant to construct senior housing on the property. If the GDP amendment is approved, any developer could submit an application for a multifamily housing development on Parcel A-1, whether age targeted or not, of the size allowed by the amendment. The application would not require review by either the Planning Commission or City Council, and, like all site plan and building permit applications, would undergo only staff review.

V. NEIGHBORHOOD MEETING

A neighborhood meeting was held on May 9, 2013 near Gateway. The meeting was attended by nine neighbors along with City staff, the applicant, and a representative from Asante.

Attendees asked questions about the specific features of the proposed building, whether the development would be age restricted, and whether it would include subsidized units. Concern was expressed about parking, traffic, building height, and building setbacks along Hahn's Peak Drive. In response, the more limited parking needs and transportation impact of senior housing was described by the applicant to attendees. Regarding the building height and setback along Hahn's Peak Drive, the applicant explained that the building would have varied heights rather than a monolithic façade, and that outdoor areas orienting towards Hahn's Peak would be located between the building and the road.

VI. PLANNING COMMISSION REVIEW

The GDP amendment request was reviewed by the Planning Commission at a public hearing on June 10, 2013. At the meeting, Commissioners were presented with a description of the amendment by staff, and a description of the proposed senior housing development by the applicant and a representative from Asante Corporation. Explaining that an application for a development of the size proposed by Asante cannot be submitted before an amendment is approved, staff clarified for the Planning Commission that the request before them does not approve any particular development, and instead only changes the density on Parcel A-1 and the overall allowable number of residential units.

The Commission inquired about details of the development proposed by Asante. In response, the Asante representative described the building and the programs offered for residents. Commissioners echoed concerns raised at the neighborhood meeting about parking and traffic. The representative explained that statistically, senior housing developments rarely attract households with more than one car and even attract a number of residents who are no longer able to drive, so parking and traffic concerns are significantly less than with non-senior housing.

Commissioners commented that development of an independent senior housing facility immediately next to the Park Regency assisted living facility within Gateway is ideal in terms of compatibility, and expressed support for the senior housing development concept as described. Commissioners voted unanimously to recommend approval of the amendment.

RECOMMENDATION

Staff recommends, subject to any further information that may be presented at the public hearing, that City Council adopt the ordinance on first reading.

Exhibit 1

City of Loveland

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Planning Commission Staff Report

June 10, 2013

Agenda #:	Regular Agenda- 5
Title:	Gateway PUD Ninth Amendment
Applicant:	Kim Perry, McWhinney Real Estate Services
Request:	**General Development Plan Amendment**
Location:	North of Eisenhower Blvd, South of Equalizer Lake, East of the Factory Outlet Mall and West of Hahn's Peak Dr.
Existing Zoning:	Planned Unit Development
Staff Planner:	Noreen Smyth, Senior Planner

Staff Recommendation:

APPROVAL of the GDP Amendment

Recommended Motion:

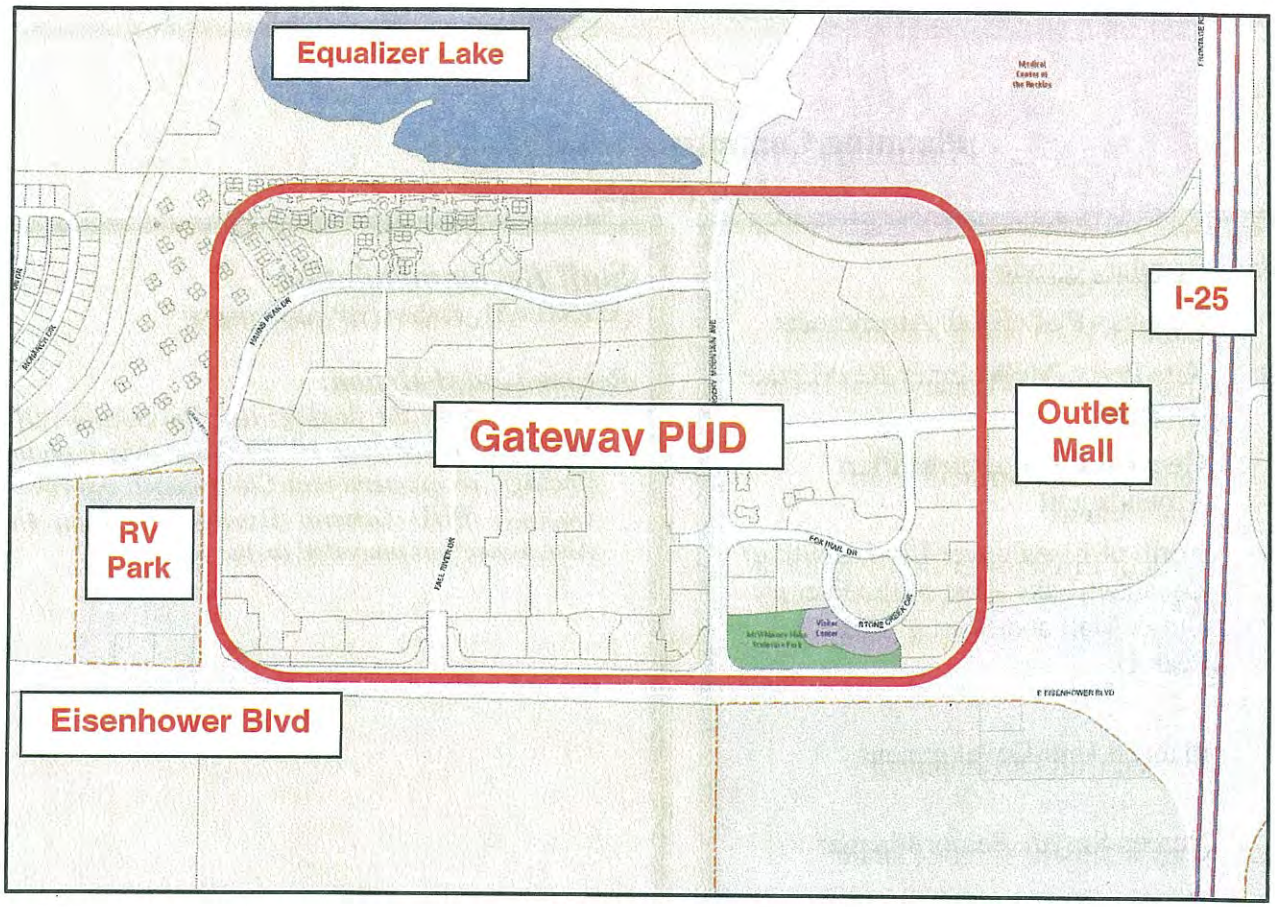
Move to make the findings listed in Section VIII of this report dated June 10, 2013 and, based on those findings, recommend that City Council approve the Gateway PUD General Development Plan Ninth Amendment, as amended on the record.

Summary of Analysis

This is a public hearing to consider an amendment to the General Development Plan of the Gateway Planned Unit Development. The PUD was approved as a mixed use development consisting of multifamily residential, commercial, office, light industrial, and other uses. The amendment seeks to modify the maximum multifamily residential density on one of the Gateway parcels along with the overall maximum number of multifamily residential units in the PUD. The amendment would allow for the future submittal of an application to construct a multifamily development targeted at seniors at a density not currently allowed by the Gateway PUD.

Staff believes that all key issues have been resolved based on City Code and standards. The neighborhood has indicated concerns with the traffic impact of additional residential development in this area.

I. VICINITY MAP



II. ATTACHMENTS

1. General Development Plan Amendment-Sheets 1 & 3
2. Applicant's Narrative
3. Traffic Analysis

III. SUMMARY

This proposal is a General Development Plan (GDP) Amendment for the Gateway Planned Unit Development (PUD). The Gateway PUD is located:

- North of Eisenhower Boulevard/US 34,
- South of Equalizer Lake and the Medical Center of the Rockies,
- East of Hahns Peak Drive and the Loveland RV Resort, and
- West of the Outlets of Loveland Mall and I-25.

The Gateway PUD is a 1994 McWhinney development, and the undeveloped parcels within Gateway

remain under the control of McWhinney, who is the current applicant. It is adjacent to, but separate from, the Millennium PUD, another McWhinney development. The 192-acre Gateway PUD includes a large shopping center (Marketplace) on the north side of Eisenhower Boulevard that includes many sizeable retail stores including Target and a number of restaurant outlots. Also within the Gateway development, to the north and east the Marketplace shopping center, are a variety of uses including office buildings, multifamily residential, and the City of Loveland Visitor's Center.

The current GDP Amendment application is a proposal to increase the maximum number of multifamily units, along with a corresponding increase in the maximum multifamily residential density, to allow construction of an age-targeted multifamily development aimed at independent seniors. Because of the number of units sought (approximately 138) for the proposed building, an amendment to the development standards established in the GDP is necessary before development applications (site development plan and building permit) can be submitted to City staff for review. The details of the request are described in the table below.

A neighborhood meeting was held on May 9, 2013. As summarized in Section VII of this report, both the GDP amendment and proposed senior-targeted residential development were described to attendees of the meeting. A number of questions about details of the proposed residential development were asked, including the appropriateness of the amount of parking, building height, and building setback. Concerns were voiced regarding the potential impact on area roads and traffic that may result from the development of a residential building. With the submittal of the traffic analysis, staff has evaluated the neighborhood concerns and believes that the proposed increase in the maximum number of residential units and the corresponding increase in maximum density for Parcel A-1 will not negatively impact area roads over the uses that could currently be built on the property by right. A residential development targeted at seniors will slightly decrease the traffic counts anticipated by the original Gateway traffic impact analysis.

General Development Plan Amendment

The applicant is requesting to amend the General Development Plan to increase the overall maximum number of dwelling units in the Gateway GDP from 500 to 586 and to increase the multifamily residential density on Parcel A-1 from 16 DU/acre to 22 DU/acre. The residential density would remain at 16 du/acre for the rest of Gateway. The following table compares the current GDP with the changes requested with the amendment:

GDP Amendment Comparison

	Existing GDP	Proposed GDP Amendment
Density	16 DU/ acre	22 DU/acre for Parcel A-1, 16 DU/acre for all other parcels and for the overall PUD
Maximum Units	500	583 (a 17% increase)
Clarification	Limited detail in Table 2 on Sheet 5, formatting inconsistencies	Increased detail in Table 2 on Sheet 5, formatting improvements

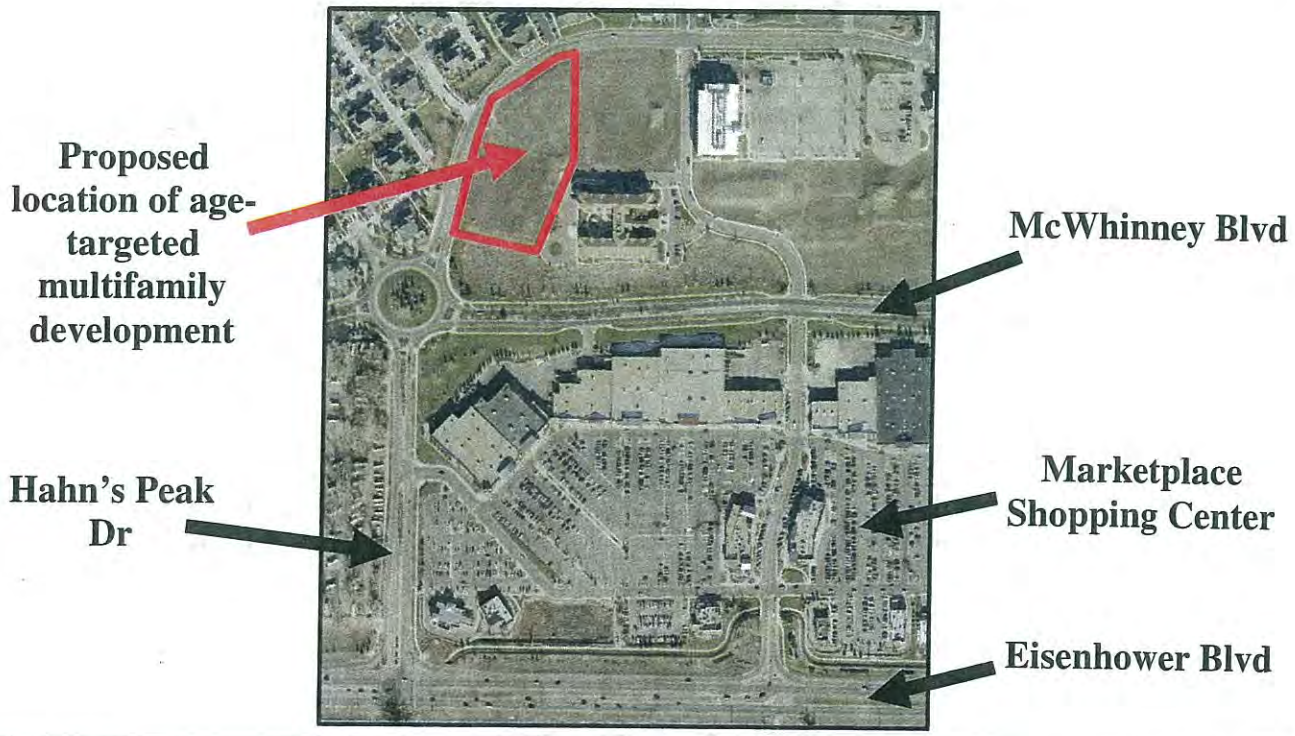
The General Development Plan is five sheets in length, but the requested amendment concerning the number and density of multifamily residential units affects only two sheets within the document, Sheets 1

and 3. The amendment to the allowable density is reflected in a change to Table 1 on Sheet 1, while the amendment to the overall maximum number of dwelling units is reflected in a change to Table 2 on Sheet 3. While these two changes to the tables constitute the substance of the requested amendment, additional changes to the GDP document included with the amendment are as follows:

- Text on Sheet 1 has been changed to correspond with the change in density reflected in the table on that sheet.
- The text on Sheet 1, the table on Sheet 3, and the map on Sheet 3 have been updated to reflect the earlier removal (rezoning) of a portion of Gateway that had not been reflected in the Gateway GDP at the time of its removal.
- Details related to Gateway developments that have been constructed since the original GDP approval, along with the proposed age-targeted multifamily development, have been added to the table on Sheet 3 for informational purposes.
- Formatting of the tables on both sheets has been improved.
- The current amendment request has been added to the table of amendments on Sheet 1.

Age-Target Multifamily Housing Development

The applicant has been working closely with Asante Corporation, a developer and property manager specializing in senior housing, concerning construction of an approximate 138-unit rental multifamily residential building targeted at independent living seniors. The development would locate on vacant land on Parcel A-1. However, the multifamily building itself is not before the Planning Commission for consideration at the June 10 public hearing. The GDP amendment request under consideration at this time would change certain development standards within Gateway that would allow for the submittal of a development application for a multifamily project of the size proposed by Asante. If the amendment is approved and Asante proceeds with a development application, that application would not undergo review by the Planning Commission, as only staff review would be necessary.



Asante has stated that they would pursue an "age targeted" rather than an "age restricted" development because the terms of their financing prevent including age restrictions (age discrimination) in the development. The company's product is such that features within the units and within the common areas, along with on-site programmed activities, would appeal specifically to seniors. The building itself would be designed and managed in the same manner as age restricted senior housing, and according to the developer, would be unlikely to appeal to anyone under "senior" age except for occasional cases of married couples in which one spouse is under that age.

While Asante has met with staff for a concept review meeting for the proposed building and has expressed strong intent on pursuing their development if the GDP amendment is approved, it should be noted that the amendment request would allow any developer to pursue a multifamily development on Parcel A-1 at the density and number of units allowed by the amendment. It should also be noted that Gateway is already almost at build-out. The multifamily housing development proposed for Parcel A-1 may be the last significant residential project in the PUD, and this request for a raising of the residential density cap is likely the last such amendment request within Gateway.

IV. KEY ISSUES

City staff believes that all key issues have been addressed in the amendment proposal. As described above, the request before the Planning Commission at this time concerns only the amendment to the GDP to allow an increase in the maximum number of multifamily residential units in Gateway from 500 to 586 (a 17% increase) and an increase in the maximum density on Parcel A-1 from 16 DU/acre to 22 DU/acre, while keeping the overall maximum residential density in Gateway at 16 DU/acre.

V. SITE DATA

GENERAL DEVELOPMENT PLAN AMENDMENT

ACREAGE OF GDP-GROSS/NET	192 AC / 179 AC
MASTER PLAN DESIGNATION	RAC - REGIONAL ACTIVITY CENTER
EXISTING ZONING	GATEWAY PUD
EXISTING USE	MIXED USE MULTIFAMILY RESIDENTIAL, COMMERCIAL, LIGHT INDUSTRIAL, INSTITUTIONAL, PARK & VACANT
OPEN SPACE	MINIMUM 20-25% OF EACH OF THE 9 GATEWAY PARCELS
NUMBER OF DWELLING UNITS APPROVED	500 MAXIMUM ALLOWED/448 DEVELOPED
NUMBER OF DWELLING UNITS PROPOSED	586 MAXIMUM PROPOSED
GROSS DENSITY (DU/A) APPROVED	16 DU/AC
GROSS DENSITY (DU/A) PROPOSED	16 DU/AC, 22 DU/AC ON PARCEL A-1
EXIST ADJ ZONING & USE - NORTH	MILLENNIUM PUD – MEDICAL CENTER AND EQUALIZER LAKE
EXIST ADJ ZONING & USE - SOUTH	MILLENNIUM PUD & UNINCORPORATED - AGRICULTURE
EXIST ADJ ZONING & USE - WEST	ROCKY MOUNTAIN VILLAGE PUD & UNINCORPORATED – RESIDENTIAL & RV PARK

EXIST ADJ ZONING & USE - EAST ..... B DEVELOPING BUSINESS – SHOPPING MALL
UTILITY SERVICE – WATER, SEWER & ELECTRIC ..... CITY OF LOVELAND

VI. BACKGROUND

The following represents a timeline for the background of the development:

May 1994 — City Council approval of the Gateway PUD. The PUD established zoning for a maximum of 500 multifamily residential units, a maximum residential density of 16 units per acre, and a maximum FAR between 0.18 and 0.72 for nonresidential uses including retail, office, research & development, light industrial, warehouse/storage, hotel/motel, and institutional (assisted/nursing) senior living. The PUD was divided into three use categories (A, B and C), with the allowable uses specified for each. The ten parcels within the original PUD were each assigned one of the use categories, and each parcel was given a maximum number of dwelling units and/or floor area ratio, as appropriate to the allowable uses. The GDP created development standards designed for each permitted use type. Six separate plats of subdivision within the Gateway PUD were subsequently submitted and approved.

Feb 1995-Jan 2006 — Eight amendments to the GDP were pursued addressing a variety of matters including landscaping, signage, transportation design, FAR, setback standards, and the removal and addition of certain lands to the Gateway GDP. Part of Parcel B-1 was rezoned to Millennium GDP during this period, although it was pursued through the approval of the Millennium GDP rather than through an amendment to the Gateway GDP.

VII. STAFF, APPLICANT, AND NEIGHBORHOOD INTERACTION

A. Notification: An affidavit was received from the applicant certifying that written notice was mailed to all property owners within 1,000 feet of the property on April 23, 2013 and notices were posted in prominent locations on the perimeter of the site at least 15 days prior to the date of the neighborhood meeting. The mailed and posted notice referenced the date of the neighborhood meeting and the Planning Commission public hearing, along with the anticipated City Council hearing date. In addition, a notice of the public hearing was published in the Reporter Herald on May 25, 2013.

B. Neighborhood Response: A neighborhood meeting was held at 6:00 p.m. on May 9, 2013 near Gateway in the McWhinney offices at 2725 Rocky Mountain Avenue. The meeting was attended by nine neighbors along with City staff, the applicant, and a representative from Asante, the senior housing developer that has been in discussion with the applicant concerning a proposed development. At the meeting, the applicant explained that the current request is to amend the GDP to allow for the future submittal of an application to develop a multifamily residential building targeted at seniors. The senior housing developer described the proposed building, including presenting a model of the structure at the neighborhood meeting.

Attendees asked questions about the specific features of the building, whether the development would be age restricted, whether it would include subsidized units, and expressed concern about parking, traffic, building height, and building setbacks along Hahn's Peak Drive. Regarding traffic, attendees inquired whether the area infrastructure, including streets, could handle a development of this nature. The applicant has submitted a traffic analysis (Attachment 3) demonstrating that the proposed amendment and the development of an age-targeted multifamily residential building will not increase the amount of traffic over what can be constructed on the property by right and that the area roadways can adequately handle the traffic. Regarding parking, some attendees inquired about the provision of adequate parking. The Asante representative described the parking proposed for the development along with the planned provision of shuttle vehicles for residents. Regarding the building height and setback along Hahn's Peak Drive, the applicant explained that the building would have varied heights rather than a monolithic façade, and that outdoor areas orienting towards Hahn's Peak would be located between the building and the road.

VIII. FINDINGS AND ANALYSIS

The Chapters and sections cited below are from the Loveland Municipal Code pertaining to PUD General Development Plans.

A. Land Use

1. Loveland Municipal Code

a. Section 18.41.050.D.4(a): *Whether the general development plan conforms to the requirements of this Chapter 18.41, to the City's master plans and to any applicable area plan.*

Planning: Staff believes that this finding can be met, due to the following:

- The requested GDP amendment is consistent with the Comprehensive Master Plan, which designates the entire site as a Regional Activity Center (RAC). The RAC land use category is a mixed use category that encourages regional shopping, offices, and a wide variety of residential development types. It does not include a target density for residential uses. The gross density in the GDP amendment would remain unchanged at 16 units per acre, although the maximum allowable density within Parcel A-1, the parcel on which there is interest in an age-target multifamily development, would increase to 22 units/acre.
- The GDP amendment is consistent with the intent of the master plan to promote a variety of housing types compatible with RAC character.
- Municipal Code Section 18.41.040 A, which describes permitted uses within PUDs, permits any combination of uses in a PUD so long as it can be determined that the uses are compatible with one another. The applicant is not proposing to change the allowable uses within Gateway as part of this GDP amendment. Multifamily uses, including age-targeted (senior) housing, were determined at the time of the original GDP approval to be compatible with other allowable uses in the GDP.

- Municipal Code Section 18.41.040 B, which describes permitted density and intensity of development within PUDs, permits residential development at a gross density of 16 units per acre, based on the gross land area devoted to each type of use for mixed use PUDs. The Gateway GDP currently limits multifamily residential to that allowed by Code, 16 units per acre. (Single family residential is not a permitted use within use within the Gateway GDP). The amendment proposes to increase the maximum multifamily residential density for Parcel A-1, where the age-targeted housing development would locate, to 22 dwelling units per acre, while not permitting the overall maximum gross residential density of 16 units per acre to be exceeded.

b. Section 18.41.050.D.4(c): *Whether development permitted under the GDP amendment will be complementary to and in harmony with existing development and future development plans for the area in which the GDP is located by:*

(i) *Incorporating natural physical features into the GDP design and providing sufficient open spaces considering the type and intensity of proposed land uses.*

(ii) *Incorporating site planning techniques that will foster the implementation of the Loveland Comprehensive Master Plan.*

(iii) *Incorporating physical design features that will provide a transition between the project and adjacent land uses through the provisions of an attractive entryway, edges along public streets, architectural design, and appropriate height and bulk restrictions on structures.*

(iv) *Incorporating identified environmentally sensitive areas, including but not limited to, wetlands and wildlife corridors, into the project design.*

(v) *Incorporating elements of community-wide significance as identified in the town image map,*

(vi) *Incorporating an overall plan for the design of the streetscape within the project, including landscaping, auto parking, bicycle and pedestrian circulation, architecture, placement of buildings and street furniture.*

Planning: Staff believes that this finding can be met, due to the following:

- Site planning standards have been incorporated into the approved Gateway GDP to promote the philosophies of the City's master plan. The requested GDP amendment does not propose to change any of the Gateway site planning standards.
- Landscaping and open space is provided throughout the Gateway development. No changes to landscaping or open space requirements are proposed in the GDP amendment.
- Transportation design standards have been incorporated into the approved Gateway GDP. Sidewalk connectivity is provided for pedestrians throughout Gateway.
- The proposed GDP amendment does not relieve any developer from the City's site development plan and building permit application processes. The City's Development Review Team will ensure that appropriate site planning techniques are followed once a detailed development plan is prepared and submitted for review, whether the development plan comes from Asante or any other potential developer.

B. City Utilities and Services

1. Loveland Municipal Code

a. Section 18.41.050.D.4

(i) *Development permitted under the zoning established by the GDP will not have negative impacts on traffic or City utilities. If such impacts exist, Section 18.41.050.D.4(b) of the Loveland Municipal Code requires City staff to recommend either disapproval of the GDP or reasonable conditions designed to mitigate the negative impacts.*

(ii) *Whether development permitted under the GDP will be complementary to and in harmony with existing development and future development plans for the area in which the GDP is located by incorporating public facilities or infrastructure, or cash-in-lieu, that are reasonably related to the proposed development so that the proposed development will not negatively impact the levels of service of the City's services and facilities.*

Because the current request concerns only a change to the maximum allowable number of residential units and density in the GDP document, and not a specific development proposal, the application did not require review by the City Water/Wastewater, Power, or Stormwater divisions. These divisions will review the multifamily building or any other specific proposal that is submitted for the subject property at the time of site development plan and building permit review.

Transportation: Staff believes that this finding can be met, due to the following:

- A Traffic Analysis has been submitted with the Gateway GDP amendment. The proposed use associated with the GDP Amendment will result in a decrease of peak hour traffic when compared to what was previously approved. Therefore the proposed GDP amendment will not create a negative impact on traffic and has demonstrated the ability to comply with the City's ACF Ordinance for traffic.

Fire: Staff believes that this finding can be met, due to the following:

- The site will comply with the requirements in the ACF Ordinance for response distance requirements from the first due Engine Company (Station 6).
- The proposed development will not negatively impact fire protection for the subject development or surrounding properties.

IX. RECOMMENDED CONDITIONS

Because the requested amendment concerns a relatively small (17%) increase in multifamily residential units in a PUD that is already approved for multifamily units and does not include a detailed development proposal, no conditions are recommended by staff.

The Gateway-General Development Plan Narrative

The Gateway Planned Unit Development General Development Plan

bha design
May 12, 1994
-Revised: July 14, 1997
- Revised: December 7, 2001
- Revised: _, 2013

A. AUTHORITY AND DEFINITIONS

1. Authority
The conditions of this General Development Plan shall apply to all property contained within The Gateway P.U.D. as defined on the plan map. The regulations and requirements contained herein shall become the governing standards for review, approval and modification of all development activities occuring on the site, superseding other zoning and subdivision ordinances. The subdivision and zoning regulations for the City of Loveland shall apply where the provisions of this document do not address a specific subject.

The conditions of this General Development Plan shall be vested for the period of time specified in a development or other agreements between the City and the developer. Mineral rights will remain the property of the developer throughout the property, including the rights-of-way and easements.

2. Definitions
The definitions in the City of Loveland Zoning Code shall be used except as follows:

a. Light Industrial: Secondary manufacturing, processing, or fabrication of semi-finished products from a primary manufacturing industry provided that the secondary manufacturing facility is completely enclosed. Such uses shall not violate any odor, dust, smoke, gas, noise, radiation, vibration or similar pollution standard as adopted by the City of Loveland, the State of Colorado or the United States government. A maximum of 10% of the lot may be used for outside storage provided it is adequately screened.

b. Lot Coverage: The percentage of the lot that is occupied by all covered structures.

c. Office: Any office in which goods, wares or merchandise are not commercially created, displayed, exchanged or sold.

d. Parcel: Specific site areas that are assigned land uses or other designated attributes.

e. Research and Development: Includes research, development and testing laboratories that do not involve the mass manufacture, fabrication, processing or sale of products. Such uses shall not violate any odor, dust, smoke, gas, noise, radiation, vibration or similar pollution standard as adopted by the City of Loveland, the State of Colorado or the United States government. A maximum of [illegible] of the lot may be used for outside storage provided it is adequately screened.

[illegible] of the following commodities at a small, showroom or warehouse scale: apparel and accessories; art; baked goods and groceries; books; electronics, camera and photographic equipment; drugs and medicine; flowers, fruit or plants hardware; jewelry; liquor; luggage; newspaper and magazines; musical instruments and supplies; furniture; paint, wallpaper, interior decorating and other home improvement supplies; picture framing; sporting goods; office supplies; toys; tobaccos and pipes; and other similar commodity not listed herein.

B. PROJECT LOCATION AND SIZE

The property is located within the City of Loveland on the north side ofUS34, west of the Factory Outlet Mall and I-25. The project includes ~~229.6~~ 192 +/- acres from the outlet mall to the existing R. V. Park, 112 mile west of County Road 7. The northern boundary is the 112 section line of section 9 and 10, T5N, R68W.

C. PURPOSE OF THE PROJECT AND OVERALL DEVELOPMENT CONCEPT

The goal of this project is to provide a high quality, sensitively designed development within the City of Loveland to meet the current and future market demands for many types of uses, including: public, semi-public, tourist support services, lodging, neighborhood and regional retail, commercial, light industrial, and research and development. Multi-family housing is also desirable to provide a nearby source of housing for those employed within the area, creating a synergistic mixed-use community.

Because of the size of the project and ever changing markets, it is not feasible or desirable to predetermine the exact use for each square foot of land. Instead the development will have flexibility in the types of uses, as long as they are compatible with each other, the high quality image of the project, and their location at the major entry to Loveland and the Rocky Mountains.

A City of Loveland sculpture park and Chamber of Commerce Visitors Center are planned on the corner of Rocky Mountain Parkway and US34, and should include areas that are more sheltered from the high speed, high volume traffic on these roads by being internal to the project Other common open space will thread through the project, providing a unifying element, view corridors to focal points and linear areas for locating pedestrian and bike trails. It is the intent of the property owners to develop a master association for the development and maintenance of parks, open space and detention areas that are not dedicated to the City.

It is anticipated that the project will have a theme that relates to its location at the "Gateway to the Rocky Mountains." The architecture will be reminiscent of traditional Rocky Mountain architecture, with natural colors, fonns and materials. Exposed beams, native stone, wood and stucco siding, textured roofing materials and pitched roofs will be incorporated as appropriate, providing harmony and continuity throughout the development The architecture of structures will be evaluated by a design review board for compatibility with the rest of the project.

The recommendations within the proposed US34 Corridor Plan will be incorporated into the development, with 60' (49' net from the right-of-way) landscape zones along US34, and height limitations within a view window to the Mummy Range near the intersection ofUS34 and Rocky Mountain Parkway. Landscape materials will be primarily native species to further enhance the Rocky Mountain theme and to be considerate of the type oflandscape proposed along US34.

A portion of the project is adjacent to an identified natural area, Equalizer Lake. Development adjacent to this area shall incolporate landscape buffers and other mitigation features as appropriate to minimize potential impacts to the habitat and wildlife. Trail access to this area shall be coordinated with the city to ensure that it is done sensitively. Commercial development shall be designed in centers, and other structures shall be clustered when possible to avoid a scattered appearance. Strip commercial development is strongly discouraged, except where site constraints prohibit alternative layouts. Light industrial, office and research and development parks shall be designed and landscaped to create a campus-like atmosphere.

D. LAND USE

1. Land Use Categories and Permitted Uses

The uses permitted in bubbles A-1, A-2, and A-3 are:

The uses permitted in the A category are:

a. Multiple-family housing;
b. Retail stores;
c. Offices and clinics;
d. Gas stations;
e. Convenience store;
f. Motor vehicle sales and service;
g. Carwash facilities;
h. Parking lots and parking garages;
i. Pet stores;
j. Bank, savings and loan, and finance companies;
k. Churches;
l. Hotels and motels;
m. Parks;
n. Personal service shops;
o. Public and private schools;
p. Underground public and private utility, and public service installations and facilities, excluding repair, open storage and production facilities;
q. Indoor recreational uses and theaters;
r. Drive-in or fast food restaurants;
s. Restaurants and other outdoor or indoor eating and drinking places;
t. Tourist homes;
u. Accessory buildings and uses;
v. Child care centers;
w. Boarding or rooming houses;
x. Nursing home and congregate care facility;
y. Government or semipublic uses;
z. Cemetery;
aa. Site and landscape maintenance facility for common areas within the G.D.P., including equipment and materials storage;
bb. Printing shops;
cc. Retail laundries;
d.d. Other similar uses not listed herein as determined by the Community Development Director.

The uses permitted in the B category are:

a. Research and development;
b. Light industrial;
c. The same as those listed in the A category except the following prohibited uses:
   1. Multiple-family housing;
   2. Nursing home;
   3. Congregate care facility;
   4. Boarding and rooming houses.

~~The uses permitted in the C category are:~~

~~a. Warehouse and enclosed storage;~~
~~b. Plumbing, electrical, carpenter and other similar trade shops;~~
~~c. The same as those listed in the B category.~~

2. Land Use Parcels

The ~~229.6~~ 192 +/- acre property has been divided into ~~7~~ 9 parcels as shown on the plan map, Sheet 3. Each of the parcels is designated by the land use category (A or B, ~~or C~~) and a number to differentiate each area. Table 2 summarizes the parcelization.

3. Requirements for Specific Land Uses

Table 1. Requirements for Specific Land Uses

LAND USE	MIN. % OPEN SPACE REQUIRED*	MAX. STORIES (HEIGHT)	MAX. UNITS PER ACRE OR FLOOR AREA RATIO (FAR) **	MAX LOT COVERAGE BY STRUCTURES	MAX. % OF TOTAL NET GDP AREA
Multiple Family Residential	25%	4 (50 Feet)	16 DU / acre	35%	15%
Retail	20%	2 (45 Feet)	.35	30%	90%
Office	20%	4 (50 Feet)	.50	30%	60%
Research & Development, Light Industrial	25%	2 (35 Feet)	.30	30%	50%
Warehouse, Storage	20%	2 (35 Feet)	.50	50%	5%
Hotel/Motel	25%	5 (60 Feet)	.50	25%	15%
Senior Housing -Non Residential	20%	3 (45 Feet)	.70	25%	15%
Other	20%	3 (45 Feet)	.25	25%	NA

*In addition to the open space required for specific land uses, five percent (5%) of the net project land area (~~212.1~~ 192.4) for a total of ~~~~ +/- acres, will be dedicated to common open space for the purposes of irrigation canals, drainage, landscape buffers, walks and pathways, parks, natural areas, sculpture and other passive recreational uses. The location of common open space will be finalized at the time of preliminary and final development plans. Additional open space as indicated above will be required for all uses, with the amount varying according to the specific use.

** The maximum FAR for the net total land area (~~212.1 acres~~) [illegible] is 0.4, however, the FAR on a given parcel may exceed 0.4 as long as the total project FAR is not exceeded.

~~22 DU/acre in Multi Family Residential Parcel 3 Under the open space requirements Section 10.13 will not be exceeded.~~

Note: The percentages listed may be adjusted administratively up to 5% as long as the intent of the P.U.D. is respected.

Amendment #	Date	Purpose/Revision
1	No Information	No Information
2	2.7.95	Added Landscape and Signage Standards
3	9.5.95	Approved modifications to the sign standards for the food court, Lot 6 , Block 1 of McWhinney 2nd Subdivision
4	No Information	No Information
5	9.16.97	Sheet 1: Revised Owners Name in Approvals section and provided this Amendment History Table Sheet 2: Revised the fourth paragraph under "Vehicular and Bicyclist Circulation" titled Access, to remove the requirement for the raised concrete median in Rocky Mountain Avenue when the traffic signal is installed at the intersection of Rocky Mountain Avenue and McWhinney Boulevard. Also added "unless otherwise approved by the City Engineer" to allow for decreased spacing of intersections along Rocky Mountain Avenue and McWhinney Boulevard provided the City Engineer approves. Paragraph K.1 (Master Association and Design Review Board) - added a sentence which requires a letter of approval from the Design Review Board to accompany all applications for building permit. Sheet 3: Re-aligned McWhinney Boulevard west of Rocky Mountain Avenue and revised the layout of the parcels west of Rocky Mountain A venue (parcels A-1 through A-6). Revised the Land Use Table to reflect changes in layout. Added note at the southwest corner of parcel A-6 requiring a 200' minimum intersection offset unless otherwise approved by the city engineer.
6	5.20.03	Separated out th eares for PUD #83, Twin Peaks Addition
7	2.15.05	Added Twin leaves area to the Gateway GDP land area
8	1.17.06	Sheet 1: Changed Max FAR for land use "Other" from .25 to .70 Sheet 2: Changed minimum setback from side or back property lines for Retail, Office Parking and Drives from 15 feet to 5 feet
9		[illegible]

Please Note: Amendments #1 - 5 and 8 and 9 McWhinney Boards pre-annexation recording Amendments Numbered 1 or 3

Approval:
Centerra Office Partners, LLC,
a Colorado Limited Liability Company

By: McWhinney Real Estate Services, Inc.,
a Colorado Corporation,
Manager

Jay Hardy, Vice President Community Development

a. Approved this _____ day of_____, 20____, by the Current Planning Manager of the City of Loveland, Colorado.

Current Planning Manager

b. Approved this _____ day of _____, 20____ by the City Engineer of the City of Loveland, Colorado.

City Engineer

c. Approved this _____ day of _____, 20____ by the City Attorney of the City of Loveland, Colorado.

City Attorney

d. Approved this _____ day of _____, 20____ by the City Planning Commission of the City of Loveland, Colorado.

Chairperson

e. Approved this _____ day of _____, 20____ by the City Council of the City of Loveland, Colorado.

Mayor Attest

Sheet 1- Development Plan Narrative, Land Use Summary
Sheet 2- Development Plan Narrative, Land Use Summary
Sheet 3 - Master Plan
Sheet 4 - Typical Street Sections
Sheet 5 - Architectural Character, Landscape Concept

Planners:
EDAW
249 East Mountain Ave.
Fort Collins, Colorado 80524

Developer:
McWhinney Colorado-Enterprises
4599 East US 34
Loveland, Colorado 80538

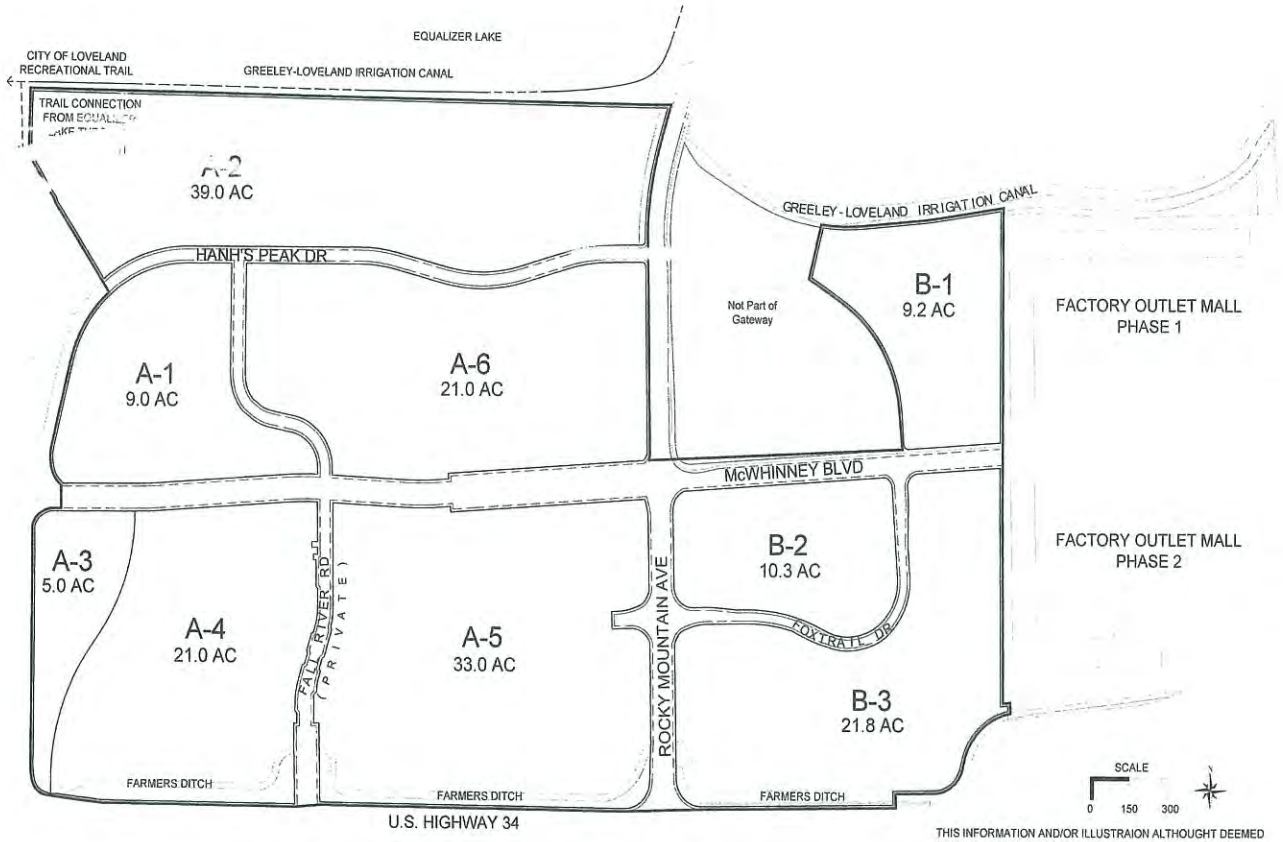
PC ATTACHMENT 1

The Gateway Planned Unit Development

General Development Plan

EDAW
May 12, 1994
-Revised: July 4, 1997
- Revised: _, 2013

MASTER PLAN



THIS INFORMATION AND/OR ILLUSTRAION ALTHOUGHT DEEMED RELIABLE, IS CONCEPTUAL IN NATURE AND McWHINNEY AND/OR ITS AFFILIATES MAKES NO WARRANTIES TO ITS ACCURACY. THE INFORMATION SHOWN HERE IS SUBJECT TO CHANGE.

Table 2

Land Use Table

LAND USE CATEGORY AND PARCEL	ACREAGE	MAXIMUM NUMBER OF DWELLING UNITS	NUMBER OF UNITS/FAR DEVELOPED	DESCRIPTION OF DEVELOPMENTS AND YEAR(S) CONSTRUCTED
A-1	~~19.0~~ 2.74	~~304*~~ 80	.72 FAR	Park Regency Assisted Living NO DU - 2007
	6.26		NA	Not developed
A-2	39.0	624*	418 DU	Eagle Ridge/Lakeshore Units 1999
A-3	5.0	80*	.22 FAR	Marketplace - NO DU 2005-2008
A-4	21.0	336*	.22 FAR	Marketplace - NO DU 2005-2008
A-5	33.0	528	.22 FAR	Marketplace - NO DU 1999-2001
A-6	21.0	~~336*~~	.26 FAR	Factual Data Building/Compass Bank/ Hahns Peak NO DU 1999-2005
B-1	~~29.3~~ 9.2	0	NA	Rezoned a portion to the Millennium GDP in 2000 - Not developed
B-2	10.3	0	.39 FAR	Vertrail Office Condos & Residence Inn NO DU 2007-2008
B-3	21.8	0	.10 FAR	Restaurant/2 Hotels/Chamber/ The Group/Old Food Court NO DU 1995-2002
~~C-1~~	~~12.1~~	0	NA	Rezoned to the Millennium GDP in 2000 - Not developed
SUBTOTAL	~~216.3~~ 179.3	~~500~~ 536*		
ARTERIAL & COLLECTOR ROADS RIGHTS-OF-WAY	13.1			
TOTAL	~~229.6~~ 192.4	~~500~~ 536*		

* The total maximum number of multi-family dwelling units for the entire ~~229.6~~ 192.4acre project is 500 536 which is significantly less than the sum of the maximum allowable units per parcel. The maximum number of units per parcel is based on the entire parcel being developed at 16 DU/acre, except Parcel A-1 which is 22 DU/acre.

Sheet 3 of 5

PC ATTACHMENT 1

Exhibit A

Table 1, Sheet 1

Close up for increased legibility

Table 1. Requirements for Specific Land Uses

LAND USE	MIN. % OPEN SPACE REQUIRED*	MAX. STORIES (HEIGHT)	MAX. UNITS PER ACRE OR FLOOR AREA RATIO (FAR) **	MAX LOT COVERAGE BY STRUCTURES	MAX. % OF TOTAL NET GDP AREA
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Warehouse, Storage	20%	2 (35 Feet)	.50	50%	5%
Hotel/Motel	25%	5 (60 Feet)	.50	25%	15%
Senior Housing -Non Residential	20%	3 (45 Feet)	.70	25%	15%
Other	20%	3 (45 Feet)	.25	25%	NA

*In addition to the open space required for specific land uses, five percent (5%) of the net project land area ~~(212.1)~~ (192.4), for a total of ~~10.6~~ 9.62 acres, will be dedicated to common open space for the purposes of Irrigation canals, drainage. landscape buffers, walks and pathways, parks, natural areas, sculpture and other passive recreational uses. The location of common open space will be finalized at the time of preliminary and final development plans. Additional open space as indicated above will be required for all uses, with the amount varying according to the specific use.

** The maximum FAR for the net total land area ~~(212.1 acres)~~ (192.4) is 0.4, however, the FAR on a given parcel may exceed 0.4 as long as the total project FAR is not exceeded.

*** 22 DU/acre for Multi-Family Residential in Parcel A-1 only. The gross density requirements of Section 18.41.040 shall not be exceeded.

Note: The percentages listed may be adjusted administratively up to 5% as long as the intent of the P.U.D. is respected.

Amendment Table, Sheet 1

Close up for increased legibility

Amendment #	Date	Purpose/Revision
1	No Information	No Information
2	2.7.95	Added Landscape and Signage Standards
3	9.5.95	Approved modifications to the sign standards for the food court, Lot 6 , Block 1 of McWhinney 2nd Subdivision
4	No Informaiton	No Information
5	9.16.97	Sheet 1: Revised Owners Name in Approvals section and provided this Amendment History Table. Sheet 2: Revised the fourth paragraph under "Vehicular and Bicyclist Circulation" titled Access, to remove the requirement for the raised concrete median in Rocky Mountain Avenue when the traffic signal is installed at the intersection of Rocky Mountain Avenue and McWhinney Boulevard. Also added "unless otherwise approved by the City Engineer" to allow for decreased spacing of intersections along Rocky Mountain Avenue and McWhinney Boulevard provided the City Engineer approves. Paragraph K.1. (Master Association and Design Review Board) - added a sentence which requires a letter of approval from the Design Review Board to accompany all applications for building permit. Sheet 3: Re-aligned McWhinney Boulevard west of Rocky Mountain Avenue and revised the layout of the parcels west of Rocky Mountain A venue (parcels A-1 through A-6). Revised the Land Use Table to reflect changes in layout. Added note at the southwest corner of parcel A-6 requiring a 200' minimum intersection offset unless otherwise approved by the city engineer.
6	5.20.03	Seperated out th earea for PUD #83, Twin Peaks Addition
7	2.15.05	Added Two leaves area to the Gateway GDP land area
8	1.17.06	Sheet 1: Changed Max FAR for land use "Other" from .25 to .70 Sheet 2: Changed minimum setback from side or back property lines for Retail, Office Parking and Drives from 15 feet to 5 feet
9		Sheet 1: Revise for Specific Land Uses, Amend Multiple Family Residential to reflect 22 DU/acre. Revise Amendments History Table. Sheet 3: Revise Land Use Table to reflect increase in total units to 586 and increase the Maximum Number of Dwelling Units Revised to reflect the rezoning of a portion of Parcel B-1 and Parcel C to the Millennium GDP on July 11, 2006

Table 2, Sheet 3

Close up for increased legibility

Table 2

Land Use Table

LAND USE CATEGORY AND PARCEL	ACREAGE	MAXIMUM NUMBER OF DWELLING UNITS	NUMBER OF UNITS/FAR DEVELOPED	DESCRIPTION OF DEVELOPMENTS AND YEAR(S) CONSTRUCTED
A-1	~~49.0~~ 2.74	~~304*~~ 60	.72 FAR	Park Regency Assisted Living NO DU - 2007
	6.26	138*	NA	Not developed
A-2	39.0	624*	448 DU	Eagle Ridge/Lakeshore Units 1999
A-3	5.0	80*	.22 FAR	Marketplace - NO DU 2005-2008
A-4	21.0	336*	.22 FAR	Marketplace - NO DU 2005-2008
A-5	35.0	528	.22 FAR	Marketplace - NO DU 1998-2004
A-6	21.0	336*	.26 FAR	Factual Data Building/Compass Bank/ Hahns Peak-NO DU - 1998-2005
B-1	~~29.3~~ 9.2	0	NA	Rezoned a portion to the Millennium GDP in 2008 - Not developed
B-2	10.3	0	.39 FAR	Foxtrail Office Condos & Residence Inn- NO DU 2007-2008
B-3	21.8	0	.18 FAR	Restaurants/2 Hotels/Chamber/ The Group/Old Food Court - NO DU 1995-2002
~~C-1~~	~~17.1~~	~~0~~	~~NA~~	Rezoned to the Millennium GDP in 2008 - Not developed
SUBTOTAL	~~316.3~~ 179.3	~~500~~ 586*		
ARTERIAL & COLLECTOR ROADS RIGHTS-OF-WAY	13.1			
TOTAL	~~329.6~~ 192.4	~~500~~ 586*		

[* The total maximum number of multi-family dwelling units for the entire ~~329.6~~ 192.4 acre project is ~~500~~ 586, which is significantly less than the sum of the maximum allowable units per parcel. The maximum number of units per parcel is based on the entire parcel being developed at 16 DU/acre, except Parcel A-1 which is 22 DU/acre.

Project Description and Legal Description

Project Description:

Amend the Gateway GDP to modify the "Requirements for Specific Land Uses" table on Sheet 1 to increase the Maximum units per Acre or Floor Area Ration (FAR) in the Multi-Family land use from 16 dwelling units per acre to 22 dwelling units per acre. With this modification the Land Use Table on Sheet 3 will also need to be amended to reflect the change. The Maximum Number of Dwelling Units subtotal and total will need to be increased to 586 total units.

Legal Description: There are several Subdivision Plats within the Gateway GDP

Rocky Mountain Village 16th Subdivision
McWhinney 12th Subdivision
McWhinney 11th Subdivision
Rocky Mountain Village 15th Subdivision
Rocky Mountain Village 5th Subdivision
Rocky Mountain Village 3rd Subdivision

PROJECT NARRATIVE/OVERVIEW

We are requesting to amend the Gateway GDP to increase the allowed dwelling units per acre from 16 du per acre to 22 du per acre for age restricted senior apartments (subset of the multifamily land use category). With this amendment we plan to amend Sheet 1 and Sheet 3. On Sheet 1 the Requirement for Specific Land Uses would be amended in the Multi-Family Residential section by adding a footnote that would allow up to 22 dwelling units per acre for only age restricted senior apartments. The Land Use Table on Sheet 3 would be amended to increase the subtotal and total Maximum Number of Dwelling Units from 500 dwelling units to 586 dwelling units.

The City of Loveland Municipal Code, Section 18.41.040.B of the ("Planned") Unit Development Zone District Requirements and Procedures is referenced below. The intent of this amendment is to increase the density for a specific use that will be an infill lot to the Gateway GDP. Presently there are three vacant parcels of land in the GDP; two have been slated for commercial building while the third is planned to be utilized for senior housing, thus the need to increase the density.

> 18.41.040.B. The density and/or intensity of development shall be based on the capacity of the land proposed for development to support the planned unit development as well as the impact of the proposed development on city services and facilities and on neighboring property that reasonably could be impacted by the proposed development. Capacity of the land shall be determined based on the size, topography, and geological and environmental limitations of the land proposed for development. Notwithstanding the foregoing, residential development shall not exceed a gross density of sixteen units per acre; commercial development shall not exceed a floor area ratio of 0.5; office development shall not exceed a floor area ratio of 4.0; industrial development shall not exceed a floor area ratio of 1.0. In a mixed use planned unit development, the gross density shall be calculated based on the gross land area devoted to each type of use. (Ord. 4239 § 1 (part), 1997; Ord. 3896 § 1 (part), 1993)

VACANT PROPERTIES WITH IN THE GATEWAY GDP

Rocky Mountain Village 16th Subdivision

Current Vacant Properties:

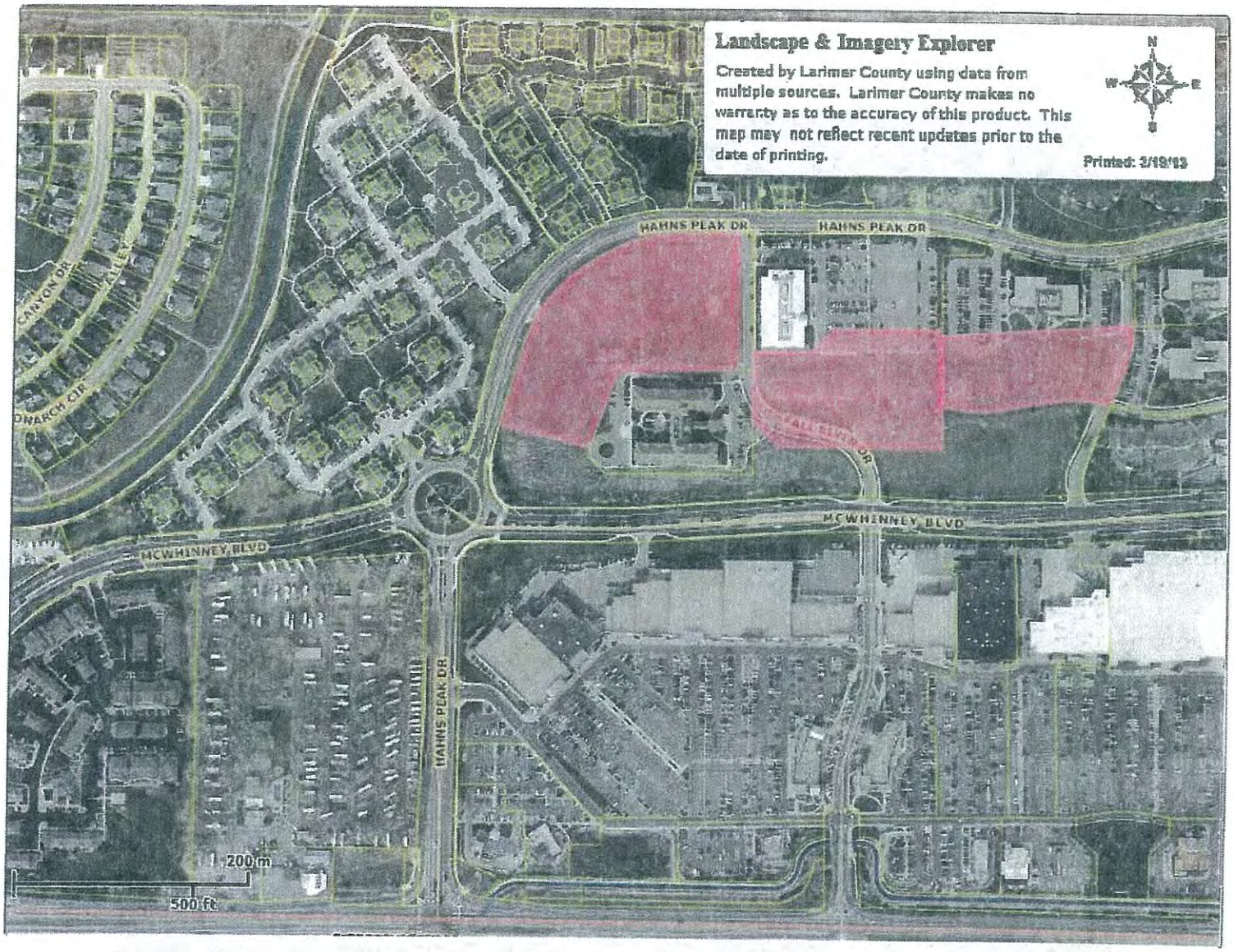
1. Block 1, Lot 3 and Outlot B – proposed use will be the senior apartments that the amended GDP will be addressing
2. Block 1, Lot 2 – intent for this will be another Hahn's Peak office building which will be for commercial uses. There currently is an approved FDP dated 5.1.06 for this parcel. It includes no residential

McWhinney 12th Subdivision:

Current Vacant Properties:

1. Block 1, Lot 3 – intent for this is FDC IV which will be another office building for commercial use. This currently has an approved FDP with a revised date of 8.23.00. It includes no residential

The map below indicates the location of the three vacant parcels.



List and description of developments in Centerra and the Millennium GDP with comparable densities

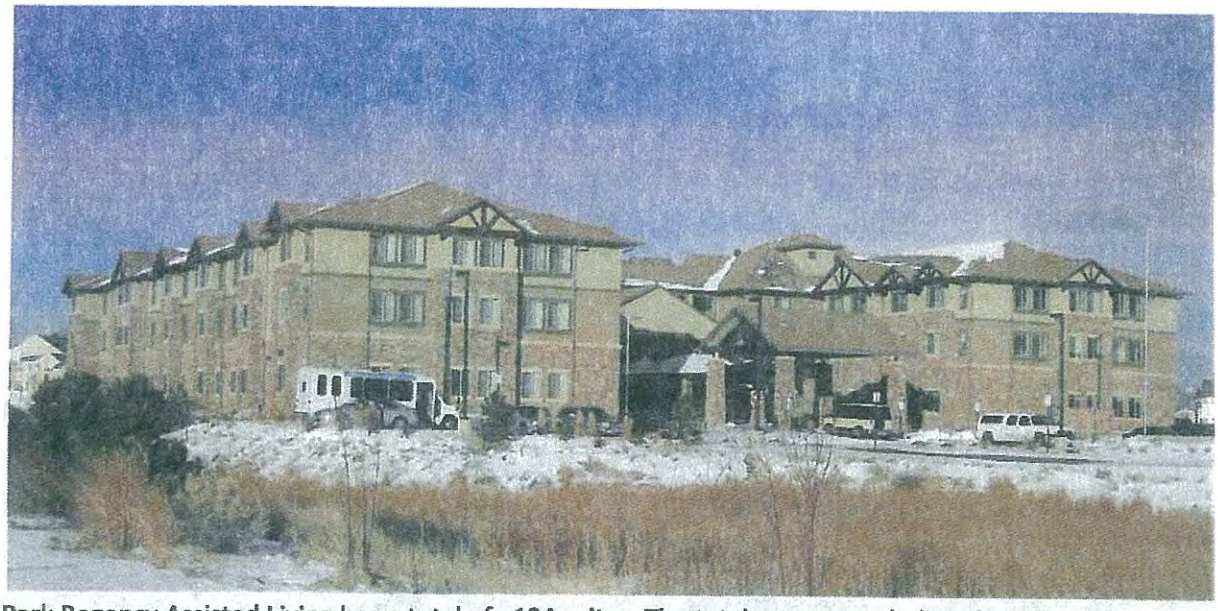
Below are photos that include a brief summary with regards to the individual developments.

Eagle Ridge Apartments has 168 Total Units. The total acreage excluding the adjacent regional detention pond is 8.65 ac. The density is 19.4 du/ac (168/8.65).

The Reserve Apartments has 153 Total Units. The total acreage excluding the adjacent regional detention pond is 9.08 ac. The density is 16.8 du/ac (153/9.08).

The McStain Condos has 208 Total Units. The total acreage excluding the adjacent regional detention pond is 16.68 ac. The density is 12.5 du/ac (208/16.68).

The Lakeshore Condos has 280 Total Units. The total acreage excluding the adjacent regional detention pond is 17.15 ac. The density is 16.3 du/ac (280/17.15).



Park Regency Assisted Living has a total of 104 suites. The total acreage excluding the adjacent regional detention pond is 2.93. Because the suites do not have kitchens they are not considered a residential use. If the suites were considered on the equivalent as residential units then the density would be 35.5 du/ac (104/2.93).

Lake Vista has 303 Total Units. The total acreage excluding the adjacent regional detention pond is 14.92 ac. The density is 20.3 du/ac (303/14.92).

The Greens at Van de Water has 252 Total Units. The total acreage excluding the adjacent regional detention pond is 14.54 ac. The density is 17.3 du/ac (252/14.54).

VARIOUS GDP COMPARISONS OF ALLOWED DENSITIES AND BUILDING HEIGHTS

GDP	DENSITY	HEIGHT
Millennium	30 du/acre	60 feet
Gateway	16 du/acre	50 feet
Rocky Mountain Village	16 du/acre	50 feet

OPEN SPACE COMPARISONS

RES. PROPERTIES	ACRES OF OPEN SPACE	TOTAL ACRES	% OPEN SPACE
Lakeshore	1.63	18.78	9
Eagle Ridge	3.25	11.90	27
Reserve	3.92	13.00	30
McStain	5.13	21.81	23
Proposed Senior Living Campus (Park Regency and new project)	3.40	9.19	37

These numbers were taken directly from the parcel map and tie to the density and photos above.

FINDINGS REPORT

A. The GDP/PDP conforms to the requirements of Chapter 18.41 of the LMC (PUD Chapter), to the City's master plans and to any applicable area plan

This GDP amendment does conform to the requirements of Chapter 18.41 as it is an innovative design of a residential need. This provides necessary housing conveniently located to commercial and recreational facilities. This housing type provides a perfect transition from the higher density senior units at Park Regency to the lower density units at Lakeshore and Eagle Ridge. This amendment will encourage innovation in residential so the growing demands of the population may be met by a greater variety in type of buildings. This proposed amendment will allow for a use that will lessen the burden of traffic in the area as seniors are typically retired and do not require as many trips per day. With this amendment being specific to an infill need we feel as though it meets the intent of this chapter.

B. The proposed development will not negatively impact traffic in the area, city utilities, or otherwise have a detrimental impact on property that is in sufficient proximity to the proposed development to be affected by it.

The proposed amendment to the GDP will in fact create a use that will lessen the burden of traffic in the area and will not negatively impact the city utilities in any way. There will be no detrimental impact as this will create a use that nestles into the area perfectly.

C. The proposed development will be complementary to and in harmony with existing development and future development plans for the area in which the proposed development is to take place.

This amendment will create a use that is in perfect harmony with the existing development in the area. The area impacted by this amendment is surrounded by residential to the north and west with commercial conveniently located within walking distance to the south and east. This amendment affects what is essentially an infill lot to the Gateway GDP.

i. Incorporating natural physical features into the development design and providing sufficient open spaces considering the type and intensity of use:

Currently there is open space that is in abundance of the required % of open space for the area. The percentages are included in the information above. There are currently detention areas providing quality wildlife habitat in existence for the entire area.

ii. Incorporating site planning techniques that will foster the implementation of the City's mater plans, an encourage a land use pattern that will support a balanced transportation system, including auto, bike and pedestrian traffic, public or mass transit, and the cost effective delivery of other municipal services consistent with adopted plans, policies and regulations of the city.

A majority of this already exists in the area. The infrastructure is in place along with the bike and pedestrian sidewalks. There are two bus stops within ¼ mile of the parcels this amendment will affect. Currently all utilities are in place and there will be no additional fees.

iii. Incorporating physical design features in the development that will provide a transition between the project and adjacent land uses through the provision of an attractive entryway, edges along public streets, architectural design, and appropriate height and bulk restrictions on structures.

There will be physical features built into the development that will enhance connectivity between the adjacent land uses. Presently sidewalks are installed.

iv. Incorporating identified environmentally sensitive areas, including but not limited to, wetlands and wildlife corridors, into the project design

Wetlands are existing, established and being maintained by HPEC.

v. Incorporating elements of community-wide significance as identified in the town image map

N/A

vi. Incorporating public facilities or infrastructure, or cash-in-lieu, that are reasonably related to the proposed development so that the proposed development will not negatively impact the levels of service of the City's services and facilities; and

The amendment will not negatively impact the level of services of the City's utilities.

vii. Incorporating an overall plan for the design of the streetscape within the project, including landscaping, auto parking, bicycle and pedestrian circulation, architecture, placement of buildings and streets furniture

Currently a majority of the amenities are in place, bike and pedestrian circulation, streetscape. The proposal for senior housing will address the needed designs internal to the site.

D. A description and discussion of all aspects of the GDP that do not comply with the regulations for the comparable zone district in the Municipal Code.

We do not believe there are any aspects that do not comply with regulations as proposed.

LAND USE INFORMATION TABLE

The land use table is modified on Sheet 3 of the GDP submitted documents.

McWHINNEY

March 21, 2013

RE: REQUEST A WAIVER TO THE PUD DENSITY STANDARDS
City of Loveland Municipal Code Section 18.41.040.B

TO: Noreen Smyth
City of Loveland Senior Planner

McWhinney, Manager for the owner of Lot 3 and Outlot B of the Rocky Mountain Village 16th Subdivision is making application to the City for an amendment to the Gateway GDP related to a proposed Senior Apartment project. As part of the application McWhinney is also submitting this request for a waiver to Section 18.41.040.B of the municipal code specifically addressing the density per unit calculation. Lot 3 and Outlot B comprise the last parcel of ground that is intended to be developed with residential uses within the Gateway GDP. There are two other undeveloped parcels within the GDP and those have been platted and approved for office developments. (Phase 2 of the Hahn's Peak Office campus and FDC 3 of the Factual Data Office campus).

The request for the waiver is to allow up to 22 du/acre for age restricted Senior Apartments. The design of Senior Apartment projects differs from standard multifamily apartments targeting families in that the unit mix typically does not include the larger three bedroom units. The unit mix instead is dominated with one and two bedroom units resulting in a much smaller average square foot size per unit. This means that given a building of the same size, there will be more Senior Apartment units that can fit in it versus traditional apartment units. Senior Apartments also require fewer parking spaces with fewer residents driving and owning cars. This also means that compared to a traditional apartment project, the Senior Apartments can fit the same number of units on a smaller site since less space is required for parking lots. Both the unit mix/average size and the reduced requirement for parking spaces mean a more compact development resulting in a higher density project. The increased density is necessary to make a Senior Apartment project viable.

Other Supporting Documentation

- The waiver would only apply to age restricted Senior Apartments and would not apply to other multifamily apartments or condominiums. Most of the land within the Gateway GDP and surrounding area is already developed with multifamily (apartments and condominiums), office, retail and senior assisted living facilities. Allowing for Senior Apartments to be developed would broaden the residential options available to seniors in the area and create a greater senior living campus.

Bring Your Dream

2725 Rocky Mountain Ave,
Suite 200
Loveland, CO 80538
p: 970.962.9990
f: 970.635.3003
www.mcwhinney.com

The size and scale of the development would be in keeping with the existing and future allowed commercial development on the adjacent property.

- Existing multifamily developments in the Gateway GDP and in surrounding GDP's on similar sites (net of regional detention ponds) have similar densities to the proposed 22 du/ac. (See detailed summary in the application for the GDP amendment).

- The Millennium GDP which covers thousands of acres in the Centerra and Van de Water developments already allows multifamily densities of up to 30 du/ac.

- The proposed Senior Apartment project, when taken into context with the existing senior living facility as a campus and the adjacent regional detention pond/wetlands within the block will provide a higher percentage of open space than the existing surrounding multifamily developments. 39% of the property is comprised of high quality wetlands and wildlife habitat. (See detailed open space comparison in the application for the GDP amendment).

Based on the above information, we respectfully request approval of the waiver. Thank you for your consideration.

Sincerely,

Kim L. Perry
VP Community Design
McWhinney

permontesgroup

March 21, 2013

Mr. Jim Niemczyk
McWhinney Enterprises
2715 Rocky Mountain Avenue, Suite 200
Loveland, CO 80538

RE: Land Use Modification Traffic Analysis for the Parcel 102 Project - Centerra

Dear Jim:

This letter summarizes the traffic characteristics of the currently proposed senior residential plan for two of the remaining vacant parcels within the Centerra Parcel 102 area. The currently proposed residential land use traffic characteristics are compared to those contained in a 2005 traffic impact study (TIS)[1] prepared for the site. This traffic analysis reviews prior and currently proposed land use traffic characteristics for the parcels and identifies any site specific traffic impacts to the adjacent street network.

The site is generally located on the northeast quadrant of the McWhinney Boulevard / Hahns Peak Drive intersection in the City of Loveland. The two parcels within the Parcel 102 site are currently vacant, but have been planned for a future nursing home and congregate care retirement residential uses. The project involves a change in land use for these two parcels for up to 138 senior apartment residential units. Access to the site is planned from the adjacent street network via existing driveway connections.

Transportation and Access Conditions

The site is located within the Centerra development area on the northeast quadrant of the McWhinney Boulevard and Hahns Peak Drive intersection. The adjacent street network has been constructed and access points to the site are in place. The site plan (prior study Figure 2) from the Parcel 102 TIS is attached for reference. The internal north-south site drive is in place. The assisted living building and northern office building have been constructed. The Alzheimer Care Center and Outlot A (Future Nursing Home) on the study site plan are the parcels included in this analysis for land use modification. The two sites encompass a total of 6 acres in the Parcel 102 area.

[1] Centerra Parcel 102 (Rocky Mountain Village 16th Subdivision) Project Traffic Impact Study, Fox Higgins Transportation Group, November 10, 2005.

Comparison of Site Traffic Characteristics

The traffic study prepared in 2005 for the site assumed the two internal site parcels would be developed with the following land use compositions:

Prior Site Land Uses:
- Alzheimer Care Center – 66 beds
- Nursing Home – 45,000 square feet

The current land use plan calls for the construction of up to 138 senior residential apartment units. A comparison between the prior and current land use traffic was made based on trip generation data for similar land uses contained in the Institute of Transportation Engineers (ITE) Trip Generation manual. The ITE 7th Edition (2003) manual was applied in 2005 to the prior land uses. The most current ITE manual was used to determine traffic characteristics of the proposed land uses[2]. The trip rates are for an average weekday, as well as morning and evening peak hour periods of the adjacent street network.

Based on the data presented above, trip generation for the current and prior proposed site uses was estimated and is shown in Table 1 attached and summarized below.

Prior Land Use Traffic Characteristics:
- 460 average daily trips
- 29 A.M. peak hour one-way trips
- 38 P.M. peak hour one-way trips

Currently Proposed Senior Apartment Land Use Traffic Characteristics:
- 475 average daily trips
- 28 A.M. peak hour one-way trips
- 35 P.M. peak hour one-way trips

As shown in the table, the currently proposed senior apartment land use will generate relatively the same amount of traffic as the prior uses. The current land use plan will generate less peak hour traffic than the prior uses in both the morning and evening peak hour periods when the adjacent street network is experiencing its highest traffic volumes. The adjacent and planned internal street network will be more than adequate to serve the senior residential use traffic.

[2] Trip Generation 9th Edition, Institute of Transportation Engineers, 2012.

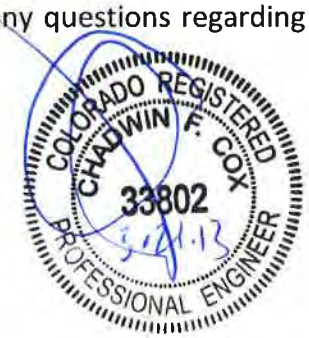
Conclusions

In summary, this traffic analysis reviewed site generated traffic and area conditions of the adjacent transportation network for the proposed Parcel 102 Project in Centerra. A comparison between the prior land uses planned in 2005 when the site traffic study was prepared and the currently proposed land uses was made. It is estimated that the current proposed senior apartment units will generate similar traffic to that of the prior land uses proposed on the site. The senior residential use is estimated to generate 475 average daily weekday trips with 28 of these trips occurring during the morning peak hour and 35 of these trips occurring during the evening peak hour period of the adjacent street network.

It was determined that the site traffic will be equal to or less than that of the approved uses planned on the site parcels in the past. The senior residential traffic can be served by the existing adjacent roadway and pedestrian networks. This concludes our traffic analysis for the Parcel 102 land use modification project.

Please feel free to contact me if you have any questions regarding this traffic analysis or you need additional information.

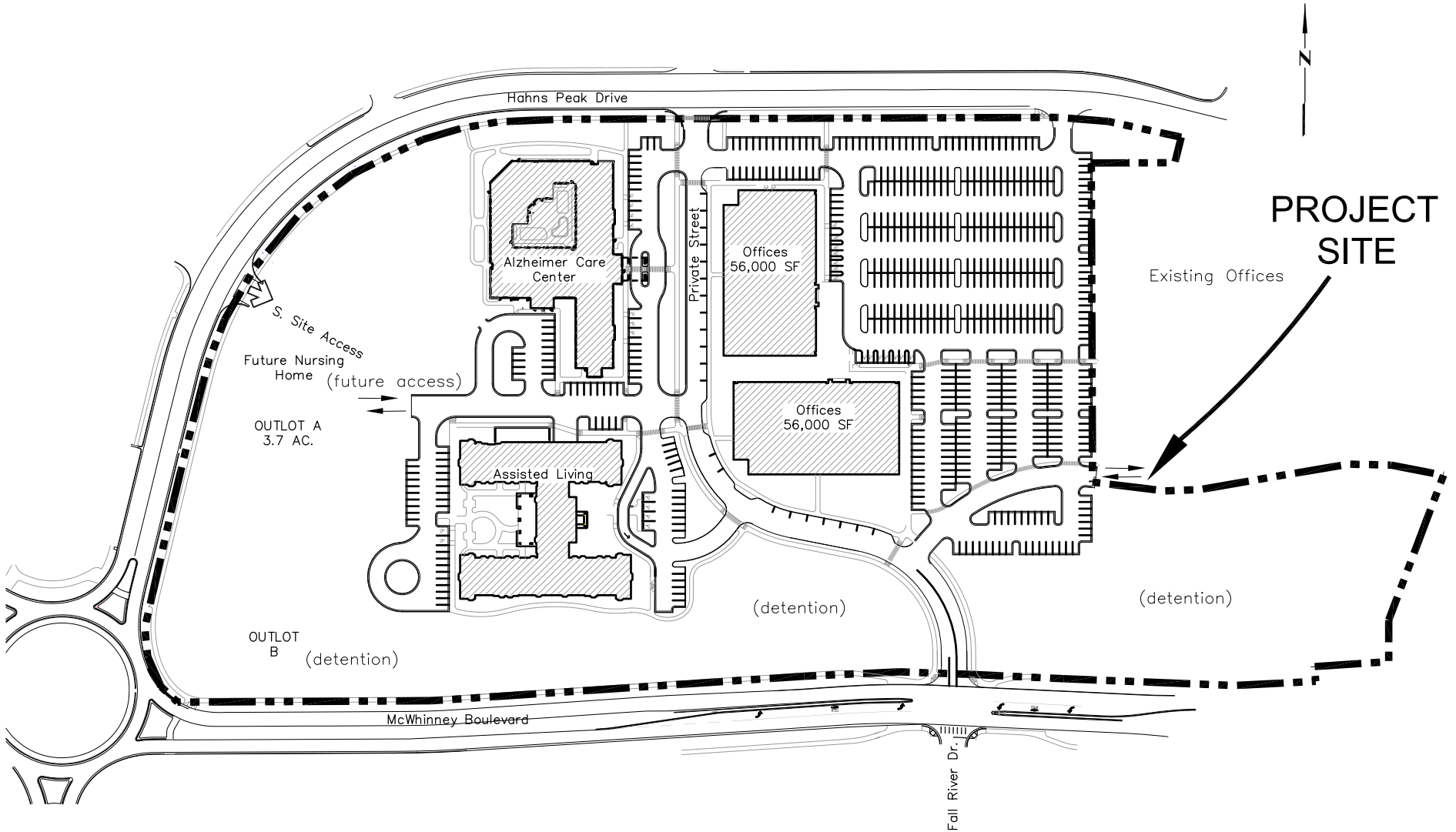
Sincerely,
PERMONTES GROUP, INC.



Jo Ann Higgins
Project Planner

Chadwin F. Cox, P.E.
Registered Professional Engineer

Attachments: Parcel 102 TIS Figure 2 – Site Plan
Table 1 – Trip Generation Comparison



FOX HIGGINS
TRANSPORTATION GROUP

CENTERRA PARCEL 102 PROJECT TRAFFIC IMPACT STUDY

SITE PLAN

FH Project #	05038	Original Scale	1"=200'	Date	11/09/05	Drawn by	JAH	Figure #	2

Exhibit A

permontesgroup

Table 1 - Trip Generation Comparison

ITE Code	Land Use	Size	Unit	Average Daily Trips				A.M. Peak Hour Trips				P.M. Peak Hour Trips			
				Rate	Total	In	Out	Rate	Total	In	Out	Rate	Total	In	Out
Prior (Nov. 2005 TIS) Centerra Parcel 102 Traffic Estimates:															
255	Continuing Care Retirement Comm.	66	Beds	2.81	185	92	93	0.18	12	8	4	0.29	19	9	10
620	Nursing Home	45.00	1,000 S.F.	6.10	275	138	137	0.38	17	11	6	0.42	19	9	10
	Total Prior Parcel Trips:				*460*	*230*	*230*		*29*	*19*	*10*		*38*	*18*	*20*
Currently Proposed Senior Apartment Traffic Estimates:															
252	Sr. Adult Housing	138	Dwelling Units	3.44	475	237	238	0.20	28	10	18	0.25	35	19	16
	Total Currently Planned Land Use Trips:				*475*	*237*	*238*		*28*	*10*	*18*		*35*	*19*	*16*
	Net Traffic Difference between Prior and Current:				**15**	**7**	**8**		**-1**	**-9**	**8**		**-3**	**1**	**-4**
	Percent Trip Differential (Current to Prior):				*3%*				*-3%*				*-8%*		

Note: Current trip generation rates based on ITE trip gen manual dated 2012.

CITY OF LOVELAND
PLANNING COMMISSION MINUTES- *Excerpt*
June 10, 2013

A meeting of the City of Loveland Planning Commission was held in the City Council Chambers on June 10, 2013 at 6:30 p.m. Members present: Chairman Meyers; Vice-Chair Middleton, and Commissioners Ray, Massaro, Dowding, Crescibene, Krenning and Prior. Member(s) absent: Commissioner Molloy. City Staff present: Bob Paulsen, Current Planning Manager; Judy Schmidt, Deputy City Attorney; Kimber Kreutzer, Planning Commission Secretary.

3. **Gateway PUD: General Development Plan Amendment**
This is a public hearing item to consider a proposed amendment to the Gateway General Development Plan requested by McWhinney Real Estate Services to allow a residential density increase from 16 units per acre to 22 units per acre on parcel A-1. This parcel is located on Hahn's Peak road and includes a lot that is vacant and suitable for multi-family development.

Senior Planner, Noreen Smyth stated that the purpose of this amendment request is to allow for the future submittal of Site Development Plan and Building Permit applications for a multi-family residential development aimed at seniors. The maximum number of residential units would increase from 500 to 586, which is a 17% increase. A formal application for a Site Development Plan can only be submitted when and if the amendment is approved. A neighborhood meeting was held on 5/9/2013 with the Developer, and concerns about traffic and parking were addressed by the applicant. Because the Municipal Code Findings relative to a GDP amendment have been met, Planning Staff is recommending the approval of this amendment without conditions.

Ms. Smyth introduced **Kim Perry, VP of Community Design for McWhinney Enterprises.** Ms. Perry stated that this 6.2 acre parcel in the GDP is one of the last undeveloped parcels in the PUD. The amendment would allow the development of an active adult apartment community which would be built next to Park Regency Assisted Living Residence. **Ms. Perry** explained that senior apartment projects typically have a more compact development model and this project will have no 3 bedroom units. Smaller average unit size allows more units in the same size building. Fewer parking spaces allow the same number of units to be built on a smaller site. Comparison to GDP maximum densities in the area revealed that Millennium GDP currently has 20 and 30 units/acre and **Ms. Perry** stated the new project would be comparable to existing developments in the area. The preliminary site plan revealed that surface and garage parking will be included. The program and services in the project are leaned toward senior services, including a shuttle bus service, and possibly a small fleet of electric cars that residents could share and use.
Ms. Perry shared that the owner of Park Regency is in favor of this project and would like to see the amendment approved. The units will be market rate apartments for seniors.

Chair Meyers opened the meeting up to a Public Hearing. Not seeing any citizens come forward with comments, **Chair Meyers** closed the Public Hearing.

Commissioner Dowding agreed that this project would be a beautiful complement to Park Regency. She asked for clarification on page 3 in her packet. It said there were 583 units versus the 586 discussed earlier. **Ms. Smyth** confirmed that 586 is the correct number however she noted the number of units can be less in the final plan.

Commissioner Massaro asked about the number of dwelling units per acre and felt that 22 per acre were pushing the limit. **Ms. Perry** stated that higher density projects are likely in the future. He questioned the transportation plans for this project. **Ms. Perry** confirmed that the traffic study was done under the assumption that there would be no car sharing and the study confirmed there would be no impact on the traffic in the area.

Commissioner Crescibene asked if the units for this project would be for purchase or rental, and if each apartment would contain kitchens. **Ms. Perry** stated that all the units would be rental apartments and that each one would contain a full use kitchen.

Scott Mickeleit, Developer for Asante discussed transportation plans and stated that ideas are being looked at including electric shuttles. He stated that the project would blend in well with the master plan for Centerra. He added that a 14 person passenger van and shared vehicles are alternatives being explored for future residents.

Commissioner Ray stated that a 17% increase is substantial and felt that plans shown for the project mitigated his concerns, but wanted **Ms. Perry** to elaborate. **Ms. Perry** pointed out that Asante knows their customer profile well. Singles and couples are the major clientele allowing for 1-2 bedroom units. She felt like the amount of common space and open space is extremely adequate and well planned out.

Vice-Chair Middleton commented that this is a great location and the best use of land. He continued that Asante is a great company and that he strongly supports this project and suggested that fellow Commissioner’s do the same.

Commissioner Crescibene liked the idea that the units are rental properties and also supported the project.

Vice-Chair Middleton moved to recommend that City Council approve the amendment. Upon a second from **Commissioner Dowding** the amendment without conditions was unanimously approved.

Park Regency
Premier Senior Living

June 25, 2013

To Whom It May Concern

Re: Senior Housing Development by Asante Living, LLC, Centerra, Loveland, Colorado.

Park Regency Assisted Living Apartments is aware and supportive of the senior housing project being proposed North and West of our property located at 1875 Fall River Drive, Loveland, Colorado 80538 by Asante Living, LLC.

This project which has been presented to us as a senior housing apartment complex is not seen as a business threat but one that enhances our ability to serve the Loveland and surrounding area senior assisted living community. The opportunites for our ability to offer an enhanced variety of services provides synergies when two projects like ours can work closely together offering a great piece of the continuum of care for our seniors. One spouse might be living independent in the Asante project while the other who needs assistance can live right next door at Park Regency. Park Regency activities and social programs can include residents of the Asante project, enhancing their life experiences and choices.

The Asante Living Project is a perfect neighbor for Park Regency and we hope the rest of the community will agree with us.

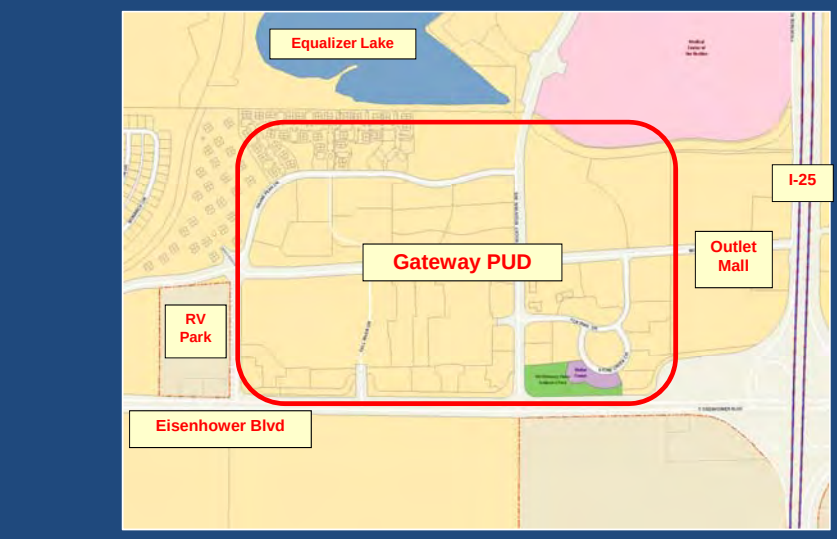
Jerry Bootzin, MSW
Park Regency Manager

1875 Fall River Drive, Loveland, CO 80538 Phone: (970) 461-1100 Fax: (970) 461-4650
www.parkregency.us E-Mail: parkregency@comcast.net

Gateway GDP Amendment

City Council Public Hearing

July 16, 2013



Gateway GDP Amendment

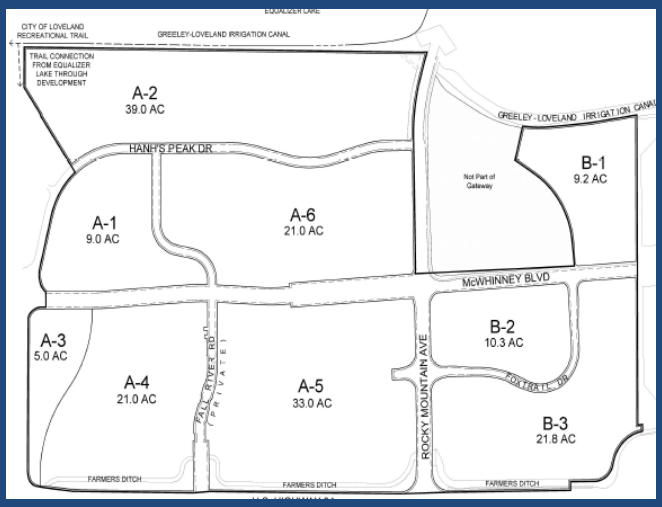
Request:

- Amend the Gateway PUD General Development Plan to:
  - Increase the maximum number of multifamily residential units in the PUD
  - Increase the maximum multifamily residential density on Parcel A-1 within Gateway

Purpose:

- Allow for the future submittal of a Site Development Plan & Building Permit application for a multifamily residential development aimed at seniors
- Use is already allowed in the Gateway PUD; the amendment is to allow a greater number of units than is currently allowed

Gateway GDP



Amendment

- **Maximum Residential Density on Parcel A-1** – To allow 22 units/acre, while keeping the overall Gateway residential density at 16 units/acre
- **Maximum Number of Residential Units** – From 500 to 583 (17% increase)
- **Clarification** – Added details in tables & formatting improvements

Amendment Process

- **Staff Review**- GDP Amendment only at this time; any specific development proposal will be reviewed at the time the site development plan and building permit applications are submitted
- **Neighborhood Meeting-** Held on May 9, 2013. Attendees inquired about specifics of the Asante building, expressed concern about adequacy of parking and whether area roadways could handle the traffic from a development at this location
- **Planning Commission Review-** Public hearing for GDP Amendment
- **City Council-** Public hearing & final action for GDP Amendment

Amendment

- **Municipal Code Findings relative to a GDP Amendment are met**
- **Proposed use will result in a decrease in traffic over uses that can be built by right**
- **On-site parking and other transportation options (shuttle buses) available for residents**

CITY OF LOVELAND
DEVELOPMENT SERVICES DEPARTMENT
Civic Center • 500 East 3rd Street • Loveland, Colorado 80537
(970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

AGENDA ITEM: **3**
MEETING DATE: 8/6/2013
TO: City Council
FROM: Greg George, Development Services Director
PRESENTER: Kerri Burchett, Current Planning

TITLE:
An Ordinance Amending Section 18.04.040 of the Loveland Municipal Code, the Same Relating to Zoning Regulations for "Dakota Glen PUD - First Amendment (#P-98)", Approving the First Amendment to the Preliminary Development Plan for the Dakota Glen PUD

RECOMMENDED CITY COUNCIL ACTION:
Adopt the ordinance on second reading.

OPTIONS:
1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

SUMMARY:
This is a quasi-judicial action. This ordinance amends the Dakota Glen PUD Preliminary Development Plan to allow the construction of an aboveground public utility facility and natural gas pipeline within the PUD boundaries. The property is located north of and adjacent to 14th Street SW and west of South Wilson Avenue. The applicant is Public Service Company of Colorado. City Council unanimously adopted the ordinance on first reading on July 16, 2013.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible

BACKGROUND:
Public Service Company of Colorado (PSCo) is proposing to construct a new regulator station on 14th Street SW in the Dakota Glen PUD and a 16-inch high pressure gas pipeline through the PUD's private open space. The regulator station would consist of a 528 square foot structure that would house controls for the flow of gas from higher to lower pressures and two

areas with aboveground pipelines. The PUD Amendment is part of a larger statewide Xcel Energy project to modernize its natural gas infrastructure. The complete project would replace approximately 77 miles of transmission pipeline between Westminster, Colorado and the Wyoming border with a 16 inch high pressure gas line.

The Planning Commission held a public hearing to consider the PUD Amendment on May 13, 2013. At the hearing, residents of the Dakota Glen Subdivision voiced opposition with the regulator station, citing concerns with the views and aesthetics of the facility, declining property values and location. The Commission continued the hearing to June 10, 2013 to allow PSCo an opportunity to meet with the residents of the neighborhood and attempt to reach a consensus on screening the facility. A neighborhood meeting was held on May 20, 2013 and a consensus was reached on all unresolved items, including the color of the control house, fencing and landscaping/berming around the facility. At the June 10, 2013 Planning Commission public hearing no opposition to the request was voiced by the neighborhood and the Commission unanimously recommended approval of the PUD Amendment.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:
Ordinance
Staff Memorandum (listed as Exhibit 1)
Planning Commission Staff Reports and Minutes (listed as Exhibits A through D)

FIRST READING July 16, 2013

SECOND READING August 6, 2013

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 18.04.040 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO ZONING REGULATIONS FOR "DAKOTA GLEN PUD – FIRST AMENDMENT (#P-98)," AND APPROVING THE FIRST AMENDMENT TO THE PRELIMINARY DEVELOPMENT PLAN FOR THE DAKOTA GLEN PUD

WHEREAS, on October 3, 2006, the Loveland City Council adopted on second reading Ordinance #5139 annexing and Ordinance #5140 zoning that real property described below designated as Dakota Glen PUD (#P-98) (the "PUD"); and

WHEREAS, Public Service Company of Colorado (the "Applicant"), in cooperation with the developer of the PUD, filed an application for amendment of the Dakota Glen PUD Preliminary Development Plan (the "PDP") to allow construction of an above ground public utility facility and natural gas pipeline (the "Pipeline Facility") in Dakota Glen common area in connection with its installation of a 16-inch high pressure gas pipeline; and

WHEREAS, after holding duly noticed public hearings on May 13, 2013 and June 10, 2013, the City of Loveland Planning Commission made the findings listed in the Planning Commission staff report dated May 13, 2013, and based on those findings recommended that City Council approve the Dakota Glen PUD – First Amendment, subject to conditions listed in Section III of the staff memorandum to City Council dated July 16, 2013, which conditions were agreed to by the Applicant; and

WHEREAS, the modifications to the PDP to permit the Pipeline Facility as a use within the PUD, including the conditions recommended by Planning Commission, are reflected in the First Amendment to the PDP, a copy of which is on file with the City's Current Planning Division and is incorporated herein by this reference (the "First Amendment"); and

WHEREAS, the City desires to approve the First Amendment to allow the Pipeline Facility as a permitted use within the PUD.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That Section 18.04.040 of the Loveland Municipal Code and the map referred to therein, said map being part of said Municipal Code and showing the boundaries of the district specified, shall be and the same is hereby amended in the following particulars, to wit:

That the territory included within the Dakota Glen PUD (#P-98), City of Loveland, Larimer County, Colorado, described as:

THAT PORTION OF THE SOUTH ONE-HALF OF SECTION 21, TOWNSHIP 5 NORTH, RANGE 69 WEST OF THE 6TH P.M., COUNTY OF LARIMER, STATE OF COLORADO, EXCEPT ANY EXISTING PUBLIC STREETS, ROADS OR HIGHWAYS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CONSIDERING THE SOUTH LINE OF SECTION 21 AS BEARING NORTH 89°46'02" WEST AND WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 21;
THENCE ALONG SAID SOUTH LINE, NORTH 89°46'02" WEST, 1134.99 FEET;
THENCE NORTH 00°10'20" EAST, 39.89 FEET TO THE POINT OF BEGINNING;
THENCE NORTH 89°47'17" WEST, 2458.32 FEET;
THENCE NORTH 00°55'16" EAST, 1479.97 FEET;
THENCE SOUTH 70°38'45" WEST, 83.13 FEET;
THENCE NORTH 89°46'08" WEST, 303.98 FEET;
THENCE NORTH 68°15'02" WEST, 77.70 FEET;
THENCE NORTH 54°57'34" WEST, 191.77 FEET;
THENCE NORTH 27°13'04" WEST, 105.61 FEET TO
THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF LARIMER COUNTY ROAD NO. 21;
THENCE ON SAID NORTHWESTERLY RIGHT-OF-WAY LINE FOLLOWING TWO (2) COURSES AND DISTANCES:
1.) ALONG A CURVE CONCAVE TO THE NORTHWEST, HAVING A CENTERAL ANGLE OF 43°05'34", WITH A RADIUS OF 432.69 FEET, AN ARC LENGTH OF 325.43 FEET AND THE CHORD OF WHICH BEARS NORTH 40°52'47" EAST, 317.82 FEET; ALONG A NON-TANGENT LINE;
2.) THENCE NORTH 19°43'12" EAST, 209.03 FEET;
THENCE SOUTH 84°27'48" EAST, 1661.76 FEET;
THENCE SOUTH 63°54'18" EAST, 1363.49 FEET;
THENCE NORTH 01°23'39" WEST, 115.56 FEET;
THENCE SOUTH 60°00'00" EAST, 278.53 FEET;
THENCE SOUTH 82°46'58" EAST, 180.10 FEET TO A POINT ON THE
SOUTH LINE OF MEADOWBROOK FARMS FIRST SUBDIVISION AND MARIANNA FARMS FIRST SUBDIVISION, THENCE CONTINUING ON SAID LINE, SOUTH 82°46'58" EAST, 128.37 FEET TO THE NORTHWESTERLY CORNER OF TRACT A, THE PONDS ADDITION TO THE CITY OF LOVELAND;
THENCE ON THE WESTERLY, SOUTHWESTERLY, AND NORTHWESTERLY LINE OF SAID ADDITION, THE FOLLOWING ELEVEN (11) COURSES AND DISTANCES;
1.) SOUTH 24°52'00" WEST, 239.12 FEET;
2.) SOUTH 57°30'23" EAST, 307.12 FEET;
3.) SOUTH 32°28'08" WEST, 99.99 FEET;
4.) SOUTH 00°57'10" WEST, 181.05 FEET;
5.) SOUTH 58°21'47" WEST, 76.65 FEET;
6.) SOUTH 75°05'24" WEST, 134.07 FEET;

7.) SOUTH 55°19'39" WEST, 167.37 FEET;
8.) SOUTH 35°07'06" WEST, 118.54 FEET;
9.) SOUTH 00°53'21" WEST, 142.68 FEET;
10.) SOUTH 65°42'02" WEST, 261.92 FEET;
11.) SOUTH 24°51'50" WEST, 160.03 FEET;
TO THE POINT OF BEGINNING.

Containing 127.678 acres (5,561,659 square feet), more or less, and being subject to all existing easements and/or rights-of-way of record,

shall be included within the boundaries of the district designated as follows:

DAKOTA GLEN PUD – FIRST AMENDMENT (#P - 98):

Section 2. That the City Council hereby finds:

a. that the First Amendment meets the intent and objectives of Chapter 18.41 of the Loveland Municipal Code and the factors set forth in Section 18.41.050D.4.b. and c., specifically:

1. development permitted by the First Amendment will not negatively impact traffic in the area, city utilities, or otherwise have a detrimental impact on property that is in sufficient proximity to the proposed development to be affected by it, provided the conditions designed to mitigate the negative impacts as set forth in Section 3 of this Ordinance are met; and

2. development permitted by the First Amendment will be complementary to and in harmony with existing development and future development plans for the area in which the proposed development is to take place by:

i. incorporating natural physical features into the development design and providing sufficient open spaces considering the type and intensity of use;

ii. incorporating site planning techniques that will foster the implementation of the City's master plans, and encourage a land use pattern that will support a balanced transportation system, including auto, bike and pedestrian traffic, public or mass transit, and the cost effective delivery of other municipal services consistent with adopted plans, policies and regulations of the City;

iii. incorporating physical design features in the development that will provide a transition between the project and adjacent land uses through the provision of an attractive entryway, edges along public streets, architectural design, and appropriate height and bulk restrictions on structures;

iv. incorporating identified environmentally sensitive areas, including but not limited to, wetlands and wildlife corridors, into the project design;

v. incorporating elements of community-wide significance as identified in the town image map;

vi. incorporating public facilities or infrastructure, or cash-in-lieu, that are reasonably related to the proposed development so that the proposed development will not negatively impact the levels of service of the city's services and facilities; and

vii. incorporating an overall plan for the design of the streetscape within the project, including landscaping, auto parking, bicycle and pedestrian circulation, architecture, placement of buildings and street furniture.

; and

b. that the First Amendment complies with applicable land use and development regulations in effect at the time the First Amendment was conditionally approved by the Planning Commission.

Section 3. That the City Council hereby approves the First Amendment, subject to the following conditions:

a. All wetlands located adjacent to the permanent and temporary easements for the regulator station and associated pipelines shall be flagged or marked by a qualified biologist prior to the occurrence of any construction activities on the site to ensure that these features will not be disturbed during construction activities.

b. No construction shall occur in areas located outside of the project easements secured by the Applicant as designated in the First Amendment.

c. The Applicant shall implement and comply with the Weed Management and Revegetation Plan included as Attachment 6 to the Environmentally Sensitive Areas Report dated March, 2013. All areas associated with the construction of the underground pipeline shall be revegetated and shall be monitored by the Applicant to ensure revegetation is successful.

d. During construction, the Applicant shall implement dust control measures such as water application to disturbed areas, erosion control techniques, and revegetation of ground disturbance following construction with a drought-tolerant seed mixture. Water shall be used daily, or as needed, for dust suppression and soil compaction.

e. Prior to any construction activities occurring on the site, a raptor nest survey shall be completed and submitted to the Current Planning Division. The Applicant shall observe all applicable Colorado Division of Wildlife buffers and timing restrictions based on the results of the raptor nest survey.

f. Prior to any construction activities occurring on the site, all plantings and berms within the Applicant landscape boundary, as identified on page 16 of the First Amendment, shall be either installed or financially secured with the City in the amount of one hundred ten percent (110%) of the costs for installation.

g. All coniferous trees shown within the Applicant landscape boundary, as identified on page 16 of the First Amendment, shall be a minimum of eight feet (8') in height at the time of planting. All other plantings shall comply with the minimal planting size in the City's Site Development Performance Standards and Guidelines.

h. Prior to approval of the final development plan, a letter of approval from the Dakota Glen PUD Home Owners Association approving all landscaping, screening, and berming around the facility shall be submitted to the Current Planning Division.

i. All dead or dying plant material within the Applicant landscape boundary, as identified on page 16 of the First Amendment, shall be the responsibility of the Applicant to replace for a time period of four (4) years after the date of initial installation.

j. During project construction, the project manager or designee shall inform Loveland Fire Rescue Authority of any anticipated interruption of fire hydrant service or emergency vehicle access to properties at least forty-eight (48) hours in advance of the anticipated interruption of service or access.

Section 4. That the **DAKOTA GLEN PUD – FIRST AMENDMENT** shall be subject to the Dakota Glen PUD PDP, as amended by the First Amendment.

Section 5. That the **DAKOTA GLEN PUD – FIRST AMENDMENT** remains subject to any applicable General Development Plan, Annexation, and/or Development Agreement, as the same may be or have been amended from time-to-time.

Section 6. That the **DAKOTA GLEN PUD – FIRST AMENDMENT** shall be subject to all applicable zoning regulations for the City of Loveland except where they conflict with the PDP, as amended by the First Amendment, and any Final Development Plan applicable to the property.

Section 7. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

ADOPTED this 8th day of August, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

City of Loveland

DEVELOPMENT SERVICES
Current Planning
500 East Third Street, Suite 310 • Loveland, CO 80537
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MEMORANDUM

TO: City Council

FROM: Kerri Burchett, Principal Planner

DATE: July 16, 2013

RE: Dakota Glen PUD First Amendment

I. EXHIBITS

A. Planning Commission staff report dated June 10, 2013, including:
   1. Dakota Glen PUD Amendment Preliminary Development Plan
   2. Weed Management and Revegetation Plan (Attachment 6 to the ESAR). The full report is available online on the City's Current Planning homepage at www.cityofloveland.org
   3. Letters from surrounding property owners (submitted at the May 13, 2013 Planning Commission hearing)

B. Planning Commission staff report dated May 13, 2013, including:
   1. Project Narrative provided by Applicant
   2. Excerpts from the Environmentally Sensitive Areas Report
   3. Letter from Army Corps of Engineers
   4. Letter of Approval from Dakota Glen Homeowners Association
   5 Letters from surrounding property owners
   6. Dakota Glen PUD Amendment Preliminary Development Plan

C. Planning Commission Minutes dated June 10, 2013
D. Planning Commission Minutes dated May 13, 2013
E. Staff power point presentation

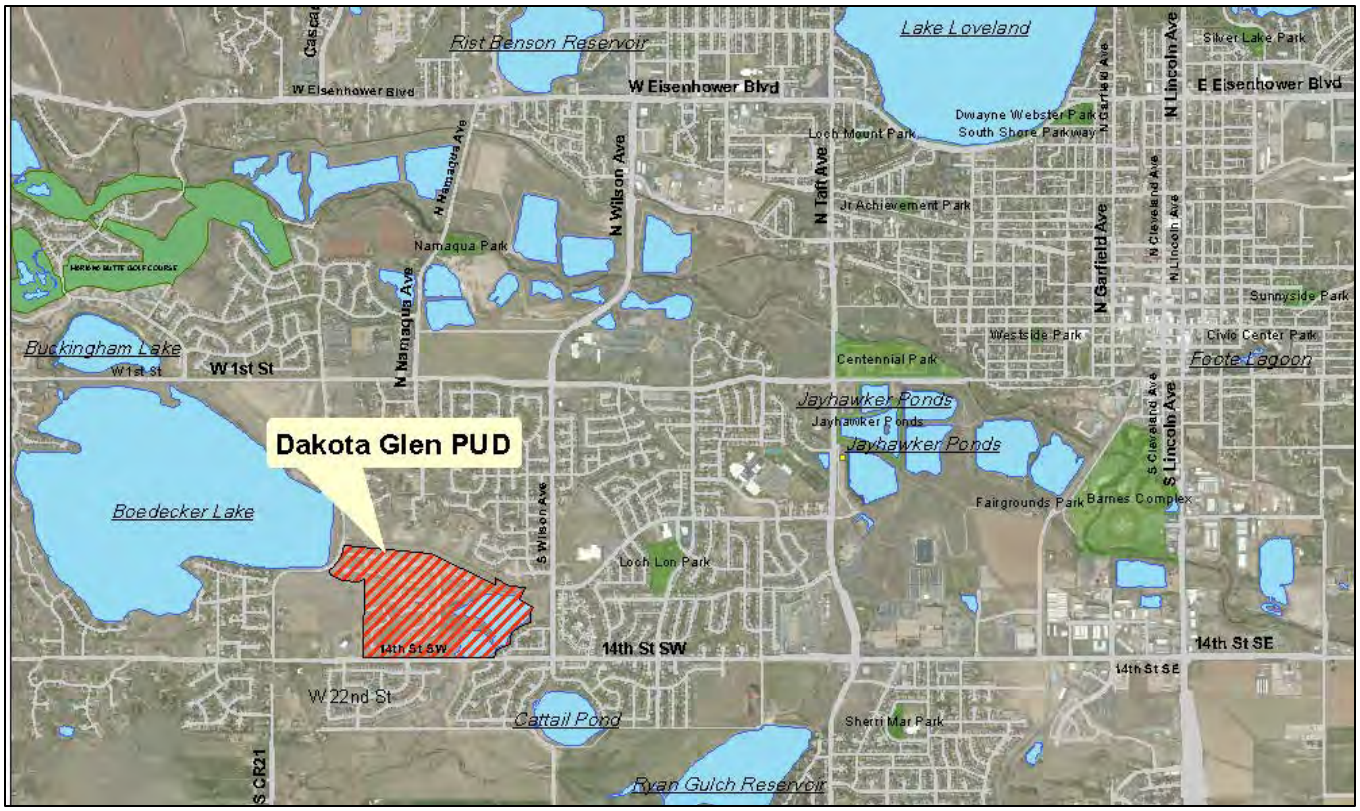
II. EXECUTIVE SUMMARY

A. Project Description

The City Council public hearing is to consider an amendment to the Dakota Glen PUD Preliminary Development Plan. The PUD is approximately 85 acres in size and is located north of 14th Street SW and west of South Wilson Avenue (see location map, below). The PUD was designed as a low density residential development. The applicant, Public Service of Colorado (PSCo), is requesting to modify the permitted uses established in the PUD to construct a new regulator station on 14th Street SW and install a 16-inch high pressure gas pipeline through the PUD's private open space (see Figure 1).

The PUD Amendment is part of a larger statewide Xcel Energy project referred to as the West Main Natural Gas Pipeline Replacement Project. In an effort to modernize its natural gas infrastructure, PSCo is replacing approximately 77 miles of transmission pipeline between Westminster, Colorado and the Wyoming border. PSCo has indicated that the replacement project is necessary to improve service reliability, maintain safety of the system and meet future needs for natural gas. In Loveland, the complete project includes the construction of 2 regulator stations and a new 16 inch high pressure natural gas line located primarily along Wilson Avenue and West 29th Street. The new line would replace the existing natural gas line in Taft Avenue. The majority of the pipeline would be located within the Wilson Avenue and 29th Street rights-of-way or in adjacent public utility easements. PSCo has a franchise agreement with the City that permits the installation of pipelines in City rights-of-way and public utility easements without public review.

Map 1: Project Location



The aboveground regulator station within Dakota Glen requires an amendment to the PUD as the use of an aboveground public utility facility was not identified as a permitted use. The regulator station is referred to as the Estes Park Regulator Station. The station is necessary to control the flow of gas from higher to lower pressures as the gas would move from the 16-inch transmission pipeline to smaller lateral and distribution pipelines. A 16-inch pipeline was constructed south of 14th Street SW, through the open space in the Blackbird Knolls Subdivision, in 2010. With the PUD Amendment, the pipeline would be extended from its current location through the Dakota Glen Subdivision.

The pipeline route enters the PUD near the intersection of 14th Street SW and Angora Drive, approximately 2,000 feet west of the intersection of 14th Street SW and Wilson Avenue. The pipeline then exits the regulator station and heads to the northeast through the open space within the Dakota Glen PUD. North of the cattail reservoir/detention pond, the pipeline turns due east toward Wilson Avenue leaving the PUD boundary and would continue north on Wilson Avenue.

Map 2: Dakota Glen Pipeline location

The proposed regulator station would consist of a 528 square foot concrete block structure and two less than 380 square foot areas with aboveground pipelines. The color of the control house, landscaping and screening of the facility has been designed to reflect the consensus reached at a neighborhood meeting between PSCo and the residents of Dakota Glen. At the meeting, PSCo presented different options for color, fencing and landscaping along with a photo simulation showing the view of the facility from inside the subdivision. At the conclusion of the meeting, a consensus with the neighborhood was reached and all issues of concerns with the neighborhood were resolved.

The appearance of the control house has been designed to be similar to architectural characteristics of the existing pumphouse on the northwest side of the cattail reservoir/detention pond within the PUD. The neighborhood chose the color of the control house to be painted teal blue with cream trim to match the pumphouse. The residents of the Dakota Glen neighborhood also preferred no fencing on the site, but rather screening of the facility through the use of berms and large coniferous trees (see Figure 2: Planting Plan)

Figure 1. Photo Simulation of Regulator Station

Existing Environment

Photo Simulation of Proposed Environment

The regulator station will be screened through the use of 2 to 3 foot landscape berms placed north and west of the facility. The berms will be planted with 8-foot evergreens and spruces. As the berm and plantings are located outside of PSCo's lease area for the facility, the residents expressed concerns over the replacement of the plantings should they not live, PSCo has agreed to replace any dying or dead plant material for a period of 4 years from the time of the installation, which satisfied the neighborhood concerns (see Condition 9). PSCo also agreed to replace the dead trees on 14th Street SW and add coniferous shrubs to add in screening along the road. A landscape plan is shown in Figure 2, below, and is included on Sheet 16 in Attachment A.1.

Figure 2. Planting Plan

B. Planning Commission Hearings

The requested amendment was originally heard by the Planning on May 13, 2013. Based on concerns voiced by the neighborhood regarding the aesthetics and screening of the facility, the Planning Commission continued the hearing to June 10th to allow PSCo and the residents of Dakota Glen an opportunity to meet and attempt to reach a consensus on the screening of the facility. A neighborhood meeting was held on May 20th and a consensus was reached on all previously unresolved items including the color of the control house, fencing and landscaping/berming around the facility, as mentioned in Section A, above.

At the Planning Commission hearing on June 10, 2013, there were no members of the public who spoke on the item. The Planning Commission unanimously recommended approval of the PUD Amendment and thanked PSCo for working with the neighborhood to resolve the concerns.

III. RECOMMENDED CONDITIONS

Current Planning

1. All wetlands located adjacent to the permanent and temporary easements for the regulator station and associated pipelines shall be flagged or marked by a qualified biologist prior to the occurrence of any construction activities on the site to ensure that these features will not be disturbed during construction activities.

2. No construction shall occur in areas located outside of the project easements secured by Public Service as designated in the PDP Amendment.

3. Public Service shall implement and comply with the Weed Management and Revegetation Plan included as Attachment 6 to the Environmentally Sensitive Areas Report dated March, 2013. All areas associated with the construction of the underground pipeline shall be revegetated and shall be monitored by Public Service to ensure revegetation is successful.

4. During construction, Public Service shall implement dust control measures such as water application to disturbed areas, erosion control techniques and revegetation of ground disturbance following construction with a drought-tolerant seed mixture. Water shall be used daily, or as needed, for dust suppression and soil compaction.

5. Prior to any construction activities occurring on the site, a raptor nest survey shall be completed and submitted to the Current Planning Division. Public Service shall observe all applicable Colorado Division of Wildlife buffers and timing restrictions based on the results of the raptor nest survey.

6. Prior to any construction activities occurring on the site, all plantings and berms within the PSCo landscape boundary, as identified on page 16 of the PDP, shall be either installed or financially secured with the City in the amount of 110% of the costs for installation.

7. All coniferous trees shown within the PSCo landscape boundary, as identified on page 16 of the PDP, shall be a minimum of 8 feet in height at the time of planting. All other plantings shall comply with the minimize planting size in the City's Site Development Performance Standards.

8. Prior to approval of the final development plan, a letter of approval from the Dakota Glen PUD Home Owners Association approving all landscaping, screening and berming around the facility, shall be submitted to the Current Planning Division.

9. All dead or dying plant material within the PSCo landscape boundary, as identified on page 16 of the PDP, shall be the responsibility of Public Service of Colorado to replace for a time period of 4 years after the date of initial installation.

Fire

10. During project construction, the project manager or designee shall inform Loveland Fire Rescue Authority of any anticipated interruption of fire hydrant service or emergency vehicle access to properties, at least 48 hours in advance of the anticipated interruption of service or access.

City of Loveland

Development Services
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Planning Commission Staff Report

June 10, 2013

Agenda #:	Regular Agenda - 3
Title:	Dakota Glen PUD First Amendment
Applicant:	Public Service Company of Colorado, Dan Tekavec
Request:	**Preliminary Development Plan Amendment**
Location:	North of 14th Street SW and west of South Wilson Avenue.
Existing Zoning:	Planned Unit Development
Staff Planner:	Kerri Burchett

Staff Recommendation

APPROVAL of the PUD Amendment.

Recommended Motion:

Move to make the findings listed in Section VIII of the Planning Commission staff report dated May 13, 2013 and, based on those findings, recommend that City Council approve the Dakota Glen PUD First Amendment, subject to the conditions listed in Section III of the staff report dated June 10, 2013, as amended on the record.

Summary of Analysis

This is a continuation of a public hearing from May 13, 2013 to consider an amendment to the Dakota Glen PUD Preliminary Development Plan (PDP). The amendment would modify the permitted uses in the PUD to allow the construction of an aboveground public utility facility and natural gas pipeline within the PUD boundaries. The applicant, Public Service Company of Colorado (PSCo), is proposing to construct a new regulator station on 14th Street SW and install a 16-inch high pressure gas pipeline through the PUD's private open space. The regulator station would consist of a 528 square foot structure that would house controls for the flow of gas from higher to lower pressures; the facilities would also include two adjacent areas with aboveground pipelines.

At the May 13, 2013 public hearing, the Planning Commission continued the request to allow PSCo an opportunity to meet with the residents of the Dakota Glen neighborhood and attempt to reach a consensus on the screening of the facility. A neighborhood meeting was held on May 20th and a consensus was reached on all previously unresolved items including the color of the control house, fencing and landscaping/berming around the facility.

Staff believes that with the imposition of the revised conditions of approval in Section III of this report, all key issues have been resolved.

I. ATTACHMENTS

1. Dakota Glen PUD Amendment Preliminary Development Plan
2. Weed Management and Revegetation Plan (Attachment 6 to the ESAR). The full report is available online on the City's Current Planning homepage at www.cityofloveland.org
3. Letters from surrounding property owners (previously handed out at the May 13, 2013 Planning Commission hearing)

II. SUMMARY

This item is a continuation of a public hearing held on May 13, 2013 for the consideration of an amendment to the Dakota Glen PUD Preliminary Development Plan (PDP). The amendment would modify the permitted uses in the PUD to allow the construction of an aboveground public utility facility and natural gas pipeline. The applicant, Public Service Company of Colorado (PSCo), is proposing to construct a new regulator station on 14th Street SW and install a 16-inch high pressure gas pipeline through the PUD's private open space. The regulator station would consist of a 528 square foot structure that would house controls for the flow of gas from higher to lower pressures; two adjacent areas with aboveground pipelines would also be included with the regulator station.

At the Planning Commission hearing on May 13, 2013, residents of the Dakota Glen PUD voiced opposition to the facility, citing concerns with the views and aesthetics of the facility, declining property values and a belief that there were better options for the location of the facility. At the hearing, the Planning Commission indicated that the location of the facility seemed appropriate based on the constraints of the surrounding area and continued the hearing to June 10, 2013 to allow PSCo and the residents an opportunity to meet and resolve concerns with the aesthetics and screening of the facility.

A neighborhood meeting was held on May 20, 2013 at 2:00 p.m. in the City's Service Center. 15 residents along with city staff, the applicant and their consultant team attended the meeting. The intent of the meeting was to reach a consensus on the following items:

- Color of the Control House
- Fencing of the Facility
- Landscape Screening and Berming

At the meeting, PSCo presented different options for the above items along with a photo simulation showing the view of the facility from inside the Dakota Glen Subdivision. At the conclusion of the meeting, a consensus with the neighborhood was reached in regards to the color, fencing and landscaping and berming. The following details the resolution for each item discussed. Revised PDP drawings are included as Attachment 1 to this report.

A. Color of the Control House

The control house, as presented at the May 13, 2013 Planning Commission hearing, was to be painted teal blue with cream trim to match the existing pump house in the subdivision. PSCo presented an alternative beige color to the neighborhood to blend the facility with the surrounding homes and natural environment. Given the option, those present at the neighborhood meeting preferred the color of the facility to match the color of the pump house. The color of the control house in the revised PDP drawings has therefore remained the same to reflect a blue teal with cream trim.

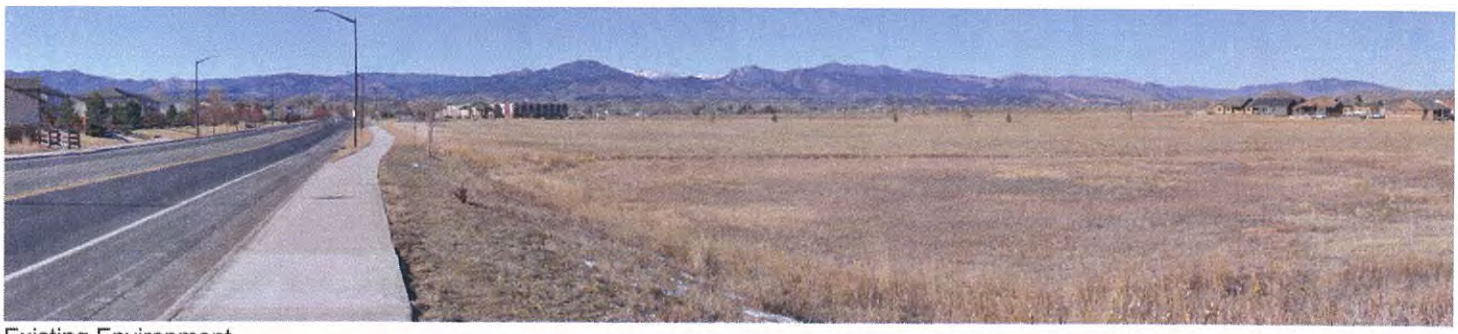
Consensus Reached: blue teal with cream trim to match the existing pump house

B. Fencing of the Aboveground Pipes

Two photo simulations were presented to the neighborhood: one showing a 6 foot decorative fence surrounding the aboveground pipes, as provided at the May 13, 2013 Planning Commission hearing, and one without fencing. With the inclusion of additional landscaping and berming to aid in screening the facility, the neighborhood preferred no fencing on the site. The revised PDP reflects no fencing of the facility, as shown in Figure 1, below.

Consensus Reached: no fencing of the aboveground pipes

Figure 1. Photo Simulation of Regulator Station



Existing Environment

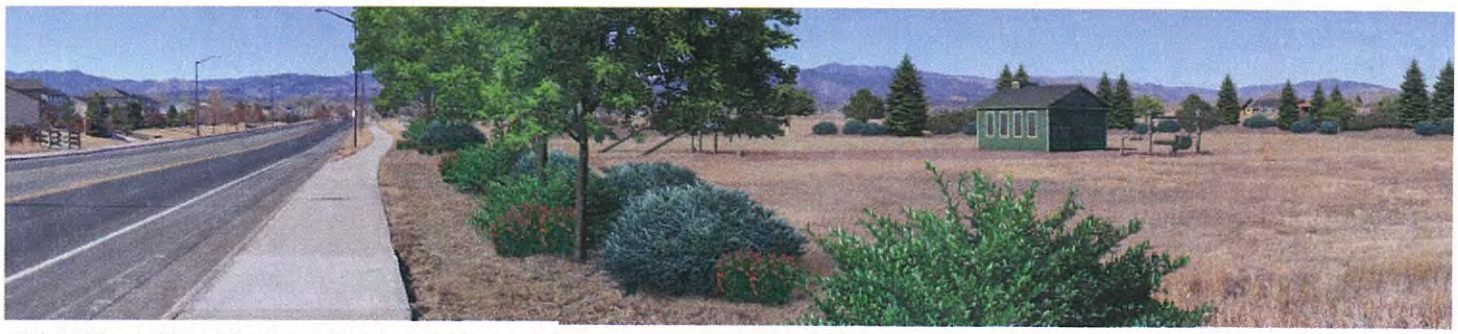


Photo Simulation of Proposed Environment

C. Landscape Screening & Berming

The majority of the discussion at the neighborhood meeting centered around the use of berms and landscaping to screen the regulator station. A landscape plan was displayed that showed a 2 to 3 foot meandering berm with a variety of coniferous trees and shrub plantings. The berm was located northwest of the facility, in the HOA open space. The residents asked for the berm to extend further to the east, approximately 15 feet from the underground pipeline, and be planted with 8 foot evergreens and spruces. PSCo agreed to both the extension of the berm, as reflected in Figure 2, below, and the 8-foot planting size.

As the berm and plantings were located outside of PSCo's lease area for the facility, the residents expressed concerns over the replacement of the plantings should they not live. The warrantee period with the landscape nursery extends 1 year from time of planting At the meeting, PSCo agreed to replace any dying or dead plant material for a period of 4 years from the time of the installation, which satisfied the neighborhood's concerns (see Condition 9). PSCo also agreed to replace the dead trees on 14th Street SW and add coniferous shrubs to add in screening along the road. A revised landscape plan is shown in Figure 2, below, and included on Sheet 16 in Attachment 1.

Consensus Reached: berms and coniferous plantings to the north and west of the facility, 8-foot planting size for trees, replacement of dead plant material and additional shrubs on 14th Street SW, PSCo to guarantee plant materials for a 4 year period.

Figure 2. Planting Plan

III. RECOMMENDED CONDITIONS

New conditions resulting from the neighborhood meeting are shown in **Bold** text.

Current Planning

1. All wetlands located adjacent to the permanent and temporary easements for the regulator station and associated pipelines shall be flagged or marked by a qualified biologist prior to the occurrence of any construction activities on the site to ensure that these features will not be disturbed during construction activities.

2. No construction shall occur in areas located outside of the project easements secured by Public Service as designated in the PDP Amendment.

3. Public Service shall implement and comply with the Weed Management and Revegetation Plan included as Attachment 6 to the Environmentally Sensitive Areas Report dated March, 2013. All areas associated with the construction of the underground pipeline shall be revegetated and shall be monitored by Public Service to ensure revegetation is successful.

4. During construction, Public Service shall implement dust control measures such as water application to disturbed areas, erosion control techniques and revegetation of ground disturbance following construction with a drought-tolerant seed mixture. Water shall be used daily, or as needed, for dust suppression and soil compaction.

5. Prior to any construction activities occurring on the site, a raptor nest survey shall be completed and submitted to the Current Planning Division. Public Service shall observe all applicable Colorado Division of Wildlife buffers and timing restrictions based on the results of the raptor nest survey.

6. **Prior to any construction activities occurring on the site, all plantings and berms within the PSCo landscape boundary, as identified on page 16 of the PDP, shall be either installed or financially secured with the City in the amount of 110% of the costs for installation.**

7. **All coniferous trees shown within the PSCo landscape boundary, as identified on page 16 of the PDP, shall be a minimum of 8 feet in height at the time of planting. All other plantings shall comply with the minimize planting size in the City's Site Development Performance Standards.**

8. **Prior to approval of the final development plan, a letter of approval from the Dakota Glen PUD Home Owners Association approving all landscaping, screening and berming around the facility, shall be submitted to the Current Planning Division.**

9. **All dead or dying plant material within the PSCo landscape boundary, as identified on page 16 of the PDP, shall be the responsibility of Public Service of Colorado to replace for a time period of 4 years after the date of initial installation.**

Fire

10. During project construction, the project manager or designee shall inform Loveland Fire Rescue Authority of any anticipated interruption of fire hydrant service or emergency vehicle access to properties, at least 48 hours in advance of the anticipated interruption of service or access.

Dakota Glen PUD First Amendment to the PUD Preliminary Development Plan
PRELIMINARY DEVELOPMENT PLAN NARRATIVE

Purpose of the Project

The following development standards apply to the Dakota Glen Planned Unit Development. The purpose of this Final Development Plan (PDP) is to provide for flexibility and innovative design for this very unique area of the City. The objective of the plan is to meet the growing demands of its residents by providing variety in the style, design, and layout of buildings.

Land Use

Overall Concept: Residential neighborhoods will be designed in a cohesive manner to accommodate the varied design requirements of the types of dwellings they will contain. The home types and densities will be designed to be appropriate to surrounding considerations, such as street patterns, adjacent uses, and location of project amenity areas. The development plan provides for a mix of varied housing types, including conventional single-family detached homes on standard lots, single family detached homes on patio lots, and single family attached. The gross density of the plan is 2.07 du / acre.

Land Use Categories: It is the intent of this plan to provide a mechanism by which land can be developed such that flexibility and innovative design are encouraged, in accordance with Chapter 18.41 of the Loveland Municipal Code and in compliance with other applicable land use and development regulations.

Permitted Uses

Residential Areas: Permitted uses within the residential areas include the following:

1. Residential - Conventional single family dwellings on standard lots, single-family dwellings on patio lots, and single family attached dwellings.
2. Other - Recreational facilities.
3. Tracts - Permitted uses within tracts include the following:
   a. Open space.
   b. Private park area (see parks and open space definition below).
   c. Trails.
   d. Utilities and drainage improvements, including irrigation pumps.
4. Open Space Preservation Tracts - permitted uses include open space, trails (locations shown on the FDP plan), utilities and drainage improvements (including irrigation controllers), and recreational access to Cattail Reservoir.
5. Temporary Parking - temporary parking will be permitted on vacant lots for model home visitors.
6. Pump house - A pump house will be constructed to use cattail reservoir for raw water irrigation. Refer to sheet 10 of 10 for elevations.
7. Essential above-ground public utility and public service installations and facilities - A permanent easement of 2.84 acres for a natural gas regulator station and 16 inch natural gas pipeline within the Dakota Glen PUD (see Sheets 11 through 15).

Definitions: The following definitions apply to residential uses with this PUD:
(Refer to Loveland Municipal Code section 18 for land use definitions not provided in this FDP)

1. Single Family Detached-standard lot - A one-family dwelling that is not attached to any other dwelling by any means, located on individual fee simple lots. Minimum lot size shall be 7,150 s.f. These Units will be either one or two story with three options for garage location.

2. Single Family Detached-patio lot - A one-family dwelling that is not attached to any other dwelling by any means, located on individual fee simple lots. Minimum lot size shall be 6,500 s.f. These units will be one story with a three car garage located on the front of the house.

3. Single Family Attached Dwelling Unit - A one-family dwelling attached to a one-family dwelling by a common vertical wall in which each unit has its own front and rear entrance and in which no unit is located over another unit. Minimum lot size shall be 3,800 s.f.

Setbacks: Staggered setbacks shall be provided so as to create a visually interesting streetscape. This will be achieved by prohibiting identical minimum front setbacks on adjacent lots that face the same street through the enforcement of varying minimum setback widths of a two feet minimum. Refer setback table this sheet for setback information, and typical lot layout on sheet 9 and 10 of 10.

Building Height: The maximum height for structures is 35 feet. Refer to the Loveland Municipal Code section 18.54 for information on calculating building height.

Neighborhood Structure: Arterial/collector streets and open space generally border neighborhoods. Neighborhoods will be designed in accordance with the development standards set forth in this development plan. Primary areas providing structure to the neighborhoods include private open space multipurpose play areas, a neighborhood wide trail system, and open space areas around Cattail Reservoir.

Circulation

Overall Concept: Primary access to the site will be from SW 14th Street, and County Road 21. Which are classified as a two-lane arterial and a major collector street respectively. An internal collector street and local streets will distribute traffic throughout the site. An interparcel connection is provided in the south[illegible] of the property.

Components

1. **Vehicular:** Local streets will provide access within the neighborhoods. Local streets may vary in width, according to the amount of traffic to be accommodated and the specific design requirements of each neighborhood.

2. **Pedestrian:** An overall system of pedestrian access is provided along streets and through open space areas. Meandering walks are provided along perimeter streets, and the minor collector street through the site will have detached sidewalks, while all of the local residential streets will have attached sidewalks. Proposed trails are shown throughout the sites open space.

3. **Performance Standards:** Street improvements and new streets will be constructed in accordance with the street-crass sections shown in the engineering drawings. The associated plat provides for dedication of necessary Right of Way to accommodate the arterial roadway's ultimate development.

Public Facilities

Overall Concept: Public facilities and services are readily available to the site, and will be provided for as described below.

Water and Sewer: The City of Loveland will provide water and sewer service. Domestic water will be delivered by extension of existing water mains as a loop through the site. Sanitary sewer service will be provided by use of the existing 8" sewer on site in accordance with the City's master plan. The trunk sewers will be extended to maximize the benefits of gravity flow from the majority of the PUD. Details of services have been provided on the preliminary development plan.

Storm Drainage: Storm drainage shall be collected and carried on the surface through the designed street pattern. As necessary to provide capacity, catch basins and storm sewers will be installed to transport storm flows to points of discharge. Most of the storm water will be discharged into cattail reservoir. A small portion of the storm water will be discharged directly into the Mariano exchange ditch. All points of discharge will be adequately designed to minimize erosion and to protect the environmental integrity of the lake in accordance with City standards.

Electric: The City of Loveland Water and Power Department will provide service.

Gas: Public Service Company of Colorado.

Cable: Comcast.

Phone: Qwest.

Private Parks and Open Space: The development will incorporate a large open space private park area including: open turf areas, a lake, trails, boardwalks, natural areas, and recreational amenities may include any or all of the following: Clubhouse, pool, hot tub, tennis court(s), basketball court(s), trails, playground structures, sand valley ball court(s), and a sand beach. In addition to the large private park area, numerous green belts with trail systems will loop through the neighborhoods providing connection to the park for residents.

Landscape Concept: The design intent for the Dakota Glen PUD is to create a comprehensively planned community through the careful integration of the natural features of the site. The creation of a well conceived overall landscape program for the development would serve to provide for a unique identity as well as an overall sense of continuity amongst the various neighborhoods. Several design elements will be used to reinforce the image of this community. The elements include: consistent perimeter treatments, continuity of the man made site amenities (signage, fencing, play areas and other architectural site features), provision of a comprehensive landscape treatment, and architectural treatments of the various housing types.

Edge Treatment

1. **Architecture:** One of the most important aspects of the development's overall appearance, as viewed from its edge, is the appearance of the residential structures. Rear and side elevations of structures will be detailed to provide visual interest from adjoining streets. Appropriate setbacks and detached sidewalks with street trees have been provided along the site's perimeter and proper buffering will be incorporated.

2. **Landscaping:** Perimeter landscape treatment will receive careful attention due to a portion of the site's edge that faces an arterial roadway. Arterial streets will feature landscaped areas outside of the right-of-way, tree lawns, berms, and detached sidewalks. 14th Street will have a thirty-five foot landscape buffer and County road 21 will have a twenty-six foot minimum landscape buffer. Landscape buffers will provide ample buffering from adjacent development and to create a park-like environment.

3. **Access:** Entry points are proposed from the site's abutting roadways. Each entry point will be designed as a part of the development's overall theme in terms of landscape and architectural treatment.

4. **Fencing:** The use of fencing as a part of the development's edge treatment will be minimized, and the dominant form of edge treatment for screening and buffering will be landscape. Fencing is not required in this development, however if a property owner is so inclined the following fencing options will be allowed:

   A. Single Family Detached - standard lot - will allow cedar fencing at a 48 inch maximum height to the property line (see sheet 9 of 10 for typical fence details).

   B. Single Family detached - Patio lots - will allow steel picket fence at 36 inch maximum height to the property line

   C. Single family attached will allow steel picket fencing at 36 inch maximum height in designated areas, fencing will not be allowed to the property lines (see typical floor plan sheet 10 of 10).

Streetscape: Landscaping will be designed with a comprehensive theme for the entire development. The overall concept will include the treatment of the roadways as tree-lined lanes reflective of early, established communities typical of northern Colorado. One 2-inch caliper tree shall be planted in each single-family lot, with two, 2-inch caliper street trees planted on corner lots (one per street frontage). Single-family attached homes shall have two, 2-inch caliper trees per street frontage while corner lots shall have 3.

Open Space Areas: Lake edges will be enhanced with additional trees, grasses and shrubs as recommended in the Environmentally Sensitive Areas Report, (ESAR) dated June 1, 2006. The open space within the buffer will be used for passive uses only. The private neighborhood park and the multipurpose play areas are intended to provide for active and passive play. Large open irrigated turf areas will support this type of activity.

The large open space area near the lake has been designed to allow humans and wildlife to coexist in harmony. It is envisioned that the design of this area will enhance and protect the vitality and environmental quality of this beautiful area. Less than .1 acres of the wetlands will be filled in. Cedar Creek Associates has reviewed the open space plan and has confirmed that it is in compliance with the environmentally sensitive areas report.

High quality wetlands in the southeastern area of the property shall be left undisturbed in their current location, with no disturbance, removal, replacement or mitigation during construction or thereafter, except as otherwise provided for under condition 3, below. These include the wetland where Cattail Reservoir No. 1 was previously located, and wetlands along the southern shore of Cattail Reservoir No. 2. These high-quality wetlands shall also be protected with an approximate 75-foot buffer. Within this buffer, no development shall take place. Passive, non-intrusive use shall be allowed (e.g., bird-watching from a distance).

Prior to approval of the FDP, the developer may, at his discretion, submit a natural area modification plan prepared by a qualified environmental consultant. Said plan shall be subject to approval by the Current Planning Manager.

Signage will be included at the edge of high quality wetlands, to be shown on FDP. Interpretive and educational signage should be placed along the edge of high quality wetlands (approximately 5 signs). The signs should stress the need for no wildlife harassment or human intrusion into important habitat areas. Text for signage follows the recommendations in the ESAR report.

Maintenance: The landscaped areas of the development, including perimeter areas, common open space, entry features, patio home lots, and single family attached lots will be maintained by a Home Owners Association. Maintenance of landscaping within each standard home lot will be the responsibility of homeowner.

Architecture and Site Requirements

Overall Concept: These performance standards are intended to insure that each neighborhood or development area within Dakota Glen incorporates the use of unifying architectural elements to create an overall, cohesive theme. The intent of these guidelines is to provide direction to builders and designers in the planning, design, and construction of dwellings to ensure that they are compatible with the overall design intent for the PUD. These guidelines are intended to provide flexibility in terms of design style, within a coordinated architectural concept or theme for each neighborhood area as defined by common architectural elements.

Supplemental Requirements for Single Family:

One of the most important aspects to a detached large lot single family neighborhood is its streetscape and the over all appearance and feelings generated as it is viewed by surrounding residents, neighbors, and general public. Recognizing this, the following standards are required (refer to PDP sheets 9 and 10 of 10 for typical plans and elevations):

1. **Porches:** All homes must incorporate a covered front porch for homes that use the front porch to recess the garage. The narrowest dimension of which shall be six feet deep and eight feet wide.

2. **Garages:** Garages shall have front elevations that compliment, rather than dominate, the architectural details of the living portion of the dwelling. The front elevation of side-load garages shall incorporate the use of windows, wall breaks, and or building material changes to more aesthetically enhance the front wall elevation. Garages that have doors for more than two vehicles must have one door recessed a minimum of two feet from the others. Garage doors, visible as part of the front building elevation, shall not comprise more than forty percent (40%) of the ground floor street facing linear building frontage on single family lots. Garage doors, visible as part of the front building elevation, shall not comprise more than fifty percent (50%) of the ground floor street facing linear building frontage on patio home lots. Corner lots are exempt from this condition.

3. **Varying Streetscape:** Single family detached lots (standard and patio) will have enough variety in building elevations and model type such that no identical front elevation is adjacent to or across a common street from one another. Significant changes to the front elevation will be determined by the architectural review committee.

4. **Architectural Review Committee:** The architectural review committee will be the reviewing authority for architectural character within the development. Architectural features such as colors, materials, roofs, windows, doorways, balconies, and changes in plane will all be reviewed under the authority of the architectural review committee.

5. **Materials:** Roofing materials, windows, building materials and finish, will all be carefully coordinated to achieve a cohesive appearance. Exterior wall materials must incorporate brick, natural or synthetic stone, or stucco. Permitted building materials will be established with the design of each neighborhood or development area, and must be consistent within the neighborhood to present an overall design.

6. **Colors**: Exterior wall colors shall be compatible with surrounding buildings, with natural (earth tones) encouraged. Primary or other bright colors are only to be used as accents.

7. **Garage Setbacks:** Garages that have more than two vehicle doors shall have one door recessed a minimum of 2 feet from the other doors.

8. **Accessory Structures:** Accessory structures on residential lots are not allowed within this development.

9. **Pump House:** The pumphouse will be developed using the same materials as much of the residential architecture. The character of the building will be that of a residential building in an effort to blend in with the development. The pump house will be allowed within the 75 foot lake buffer. See typical elevation on sheet 10 of 10.

Landform Modification

The Dakota Glen site is relatively flat with approximately 2 percent slope through out most of the site. Some landform modification will occur in order to create visual interest throughout the site, and to provide management of drainage.

Implementation Procedures: Proposed development within the Planned Unit Development will be processed in accordance with the procedures contained in Chapter 18.41 of the Loveland Municipal Code dated 3-97, Section 18.41.50, Procedures for approval of a Planned Unit Development, and shall require approval of Final Development Plans in accordance with the requirements thereof.

CONDITIONS OF PRELIMINARY APPROVAL

Current Planning Conditions

1. The PDP, "Supplemental Requirements for Single Family", notes be revised to read:
   a. Garage doors, visible as part of the front building elevation, shall not comprise more than forty percent (40%) pf the ground floor street facing linear building frontage on single-family standard lots.
   b. Garage doors, visible as part of the front building elevation, shall not comprise more than fifty percent (50%) pf the ground floor street facing linear building frontage on single-family patio lots.

Parks and Recreation Conditions

2. As a condition of FDP approval, if the developer wishes to conduct clean-up activities in the natural area, the management techniques described in a letter from Cedar Creek Associates dated October 4, 2006 shall be followed. These management techniques shall be carried out according to the map accompanying Cedar Creek's letter, which depicts the locations on the site where seven of the techniques identified shall be applied. According to Cedar Creek's letter, three of the techniques may be applied site-wide, and one of the techniques identified in a previous letter has been removed from consideration as a site management technique at this time. If any of the eleven management techniques identified by Cedar Creek are implemented, an annual monitoring report shall be submitted to the Current Planning Manager and Natural Areas Manager on November 1 of each year. The monitoring report shall describe the management techniques employed, the results of those techniques, and the current status of any restoration or revegetation efforts. If clean-up activities are not pursued, the natural area shall be left in its natural state.

Engineering Conditions

3. Notwithstanding any information presented in the PDP or accompanying preliminary plat and preliminary construction plan documents (text or graphical depictions), all public improvements shall conform to the Larimer County Urban Area Street Standards adopted on October 2002, as amended, unless specific variances are requested and approved in writing.
4. The following public improvements shall be designed and constructed by the developer unless designed & constructed by others. All improvements shall be completed prior to the issuance of any building permits, unless otherwise approved pursuant to the provisions in Section 16.40 of the Loveland Municipal Code.
   a. 14th Street SW to 2-lane arterial standards adjacent to the property including detached sidewalk.
   b. CR 21 to major collector standards adjacent to the property including detached sidewalk. A cash-in-lieu payment, or other form of security acceptable to the City, for all or part of these improvements may be accepted by the City if approved by the City Engineer.
   c. Angora Drive to minor collector standards within the property.
   d. Westbound right-turn lane on 14th Street SW into Angora Drive.

Fire Prevention Conditions

5. Prior to approval of the Final Plat, the design for the emergency access roadway serving the proposed phases I and II shall be approved by the Fire Department.
6. Prior to approval of any building permits within the Property all courts shall be provided with a "Fire Lane - No Parking" signs approved by the Fire Department.

Power Conditions

7. When the property being annexed into the City of Loveland is currently located within the REA certified territory; this property is subject to a five percent (5%) surcharge on electrical energy as defined in 40-915-204, CRS, and the City of Loveland Municipal Code 13.12.180. This surcharge applies to any subsequent subdivisions of property annexed after January 31, 1987 within the REA certified service territory. In this case a note will be added to the final plat that reads as follows:
   a. A surcharge of 5% will be added to all bills for the sale of electric power to additional services which came into the existence after January 31, 1987, within the territory herein annexed which surcharge will expire ten years after effective date of this annexation.
8. A letter of approval from Western Area Power Authority for landscape plans proposing landscaping within a WAPA easement or under WAPA power lines must be submitted with the Final Plat and Final Construction Drawings submittal.
9. All multifamily, condominium, apartment and town home units will have meters centrally located on or near the unit's exterior building wall. Town homes will not be individually metered.

VESTING

Vesting was granted for this development plan OCTOBER 14, 2006 for a period of 3 years.

SETBACK TABLE (all numbers refer to minimum condition)

UNIT TYPE	FRONT SETBACK, EVEN # LOTS	COMMON WALL SETBACK	FRONT SETBACK, ODD # LOTS	REAR SETBACK	SIDE SETBACK**	CORNER LOT SIDE SETBACKS
SINGLE FAMILY - STANDARD LOT *	24'	N/A	28'	15'	5'	15'
SINGLE FAMILY- PATIO LOT *	22'	N/A	25'	10'	5'	15'
ATTACHED SINGLE FAMILY LOT *	15'	N/A	15'	N/A	5'	15'

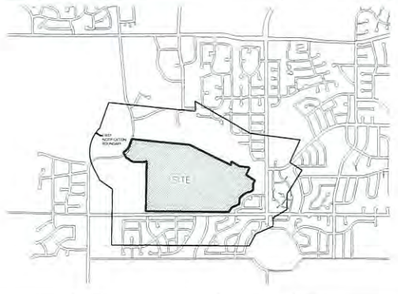
* Setbacks measured from the back of sidewalk
** The 1:3 ratio shall apply with 5 feet being the minimum.

PDP LANDUSE TABLE

LAND USE	AREA	NUMBER OF UNITS	DENSITY	PERCENTAGE OF SITE
SINGLE FAMILY - STANDARD LOT	26.48 ac.	93	1.09 du/ac. (net)	20.9%
SINGLE FAMILY - PATIO LOT	12.22 ac.	70	.83 du/ac. (net)	9.6%
SINGLE FAMILY ATTACHED	8.39 ac.	42	.50 du/ac. (net)	6.6%
OPEN SPACE	34.75 ac.	N/A	N/A	27.4%
TOTAL DEVELOPED AREA	*81.84 ac.*	*205*	*2.42 du/ac. (net)*	*64.4%*
RESERVOIR	21.6 ac.	N/A	N/A	17%
WETLANDS	5.9 ac.	N/A	N/A	4.6%
R.O.W.	14.82 ac.	N/A	N/A	11.7%
PUBLIC UTILITY EASEMENT	2.84 ac.	N/A	N/A	2.2%
TOTAL	*127 ac.*			*100%*

VICINITY MAP

Scale: 1" = 2000'



DAKOTA GLEN

Approvals

1. Approved this _____day of _____, year_____ by the Current Planning Manager of the City of Loveland, Colorado.

_____
Current Planning Manager

2. Approved this _____day of _____, year_____ by the City Engineer of the City of Loveland, Colorado.

_____
City Engineer

3. Approved this_____day of _____, year_____ by the City Attorney of the City of Loveland, Colorado.

_____
City Attorney

4. Approved this_____day of _____, year_____ by the City Planning Commission of the City of Loveland, Colorado.

_____
Chairperson

5. Approved this_____day of _____, year_____ by the City Council of the City of Loveland, Colorado.

_____ _____
Mayor Attest

Ownership Certification

KNOW ALL MEN BY THESE PRESENTS THAT.

_____

being all the lawful record owners of the property shown on this _____(type of plan) _____, except any existing public streets, roads, or highways, do hereby certify that that I/we accept the conditions and restrictions set forth on said plan and in the conditions of approval by the City of Loveland, dated _____, and that I/we consent to the recordation of any information pertaining thereto.

_____
(owner)

STATE OF COLORADO)
)
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this _____day of _____, 2008 by _____

Witness my hand and official seal.
My commission expires

_____NOTARY PUBLIC

_____address

Developer:
Glen Development LLC
P.O. Box 118
Loveland, CO 80539
970.663.1897

SHEET INDEX

SHEET 1	PDP NARRATIVE
SHEET 2	OVERALL PLAN
SHEET 3	SITE / LANDSCAPE PLAN
SHEET 4	SITE / LANDSCAPE PLAN
SHEET 5	SITE / LANDSCAPE PLAN
SHEET 6	SITE / LANDSCAPE PLAN
SHEET 7	SITE / LANDSCAPE PLAN
SHEET 8	SITE / LANDSCAPE PLAN
SHEET 9	ARCHITECTURE
SHEET 10	ARCHITECTURE
SHEET 11	XCEL PLANNED UNIT DEVELOPMENT (1 OF 5)
SHEET 12	XCEL PLANNED UNIT DEVELOPMENT (2 OF 5)
SHEET 13	XCEL PLANNED UNIT DEVELOPMENT (3 OF 5)
SHEET 14	XCEL PLANNED UNIT DEVELOPMENT (4 OF 5)
SHEET 15	XCEL PLANNED UNIT DEVELOPMENT (5 OF 5)

PDP NARRATIVE

DAKOTA GLEN 1 ST. SUBDIVISION
LOVELAND, COLORADO

BHA DESIGN, INC. • 1603 OAKRIDGE DRIVE bha FT. COLLINS, CO

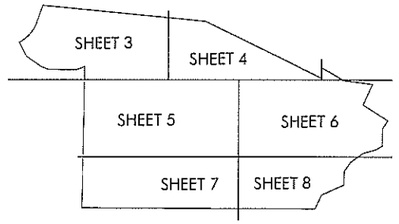
SHEET 1 OF 15
APRIL 3, 2013

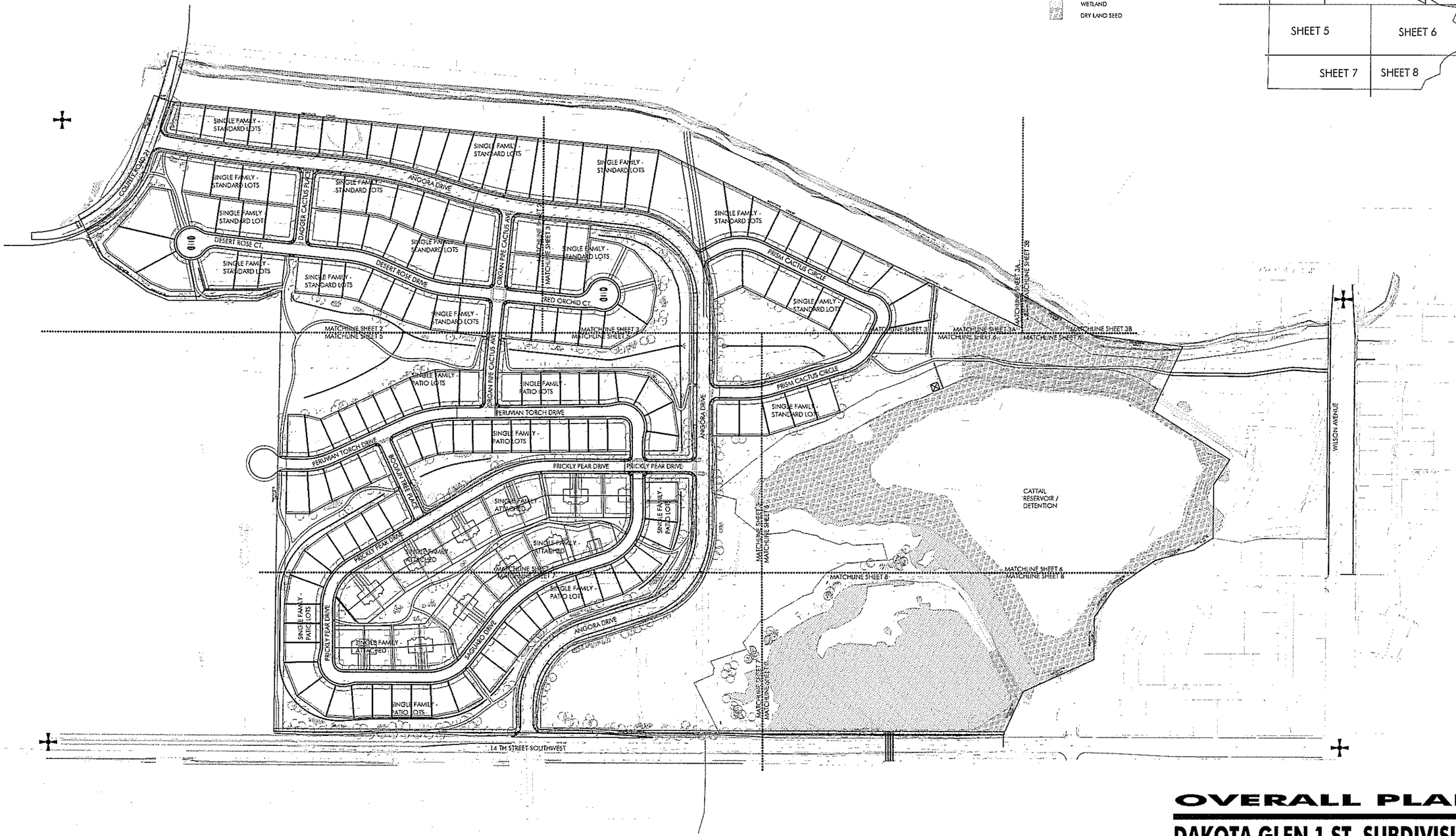
PC ATTACHMENT 1

LEGEND

DECIDUOUS CANOPY TREE
ORNAMENTAL TREE
CONIFEROUS TREE
SHRUB BED
IRRIGATED TURF
WETLAND
DRY LAND SEED

VICINITY MAP





0 75' 150' 300'

OVERALL PLAN

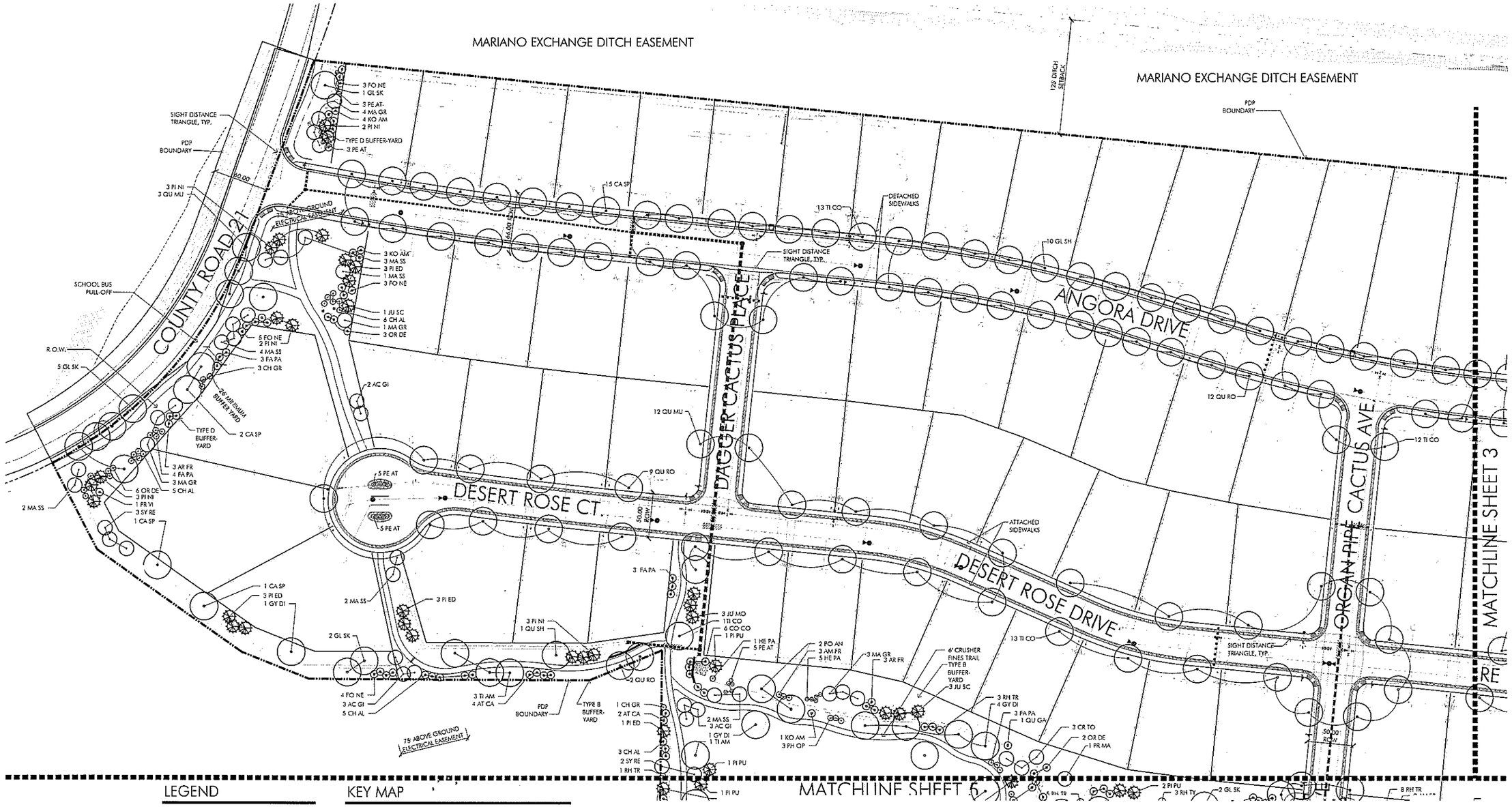
DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

BHA DESIGN, INC. • 1603 OAKRIDGE DRIVE bha FT. COLLINS, C

SHEET 2 OF 1.
APRIL 3, 2012

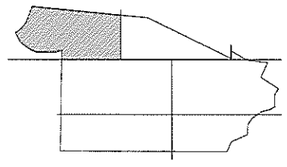
PC ATTACHMENT 1



LEGEND

- DECIDUOUS CANOPY TREE
- ORNAMENTAL TREE
- CONIFEROUS TREE
- SHRUB BED
- IRRIGATED TURF
- NATIVE MIX
- TRANSITION SEED
- DRY LAND SEED

KEY MAP



NORTH 0 25' 50' 100'

SITE / LANDSCAPE PLAN

DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

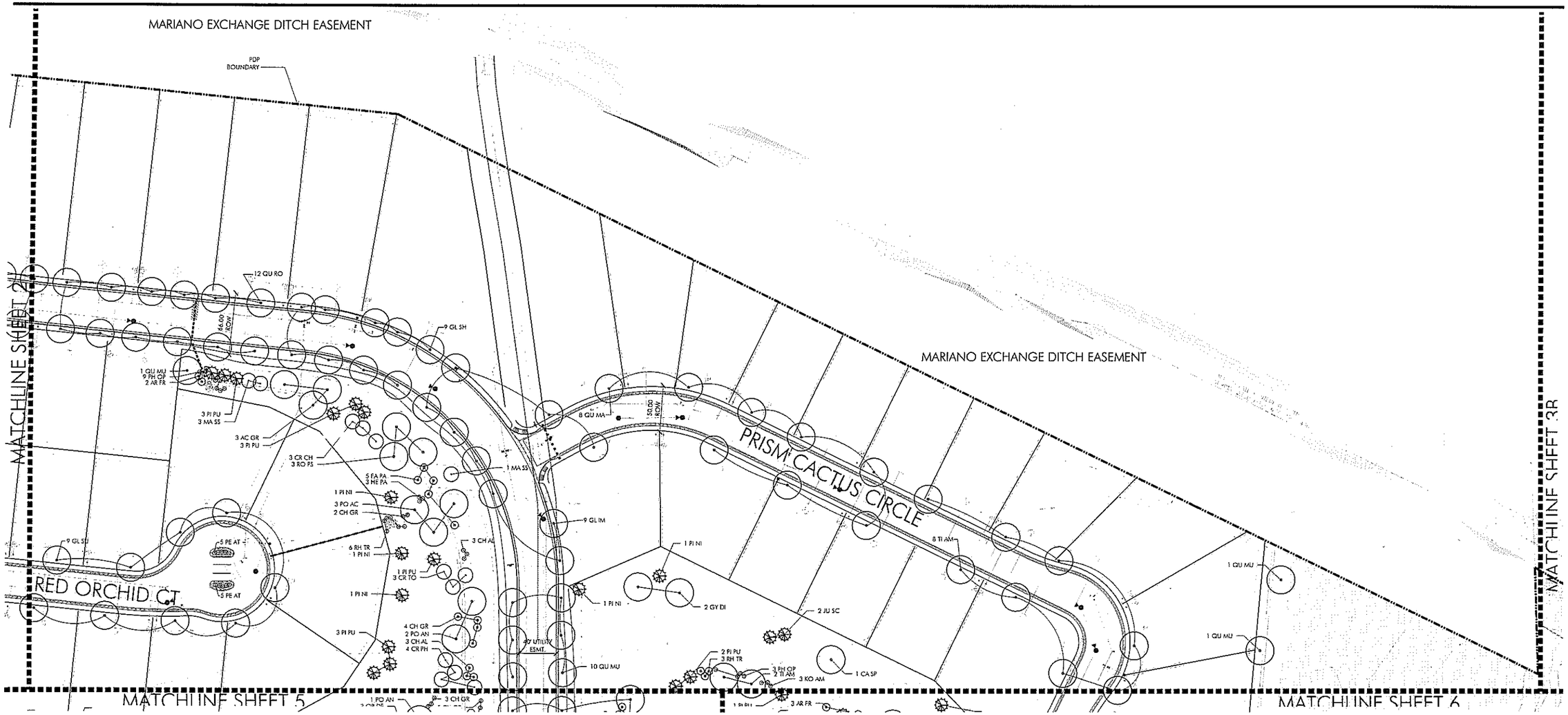
BHA DESIGN, INC. • 1603 OAKRIDGE DRIVE bha FT. COLLIN

SHEET 3 OF

APRIL 3, 201

PC ATTACHMENT 1

SHEET 3A



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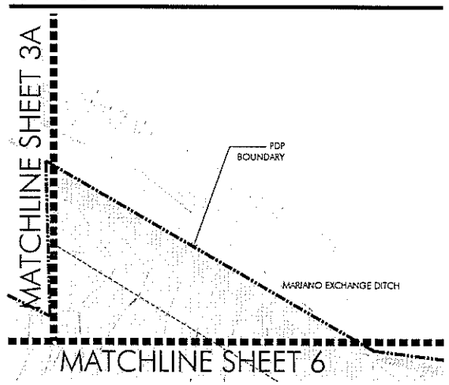
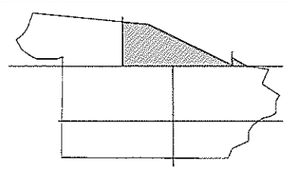


KEY MAP



LEGEND

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NORTH 0 25' 50' 100'

SITE / LANDSCAPE PLAN

DAKOTA GLEN 1 ST. SUBDIVISION

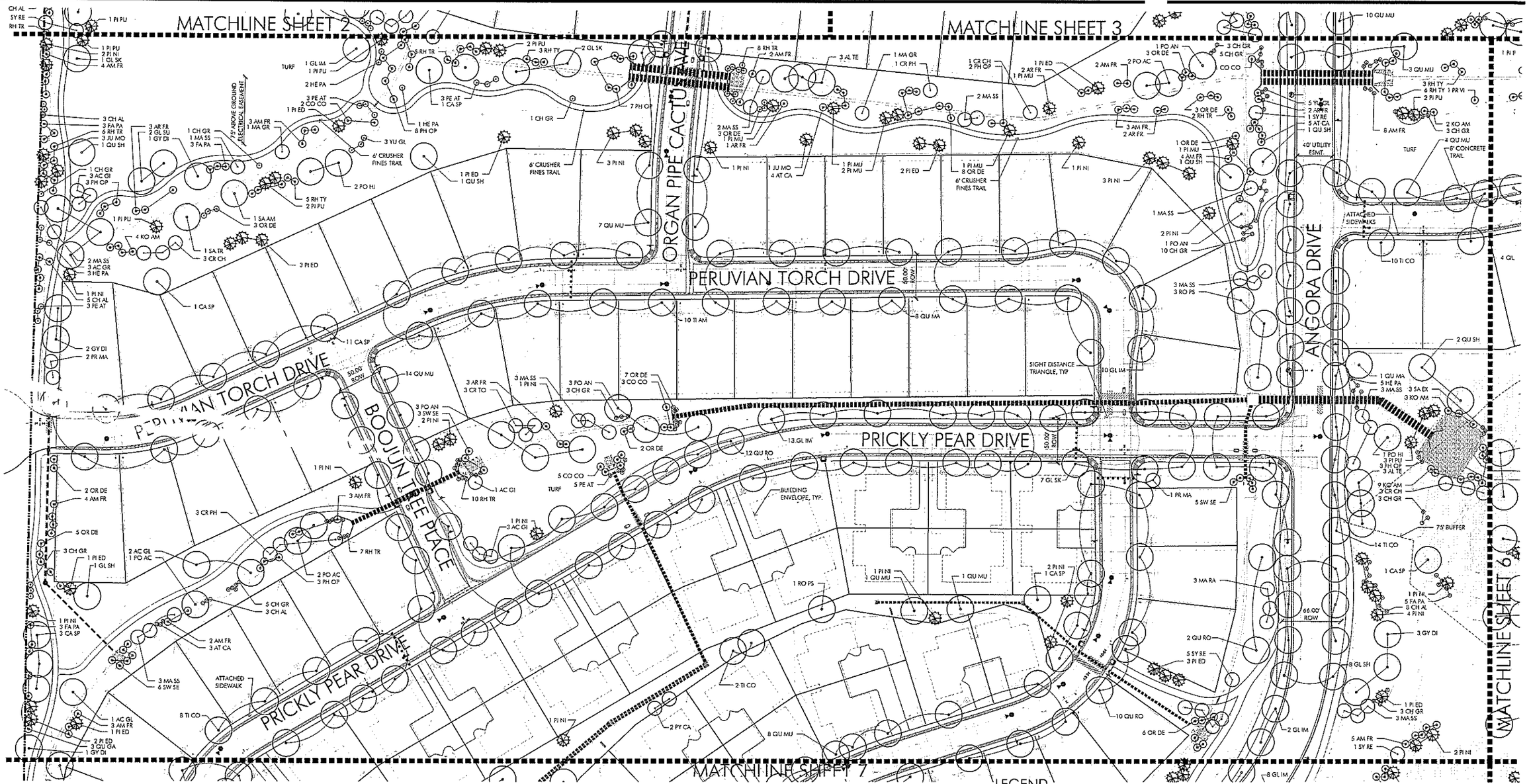
LOVELAND, COLORADO

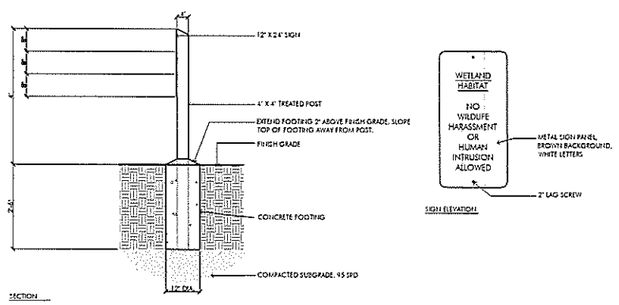
BHA DESIGN, INC. • 1603 OAKRIDGE DRIVE bha FT. COLLINS, CO 80525 • TEL: (970) 221-7477

SHEET 4 OF

APRIL 3, 201

PC ATTACHMENT 1



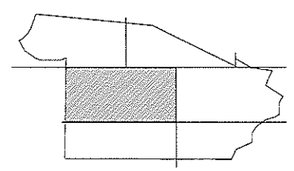


WETLAND SIGN

Note:

Development other than trails are prohibited within the 75 foot buffer

KEY MAP



LEGEND

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NORTH 0 25' 50' 100'

SITE / LANDSCAPE PLAN

DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

BHA DESIGN, INC. • 1603 OAKRIDGE DRIVE bha FT. COLLINS,

SHEET 5 OF 1

APRIL 3, 201

PC ATTACHMENT 1

MATCHLINE SHEET 6

MATCHLINE SHEET 6A

PRISM CACTUS CIRCLE

75' ABOVE GROUND ELECTRICAL EASEMENT

75' BUFFER

DRY LAND SEED

16" PROPOSED P/L

50' PERMANENT EASEMENT

25' TEMP. EASEMENT

6' CRUSHER FINES TRAIL

PDP BOUNDARY

PERMANENT WATER EDGE

CATTAIL RESERVOIR / DETENTION

MULTI-PURPPOSE OPEN SPACE PLAY AREA 16.36 Acres

EXISTING WETLANDS

SEE SHEETS 11 THROUGH 15

SHEET 6A

8' CONCRETE TRAIL

MATCHLINE SHEET 6

KEY MAP

LEGEND

- DECIDUOUS CANOPY TREE
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- TRANSITION SEED
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Note:

Development other than trails are prohibited within the 75 foot buffer

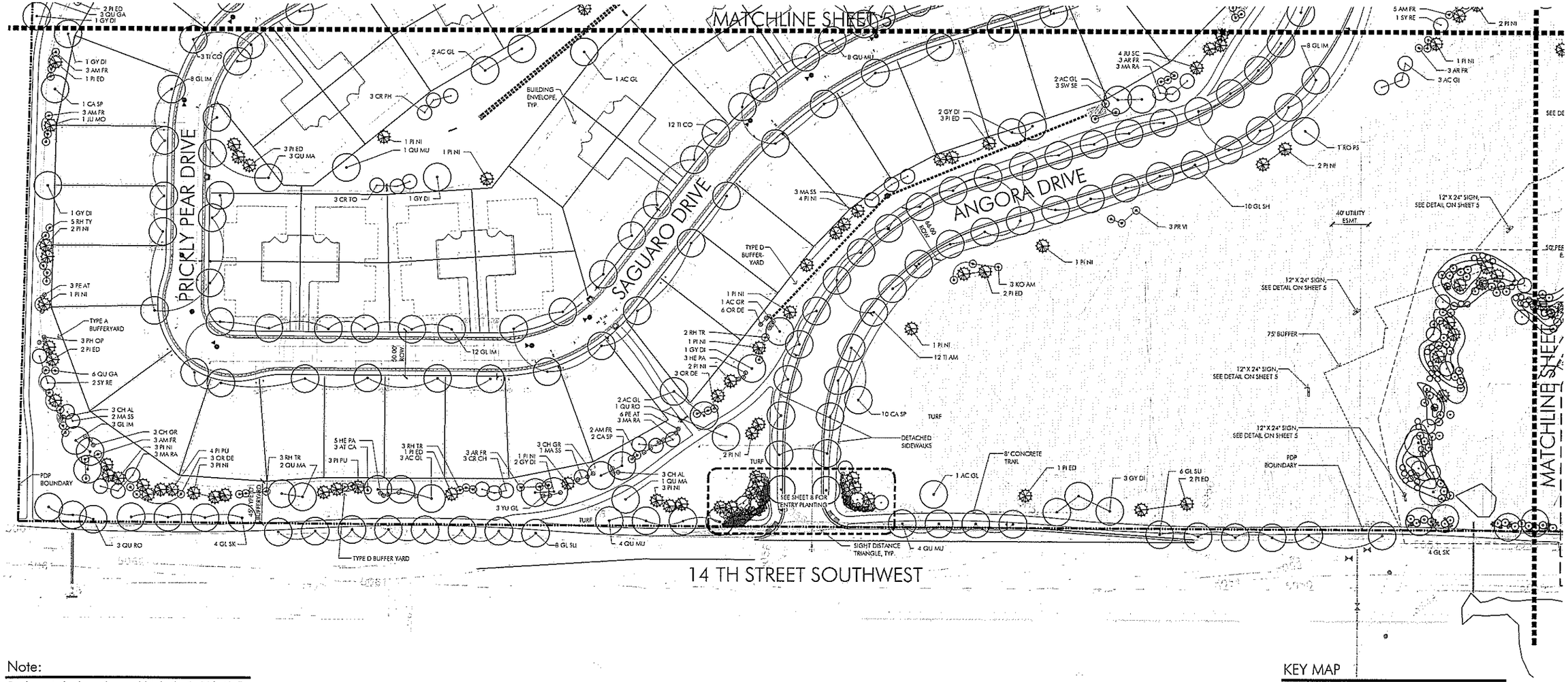
NORTH 0 25' 50' 100'

SITE / LANDSCAPE PLAN

DAKOTA GLEN 1 ST. SUBDIVISION

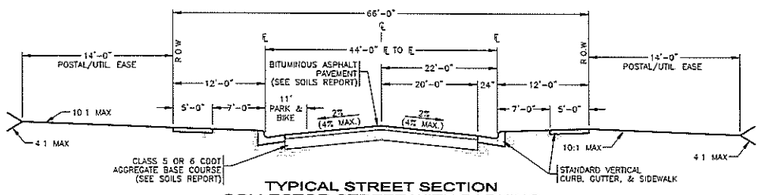
LOVELAND, COLORADO

BHA DESIGN, INC. • 1603 OAKRIDGE DRIVE bha FT. COLLINS,

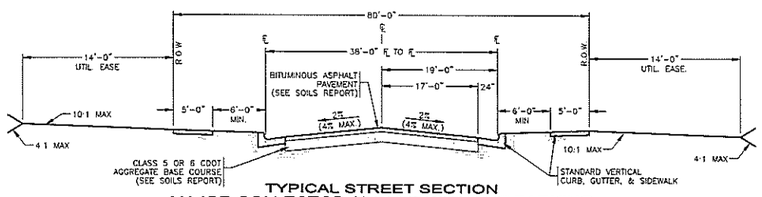


Note:

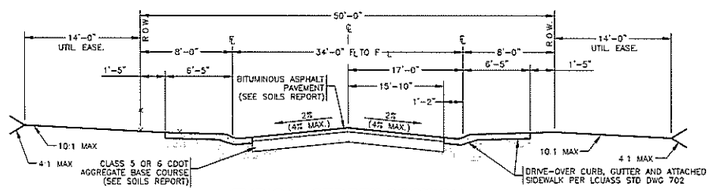
Development other than trails are prohibited within the 75 foot buffer



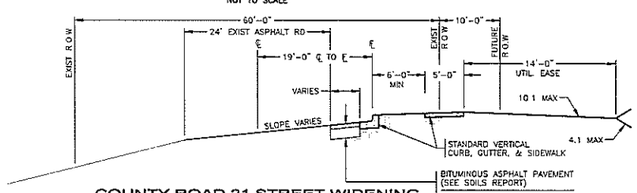
TYPICAL STREET SECTION
COLLECTOR STREET WITH PARKING
44' FLOWLINE TO FLOWLINE WITH VERTICAL CURB AND GUTTER
NOT TO SCALE



TYPICAL STREET SECTION
MAJOR COLLECTOR STREET WITHOUT PARKING
38' FLOWLINE TO FLOWLINE WITH VERTICAL CURB AND GUTTER
NOT TO SCALE



TYPICAL STREET SECTION
RESIDENTIAL LOCAL STREETS
34' FLOWLINE TO FLOWLINE WITH DRIVE-OVER CURB, GUTTER AND SIDEWALK
NOT TO SCALE



COUNTY ROAD 21 STREET WIDENING
NOT TO SCALE

LEGEND

- DECIDUOUS CANOPY TREE
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- CONIFEROUS TREE
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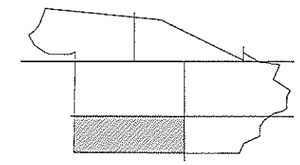
- DRY LAND SEED

KEY MAP



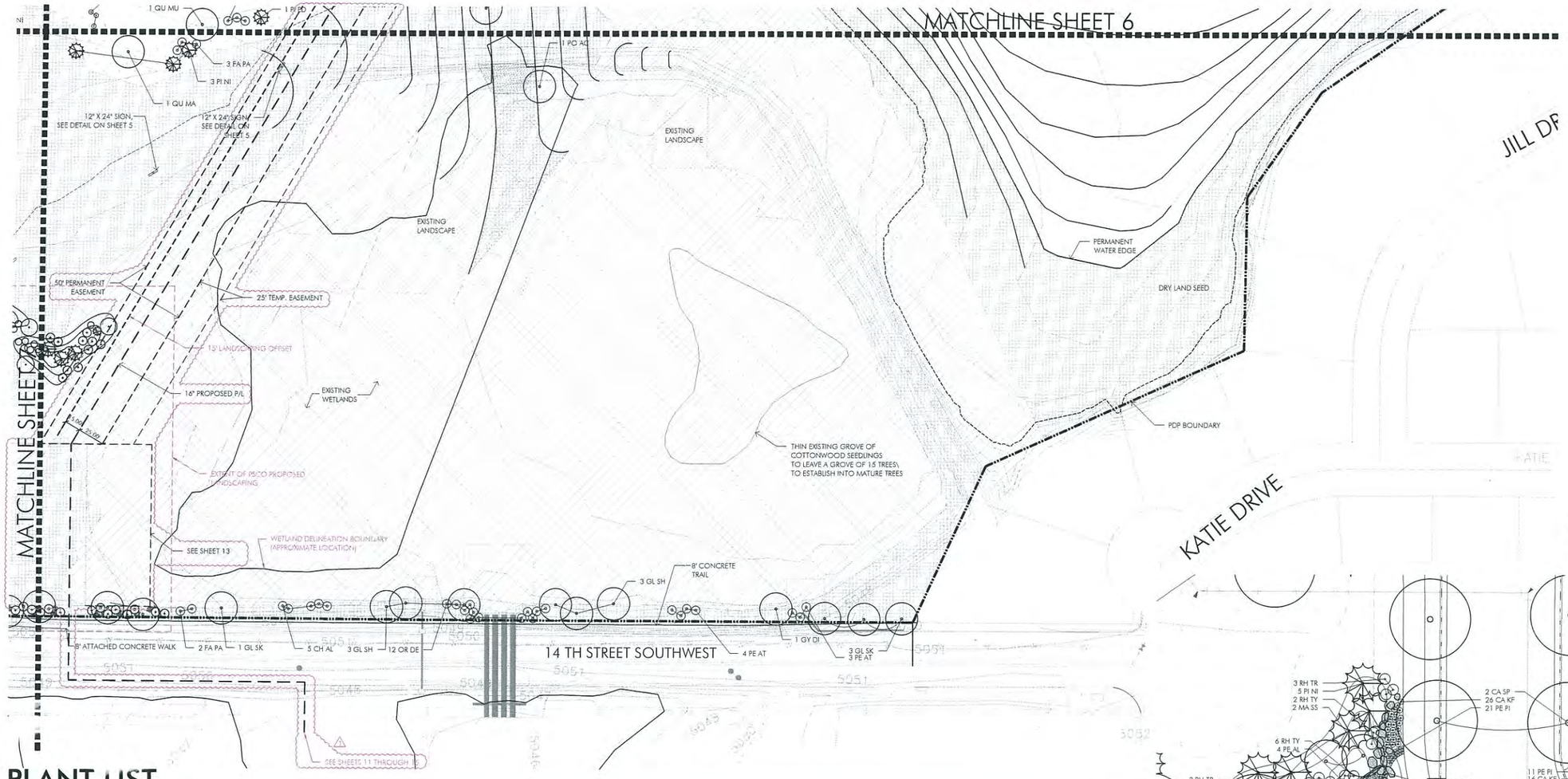
NORTH 0 25' 50' 100'

SITE / LANDSCAPE PLAN

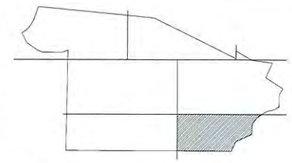
DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

BHA DESIGN, INC. • 1603 OAKRIDGE DRIVE bha FT. COLLINS, CO



KEY MAP



LEGEND

- DECIDUOUS CANOPY TREE
- ORNAMENTAL TREE
- CONIFEROUS TREE
- SHRUB BED
- IRRIGATED TURF
- NATIVE MIX
- TRANSITION SEED
- DRY LAND SEED

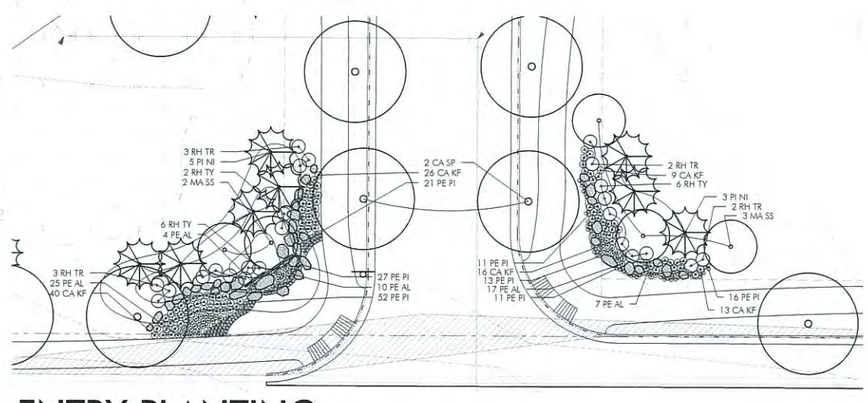
Note:

Development other than trails are prohibited within the 75 foot buffer

PLANT LIST

Key	Botanical name	Common Name	Size	Root	Spacing	Phase 1
DECIDUOUS CANOPY TREES						
AC GR	Acer grandidentatum	Big Tooth Maple	2" Cal.	BB	See Plan	10
AL TE	Alnus tenuifolia	Thinleaf Alder	2" Cal.	BB	See Plan	6
CA SP	Catalpa speciosa	Western Catalpa	2" Cal.	BB	See Plan	53
GL IM	Gleditsia triacanthos inermis 'Imperial'	Imperial Honeylocust	2" Cal.	BB	See Plan	66
GL SH	Gleditsia triacanthos inermis 'Shade Master'	Shade Master Honeylocust	2" Cal.	BB	See Plan	44
GL SK	Gleditsia triacanthos inermis 'Skyline'	Skyline Honeylocust	2" Cal.	BB	See Plan	30
GL SU	Gleditsia triacanthos inermis 'Sunburst'	Sunburst Honeylocust	2" Cal.	BB	See Plan	25
GY DI	Gymnocladus dioica	Kentucky Coffeetree	2" Cal.	BB	See Plan	30
PO AC	Populus acuminata	Lanceleaf Cottonwood	2" Cal.	BB	See Plan	16
PO AN	Populus angustifolia	Narrowleaf Cottonwood	2" Cal.	BB	See Plan	16
PO HI	Populus 'Highland'	Highland Cottonwood	2" Cal.	BB	See Plan	8
QU MA	Quercus macrocarpa	Burr Oak	2" Cal.	BB	See Plan	24
QU MU	Quercus Muehlenbergii	Chinkapin Oak	2" Cal.	BB	See Plan	93
QU RO	Quercus robur	English Oak	2" Cal.	BB	See Plan	53
QU SH	Quercus shumardii	Shumard Oak	2" Cal.	BB	See Plan	9
RO PS	Robina pseudoacacia 'Purple Robe'	Purple Robe Locust	2" Cal.	BB	See Plan	9
SA TR	Salix alba 'Tristis'	Golden Weeping Willow	2-1/2" Cal.	BB	See Plan	4
SA AM	Salix amygdaloides	Peach Leaf Willow	2" Cal.	BB	See Plan	31
TI AM	Tilia cordata 'Redmond	Redmond Linden	2" Cal.	BB	See Plan	38
TI CO	Tilia cordata 'Greenspire'	Greenspire Linden	2" Cal.	BB	See Plan	88
DECIDUOUS ORNAMENTAL TREES						
AC GI	Acer ginnala 'Flame'	Flame Amur Maple	1-1/2" Cal.	BB	See Plan	32
CR CH	Crataegus chinensis	Chinese Hawthorn	1-1/2" Cal.	BB	See Plan	13
CR CR	Crataegus crus-galli inermis	Thornless Cockspur Hawthorn				
CR PH	Crataegus phaenopyrum	Washington Hawthorn	2" Cal.	BB	See Plan	14
CR TO	Crataegus 'Toba'	Toba Hawthorn	1-3/4" Cal.	BB	See Plan	16
MA RA	Malus 'Radiant'	Radiant Crabapple	2-1/2" Cal.	BB	See Plan	15
MA GR	Malus 'Golden Raindrops'	Golden Raindrops Crabapple	2" Cal.	BB	See Plan	13
MA SP	Malus Species	Crabapple				
MA SS	Malus 'Spring Snow'	Spring Snow Crabapple	1-3/4" Cal.	BB	See Plan	56
PR MA	Prunus Maackii	Amur Chokecherry	2-1/2" Cal.	BB	See Plan	5
PY CA	Pyrus calleryana 'Aristocrat'	Aristocrat Pear	2" Cal.	BB	See Plan	2
SY RE	Syringa reticulata	Japanese Tree Lilac	1-1/2" Cal.	BB	See Plan	13
CONIFEROUS TREES						
JU MO	Juniperus monosperma	One Seed Juniper	6' Ht.	BB	See Plan	8
JU SC	Juniperus scopulorum	Rocky Mountain Juniper	6' Ht.	BB	See Plan	10
PI FA	Picea pungens 'Fat Albert'	Fat Albert Spruce				
PI HO	Picea pungens 'Hoopsii'	Hoopsii Spruce				
PI PU	Picea pungens	Colorado Spruce	6' Ht.	BB	See Plan	43
PI ED	Pinus edulis	Pinon Pine	8' Ht.	BB	See Plan	46
PI NI	Pinus nigra	Austrian Pine	6' Ht.	BB	See Plan	90
PI MU	Pinus mugo 'Tannebaum'	Tannenbaum Mugo Pine	6' Ht.	BB	See Plan	8

Key	Botanical name	Common Name	Size	Root	Spacing	Phase 1
CONIFEROUS/EVERGREEN SHRUBS						
JU HO	Juniperus squamata 'Holger'	Holger Juniper				
JU SA	Juniperus x media 'Saybrook Gold'	Saybrook Gold Juniper				
JU TA	Juniperus sabina 'Tamariscifolia'	Tammy Juniper				
PI CO	Picea pungens 'Compacta'	Commpact Colorado Spruce				
PI ME	Picea pungens 'Mesa Verde'	Mesa Verde Spruce				
PI VA	Pinus mugo 'Valley Cushion'	Valley Cushion Muga Pine				
DECIDUOUS SHRUBS						
AM FR	Amorpha fruticosa var. angustifolia	Indigobush Amorpha	5 GAL.	Container	See Plan	60
AT CA	Atriplex canescens	Four-Wing Saltbush	5 GAL.	Container	See Plan	21
AR FR	Artemisia frigida	Fringed Sage	5 GAL.	Container	See Plan	41
CH AL	Chrysothamnus nauseosus albicaulis	Tall Blue Rabbitbrush	5 GAL.	Container	See Plan	62
CH GR	Chrysothamnus nauseosus graveolens	Tall Green Rabbitbrush	5 GAL.	Container	See Plan	73
CO CO	Cotinus coggygria 'Royal Purple'	Royal Purple Smoke Tree	5 GAL.	Container	See Plan	22
FA PA	Fallugia paradoxa	Apache Plume	5 GAL.	Container	See Plan	43
FO NE	Forestieria neomexicana	New Mexico Privet	5 GAL.	Container	See Plan	22
HE PA	Hesperaloe parviflora	Red False Yucca	5 GAL.	Container	See Plan	28
KA LA	Kalmia latifolia	Mountain Laurel				
KO AM	Kolkwitzia amabilis	Beauty Bush	5 GAL.	Container	See Plan	41
OR DE	Oreobatus deliciosus	Boulder Raspberry	5 GAL.	Container	See Plan	78
PE AT	Perovskia atriplicifolia	Russian Sage	5 GAL.	Container	See Plan	64
PH OP	Physocarpus monogynus	Native Ninebark	5 GAL.	Container	See Plan	55
PR VI	Prunus virginiana melanocarpa	Native Chokecherry	5 GAL.	Container	See Plan	21
QU GA	Quercus gambelii	Gambel Oak	5 GAL.	Container	See Plan	6
RH TR	Rhus trilobata	Three-Leaf Sumac	5 GAL.	Container	See Plan	76
RH TY	Rhus typhina	Staghorn Sumac	5 GAL.	Container	See Plan	36
SA EX	Salix exigua	Coyote Willow	5 GAL.	Container	See Plan	44
SW SE	Swida stolonifera	Redosier Dogwood	5 GAL.	Container	See Plan	17
YU GL	Yucca glauca	Great Plains Yucca	5 GAL.	Container	See Plan	8
GRASSES AND PERENNIALS						
CA KF	Calamagrostis acutiflora 'Karl Foerster'	Feather Reed Grass	1 GAL.	Container	See Plan	104
PE AL	Pennisetum alopecuroides 'Hamelin'	Dwarf Fountain Grass	1 GAL.	Container	See Plan	63
PE ME	Penstemon 'Mersea Yellow'	Yellow Pineleaf Penstemon				
PE PI	Penstemon pinifolius	Pineleaf Penstemon	1 GAL.	Container	See Plan	151



ENTRY PLANTING

SCALE: 1" = 20'

IRRIGATED TURF

Kentucky Bluegrass 3 Elite Varieties

DRY LAND SEED MIX

Common Name	Scientific Name	PLS/Acre
Blue Grama	Bouteloua gracilis	0.75
Buffalograss	Buchloe dactyloides	1.60
Green Needlegrass	Nassella viridula	2.00
Sideoats Grama	Bouteloua curtipendula	1.80
Western Wheatgrass	Pascopyrum smithii	4.00
		10.15 Drilled
		20.3 Broadcast
		40.6 Small Areas

TRANSITION SEED MIX

Arkansas Valley Seed: Natures Choice Lawn Mixture or approved equivalent

70% Ephraim Crested Wheatgrass
15% Sheeps Fescue
10% Vibrant Perennial Ryegrass
5% Ronde Kentucky Bluegrass

175-220 lbs/acre

NATIVE SEED MIX

Arkansas Valley Seed: Low Grow Mix or approved equivalent

30% Ephraim Crested Wheatgrass
25% Sheep Fescue
20% Perennial Rye
15% Chewings Fescue
10% Kentucky Bluegrass

20-25 lbs/acre

NORTH 0 25' 50' 100'

SITE / LANDSCAPE PLAN

DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

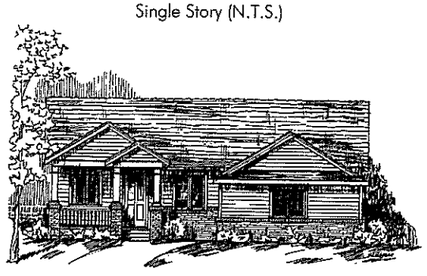
BHA DESIGN, INC. • 1603 OAKRIDGE DRIVE bha FT. COLLINS, CO 80525 • TEL: (970) 223 - 7577

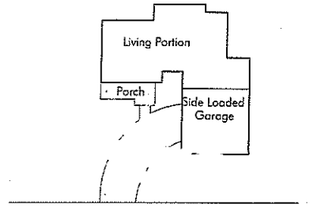
SHEET 8 OF 16
APRIL 3, 2013

PC ATTACHMENT 1

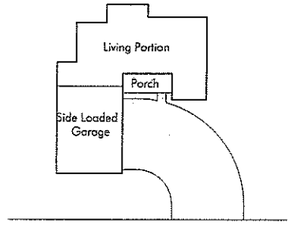
TYPICAL SINGLE FAMILY DETATCHED - STANDARD LOT - TYPE A (side loaded garage)

Single Story (N.T.S.)



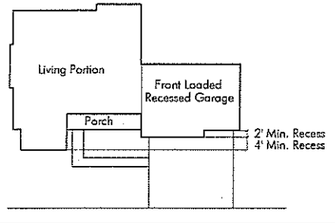


Two Story (N.T.S.)

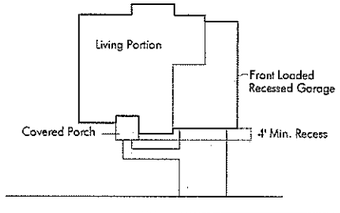


TYPICAL SINGLE FAMILY DETACHED - STANDARD LOT - TYPE B (recessed garage)

Single Story (N.T.S.)

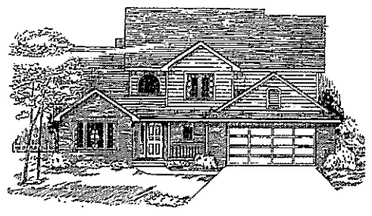


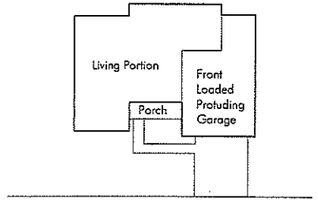
Two Story (N.T.S.)



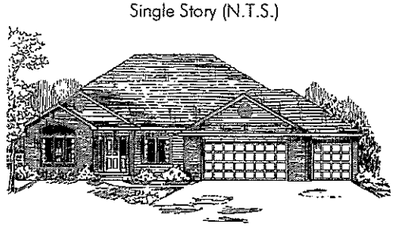
TYPICAL SINGLE FAMILY DETACHED - STANDARD LOT - TYPE C (protruding garage)

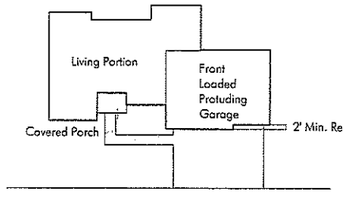
Two Story (N.T.S.)

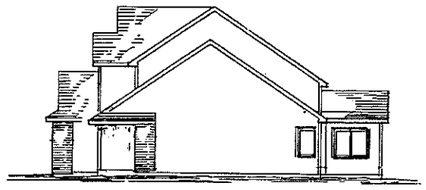




Single Story (N.T.S.)





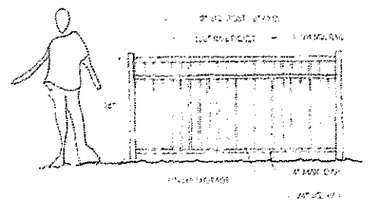


Typical Side Elevation (N.T.S.)

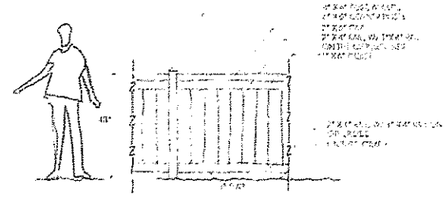
Typical Rear Elevation (N.T.S.)

Note:
These elevations are prototypical. Some variation will occur with the development of each property.

TYPICAL STEEL FENCE
scale: N.T.S.



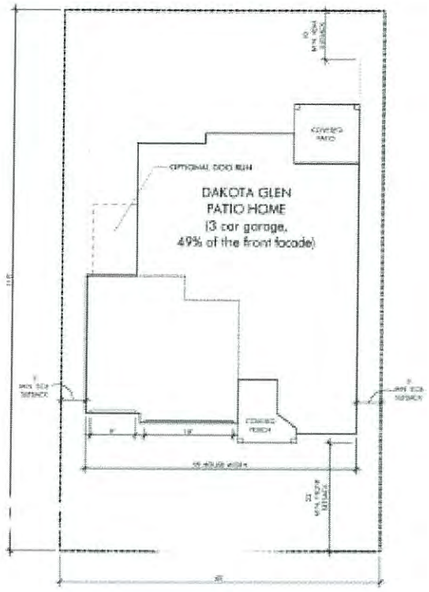
TYPICAL CEDAR FENCE
scale: N.T.S.



ARCHITECTURAL ELEVATIONS
DAKOTA GLEN FINAL DEVELOPMENT PLAN
FIRST AMENDMENT
LOVELAND, COLORADO

SHA DESIGN, INC. • 1603 OAKRIDGE DR

TYPICAL SINGLE FAMILY DETACHED - PATIO HOME

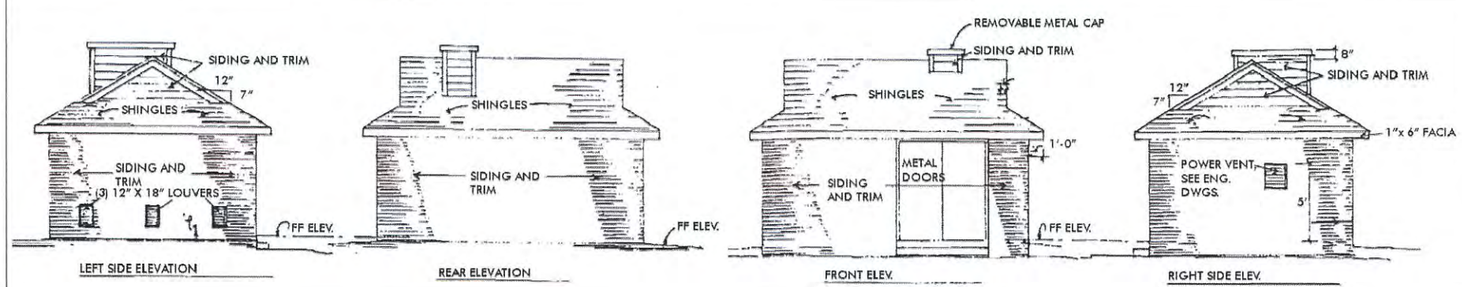


TYPICAL SINGLE FAMILY ATTACHED

PLAN

ELEVATION

TYPICAL PUMPHOUSE



Note:
These elevations are prototypical. Some variation will occur with the development of each property.

ARCHITECTURAL ELEVATIONS
DAKOTA GLEN FINAL DEVELOPMENT PLAN
DAKOTA GLEN 1 ST. SUBDIVISION
LOVELAND, COLORADO

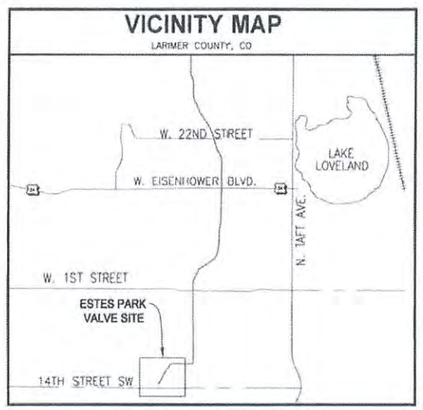
BHA DESIGN, INC. • 1603 OAKRIDGE DRIVE bha FT. COLLINS

PLANNED UNIT DEVELOPMENT
LARIMER 2013 - 16" WEST MAIN NATURAL GAS PIPELINE REPLACEMENT
(ESTES PARK REGULATOR STATION & UNDERGROUND PIPELINE IN DAKOTA GLEN PUD)
CITY OF LOVELAND
FEBRUARY 2013

Zoning	P-98
Site Acreage	7.48 acres
Land Use	Natural gas pipeline and public utility facility
Square Footage	1. Total - 300 sq. ft.
	2. Floors - 300 sq. ft.
	3. Natural Gas Regulation - 300 sq. ft.
Building Occupancy	U-Utility
Type of Construction	1. Construction Type - Type 2A
	2. Fire Sprinkler - None
Parking Spaces	N/A - This is an unmanned utility
Landscaping	N/A - See Note 5 on Sheet 4, regarding seed mix
Open Space	N/A - The Estes Park Regulator Station is a public utility facility. The pipeline will be buried and revegetated upon completion of construction, and no impacts to open space.
FEMA	[illegible] of the site is within a FEMA floodplain

Standard Site Plan Notes:

1. Unless otherwise noted all land and utilities will be unchanged or restored to their original condition.
2. Legal descriptions of all Public Service company easements are included in the legal description page.
3. Regulator stations do not yet have an address assigned by the City of Loveland.
4. Final architectural design of regulator stations will be completed after final input from the City of Loveland.
5. The construction of the valve stations or pipeline in this plan shall be completed in one phase.
6. There will be no paved parking or bicycle racks installed and no servicing of vehicles on site.
7. All trash shall be hulled away by Public Service Company employees. There will be no permanent refuse collection areas.
8. No area of the easements in this plan is within fifty feet (50') of the property that is within a 100-year floodplain, is classified by the Army Corps of Engineers as wetlands or is land classified as having severe soil limitations by the Soil Conservation Service.
9. No area of the easements in this plan is within the Airport Influence area.
10. The only high wildlife value for an easement of these plans by the Colorado Division of Wildlife is all easements fall within the snow goose winter foraging range. This development will have little to no impact on this species.



DRAWING INDEX			
REVISION	SHEET NO.	DRAWING NO.	DRAWING TITLE
A	1	2300	COVER SHEET
A	2	2301	LEGAL DESCRIPTION
A	3	2302	OVERALL PLAN
A	4	2303	GRADING PLAN
A	5	2304	BUILDING PLAN & DETAILS

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12303 Airport Way, Ste 145
Broomfield, CO 80021

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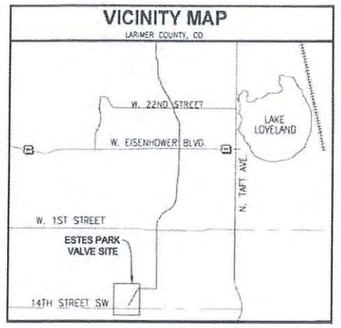
XCEL PLANNED UNIT DEVELOPMENT (1 OF 5)

DAKOTA GLEN 1 ST. SUBDIVISION
LOVELAND, COLORADO

BHA DESIGN, INC. • 1603 OAKRIDGE DRIVE bha FT. COLLINS,



Section 21, Township 5N, Range 69W
LOVELAND , COLORADO

OVERALL PLAN VIEW
SCALE 1" : 100'

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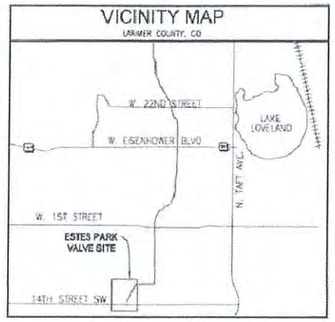
XCEL PLANNED UNIT DEVELOPMENT (2 OF 5)

DAKOTA GLEN 1 ST. SUBDIVISION
LOVELAND, COLORADO

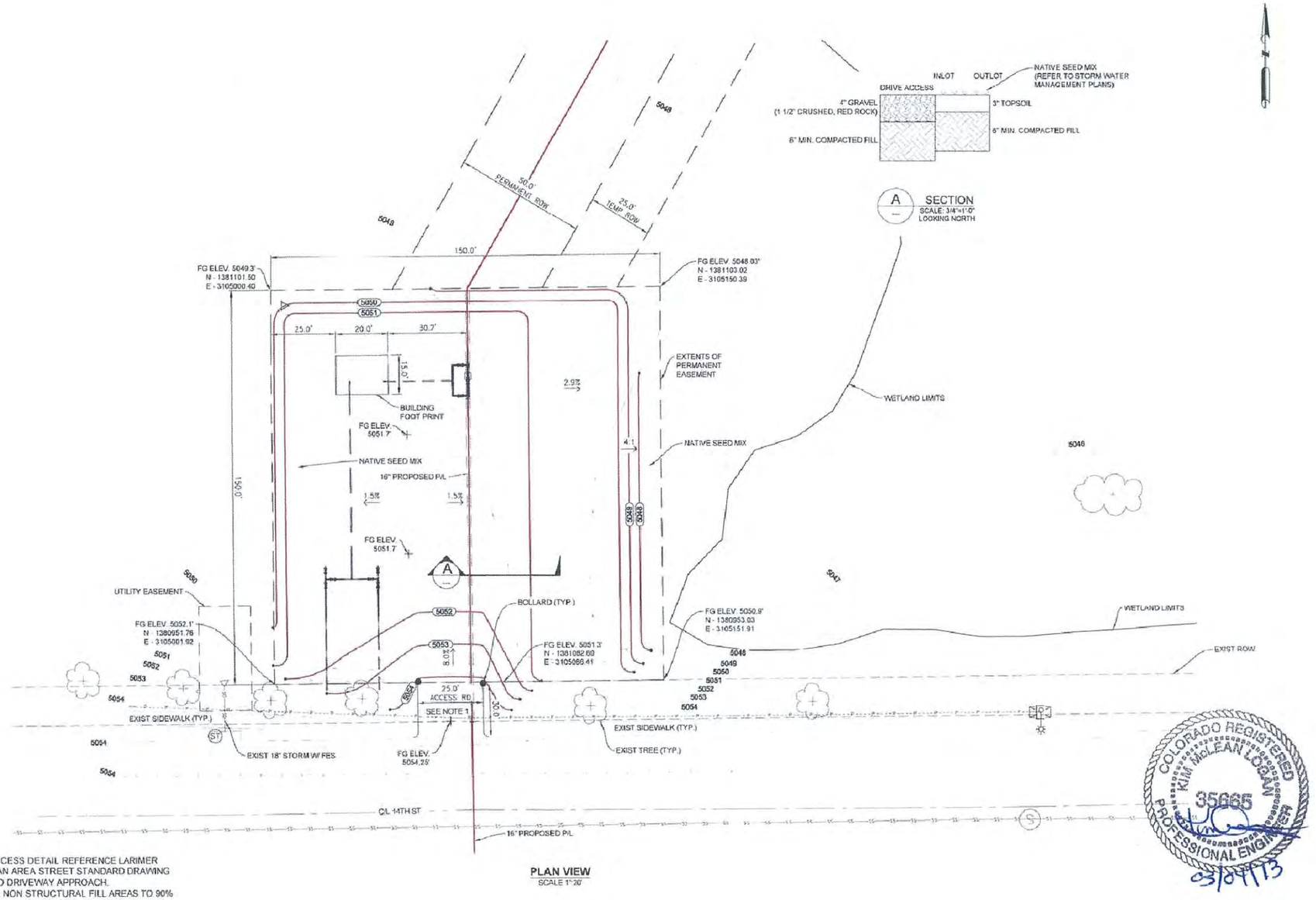
BHA DESIGN, INC. • 1603 OAKRIDGE DRIVE bha FT. COLLINS,

SHEET 12 OF 1
APRIL 3, 201

PC ATTACHMENT 1



Section 21, Township 5N, Range 69W
LOVELAND , COLORADO



PLAN VIEW
SCALE 1"=20'

LEGEND

- LIGHT POLE
- ST — STORM DRAIN
- S — SANITARY SEWER
- ABOVE GROUND PIPING
- BELOW GROUND PIPING
- RADIO TRANSMISSION UNIT

GRADING LEGEND

2246	EXISTING CONTOUR
2234	FINISHED CONTOUR
FLOW	DRAINAGE FLOW DIRECTION
•	INTERSECTING POINT BETWEEN FINISHED CONTOUR AND EXISTING CONTOUR
FG	FINISHED GRADE

NOTES:
1. FOR DRIVE ACCESS DETAIL REFERENCE LARIMER COUNTY URBAN AREA STREET STANDARD DRAWING 706-STANDARD DRIVEWAY APPROACH.
2. COMPACT ALL NON STRUCTURAL FILL AREAS TO 90% OF THE MAXIMUM DRY DENSITY WITH STRUCTURAL FILL AREAS @ 95%.
3. REFERENCE PROJECT STORM WATER MANAGEMENT PLAN FOR ALL EROSION CONTROL MEASURES.
4. CONTRACTOR IS RESPONSIBLE WITH IDENTIFYING, LOCATING, AND POTHOLING ALL FOREIGN LINE CONFLICTS. CONTRACTOR IS REQUIRED BY STATUTE TO UTILIZE THE STATE ONE CALL SYSTEM (811) FOR UTILITY LOCATE REQUESTS.
5. A NATIVE SEED MIX THAT MEETS CITY OF LOVELAND STORM WATER STANDARDS SHALL BE SUBMITTED AND APPROVED PRIOR TO INSTALL.

ENGlobal®

COLORADO REGISTERED KIM McLEAN LOGAN 35665 PROFESSIONAL ENGINEER
03/04/13

XCEL PLANNED UNIT DEVELOPMENT (3 OF 5)

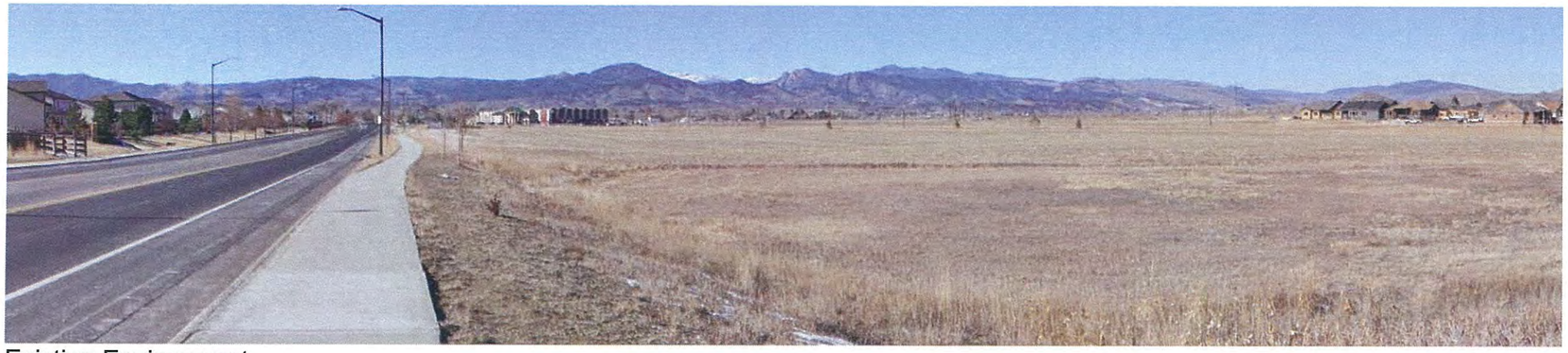
DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

BHA DESIGN, INC. • 1603 OAKRIDGE DRIVE bha FT. COLLINS, C

SHEET 13 OF 15
APRIL 3, 2013

PC ATTACHMENT 1



Existing Environment

Photographic Simulation

Disclaimer: Detailed design drawings to be submitted with building permit applications. Design drawings will substantially comply with the details included on this drawing. See Sheet 7 and 8 for Landscape Plan.

Parameter	Control House	Aboveground Pipeline	Bollard
Use	Controls the flow of gas from higher to lower pressures as the gas would move from the 16-inch transmission pipeline to smaller lateral and distribution pipelines	Transmission of natural gas	Entrance Gate
Quantity	1	2	2
Height	~12 ft (similar roof pitch to existing pump house)	Highest point of aboveground pipe structures are 7 ft 1 in and 7 ft 3 in. Pipe heights are 6 ft 2 in and 4 ft 4 in.	3.5 ft
Length	24 ft	17 ft; 11 ft	N/A
Width	22 ft	18 ft; 6.5 ft	N/A
Size	528 sq ft	6.5-inch-diameter pipeline; footprints are 306 square ft; 71.5 (377.5 sq ft total)	6.5 in diameter
Architectural Design	Similar in character to existing pump house located north of the gas regulator station site	Painted steel	N/A
Exterior Materials	Walls: Split face concrete block Windows/Openings: Glass block/metal louvers Roof: Metal shingles	Painted steel	Painted steel
Color	Walls: Teal blue, or similar to match hue of existing pump house Trim: Cream, to match hue of existing pump house Roof: Warm gray, to match hue of existing pump house	Medium/light tan	Medium/light tan

XCEL PLANNED UNIT DEVELOPMENT (4 OF 5)

DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

BHA DESIGN, INC. • 1603 OAKRIDGE DRIVE bha FT. COLLINS, C

2013 - 16" West Main Natural Gas Pipeline Replacement Project - Dakota Glen PUD First Amendment

PROJECT AND LEGAL DESCRIPTION

Introduction

Public Service Company of Colorado (PSCo), an Xcel Energy company, is requesting a Planned Unit Development (PUD) Amendment as described in the City of Loveland Land Use Code Chapter 18.41. The Larimer 2013--16" West Main Natural Gas Pipeline Replacement Project (proposed Project) involves the construction, operation, and maintenance of a 16-inch high-pressure replacement natural gas transmission pipeline. The proposed Project encompasses Larimer, Weld, and Boulder counties and several incorporated communities and is approximately 77 miles long. An overview map showing all portions of the West Main Natural Gas Pipeline Replacement Project throughout Larimer County is included on the Project website: <http://www.xcelenergywestmainpipeline.com/west_main/route-maps/route-maps.html>. The existing 84 year old natural gas pipelines have reached the ends of their service lives, require safety upgrades, and cannot reliably keep up with growing system demand to deliver natural gas. The proposed Project would provide high-pressure transmission of natural gas with limited distribution systems taps as needed. It would provide an important link to future system upgrades for northern Colorado Front Range communities and would ensure more reliable natural gas delivery to customers in light of growing natural gas demand.

The proposed Project includes necessary pipeline and above-ground facilities located on private property within the Dakota Glen PUD in the city of Loveland. As part of its West Main Natural Gas Pipeline Replacement Project, PSCo is proposing to construct, operate, and maintain one new regulator station, referred to as the Estes Park Regulator Station, in the Dakota Glen PUD. Regulator stations control the flow of gas from higher to lower pressures as the gas would move from the 16-inch transmission pipeline to smaller lateral and distribution pipelines that serve the local community.

The preferred pipeline route enters the Dakota Glen PUD in the city of Loveland near the intersection of 14th Street Southwest (SW) and Angora Drive, approximately 2,000 feet west of the intersection of 14th Street SW and Wilson Avenue (CR17) at the Estes Park Regulator Station (see Sheet 12). The pipeline exits the Estes Park Regulator Station and heads to the northeast through undeveloped open land within the Dakota Glen PUD. North of the cattail reservoir/detention pond, the pipeline turns due east toward Wilson Avenue leaving the PUD boundary and continues north on Wilson Avenue.

PSCo explored various design alternatives for the Estes Park Regulator Station (facility) in an effort to integrate the facility into the surrounding Dakota Glen PUD environment. The regulator station building was designed to complement the existing pumphouse associated with the Dakota Glen PUD, using similar structural elements (i.e., roofline and chimney) and colors for the building and trim. Neutral beige earth tone colors were selected for the above ground natural gas pipes adjacent to the regulator station building to blend with the surrounding landscape.

Landscaping and earthen berms will be introduced to the west and north of the facility to provide a natural screening effect for residences in the Dakota Glen PUD. Broadleaf deciduous trees will be planted along the west side of the Estes Park Regulator Station easement on a 2 to 3 foot-high berm providing intermittent screening from the west. Landscaping and berms will also be extended north around the facility. In this area, evergreen trees and a variety of shrubs will be planted along and on top of the berms in order to provide dense, year-round screening of the facility from residents to the north-northwest. Screening is also proposed along 14th Street SW in front of the facility and will include broadleaf deciduous trees and a variety of deciduous and evergreen shrubs. The landscaping along 14th Street SW will be arranged in a similar pattern as proposed in the Dakota Glen PUD landscaping plan. A photographic simulation of the proposed Estes Park Regulator Station is provided in Sheet 14 and proposed landscaping is shown on Sheets 7 and 8 of the Dakota Glen PUD First Amendment. Sheet 16 contains the proposed landscaping plan.

This application requests approval specifically for the proposed Estes Park Regulator Station and pipeline within the Dakota Glen PUD boundary associated with the proposed Project. The proposed Project is an important part of PSCo's service plan to upgrade the existing natural gas transmission system along the northern Colorado Front Range with new natural gas pipelines that meet current safety, service, capacity, and reliability requirements while also meeting the increasing demand for natural gas in Larimer County, including the city of Loveland. The upgrade would involve replacing the existing 84-year-old, 8-inch natural gas transmission pipeline with a new high-pressure 16-inch pipeline to continue providing reliable, safe natural gas service.

Applicant Information

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Location and Legal Description

The Estes Park Regulator Station and pipeline within the Dakota Glen PUD boundary is located in Larimer County within the municipal limits of the city of Loveland. The Project area subject to this PUD is located in the Dakota Glen Subdivision near the intersection of 14th Street SW and Angora Drive, approximately 2,000 feet west of the intersection of 14th Street SW and Wilson Avenue (CR17) and the undeveloped open land near the cattail reservoir/detention pond. PSCo has obtained a permanent easement on 0.516 acres of land for this regulator station, and 2.323 acres of permanent easement and 1.114 acres of temporary easement for the pipeline alignment within the Dakota Glen PUD.

Purpose and Need

PSCo currently operates the natural gas supply for most of Larimer County including the city of Loveland. The purpose of the proposed Project is to reliably maintain delivery of natural gas to area customers. The proposed Project is an important part of PSCo's service plan to meet growing natural gas demand in the area because the existing natural gas pipeline cannot meet load requirements at peak demand. The proposed natural gas pipeline upgrade would address safety, service reliability, and capacity concerns for the benefit of commercial and residential customers along the northern Colorado Front Range. Regulator stations are required to control the rate of gas flow and/or pressure though the station and maintain the desired pressure or flow level in the distribution system.

Project Construction Activities

The permanent ROW for operation and maintenance of the Project would be 50 feet. An additional temporary ROW needed for construction activities would be 25 feet.

Construction activities for the West Main Natural Gas Pipeline Replacement Project are proposed to begin approximately May 1, 2013, and operation of the replacement facility would begin during the fall/winter season of 2013.

In open trench areas, major activities involved in Project construction would include surveying, best management practice (BMP) installation, vegetation clearing, staging materials, pipeline trenching, pipeline installation and welding, pressure-testing, backfilling the pipeline trench, cleanup, re-grading the surface, revegetation, and revegetation monitoring. Surface disturbance would be limited to the permanent ROW and the temporary construction ROW and would include boring locations and modifications to regulator stations. Construction activities would be sequenced and likely would occur simultaneously in multiple locations. The pipeline trench would be approximately 72 inches deep with a width of approximately 24 to 36 inches. The new pipeline would sit approximately 48 inches below the final grade. Site restoration would occur according to the provisions of the Stormwater Management Plan (SWMP), which was provided to the City of Loveland on March 22, 2013. Temporary fencing would be utilized around the bore pits and trenches as needed to prevent public access and maximize safety.

Regulator station construction could run concurrently with natural gas pipeline construction. Surface disturbance associated with the Estes Park Regulator Station would be limited to the 0.516 acre permanent easement of the regulator station.

PSCo proposes to use boring techniques, as feasible, to avoid surface disturbance to wetlands, trails, and driveways. Boring techniques would involve drilling construction of the pipeline under these surface features. In wet areas, the natural gas pipeline would be weighted for stability to ensure that the pipeline remained securely in place during periods when soil might be saturated. All wetlands associated with the Dakota Glen PUD will be bored. As described in the Environmentally Sensitive Areas Report (ESAR) submitted under separate cover, the proposed Project would not affect mature stands of vegetation. A wetland delineation report was prepared for the proposed Project located within the PUD, and is provided in Attachment 2 of the ESAR. The proposed regulator station is located in an area that is higher than the surrounding wetlands primarily located to the east and would therefore not impact wetlands. The proposed pipeline crosses one wetland located along the western portion of the lake. The proposed pipeline would avoid effects to this wetland through the use of boring techniques. The locations of the boring entry/exit locations are shown in Sheet 12. As documented in the agency correspondence included in Attachment 3 of the ESAR, the U.S. Army Corps of Engineers has indicated that a wetland permit (per the Clean Water Act) would not be required. The construction BMPs and site mitigation measures would protect potential impacts to adjacent wetlands during construction and operation of the Project as described in Section IV of the ESAR. As discussed in Section IV.2 of the ESAR, BMPs would be implemented as described in Attachment 6 of the ESAR to minimize or mitigate soil erosion and to revegetate any areas disturbed during construction of the proposed Project. PSCo also would follow the Weed Management and Revegetation Plan provided in Attachment 7 of the ESAR. The Plan includes a preconstruction survey for noxious weeds and follow-up monitoring to ensure revegetation is successful.

PSCo plans to off-load and string pipeline as it is delivered along the ROW. Any stockpiling of pipeline would take place at the proposed Project ROW (including the temporary and permanent easement areas) or at existing PSCo yards. Miscellaneous materials (such as valves, fittings, and other construction materials) would be stored and delivered to the pipeline construction area from PSCo's Fort Collins and Campion Service Centers.

PSCo would install signs (pipeline markers) in the permanent 50-foot easement to identify that a natural gas pipeline is buried nearby. These markers are required by federal regulations for pipeline safety (49 CFR 192). A typical pipeline marker is shown in Attachment 2. These markers provide adequate warning and location of the natural gas pipeline to local residents and future construction contractors performing work in the area. Markers identify the product carried in the pipeline (such as natural gas), the name of the pipeline operator, the operator's 24-hour emergency contact number, and the area's one-call center number. These markers are approximately 4 feet above ground and occur approximately every 500 feet or in-line of sight, on both sides of road, water, and railroad crossings, and at all changes in direction. There would be approximately 4 pipeline markers within the Dakota Glen PUD; one at the Estes Park Regulator Station, one at the angle point near the existing pump house, one at the east end of Dakota Glen near Wilson Avenue, and one on the straight line pipeline alignment within the PUD.

Noise from heavy machinery would be of short duration during construction of the proposed natural gas pipeline. Construction would be limited daily hours between 7 a.m. and 7 p.m. per City of Loveland Municipal Code Chapter 7.32 Sound Limitations, and would occur Monday through Friday. Construction may occur on weekends and other hours outside the 7 a.m. to 7 p.m. timeframe on an as-required basis, with prior approval from the City Manager. Noise levels from equipment would be controlled through the use of standard maintenance procedures and the use of appropriate mufflers.

Construction of the natural gas pipeline and related facilities may generate a temporary increase in fugitive dust. PSCo would comply with state and Larimer County requirements for controlling dust emissions during the construction of the proposed Project. PSCo would employ BMPs for dust suppression, as described in the SWMP. During construction, water trucks would patrol work areas to control dust as necessary depending on weather and dust suppression, weed control, and soil conditioning.

Minimal odors from the proposed Project are expected, with the highest likelihood occurring during construction from vehicle exhaust, and during periods of maintenance activities when mercaptan may be noticeable. Mercaptan is a chemical injected into the natural gas product, as required by federal regulation, to produce a sulfurous odor ("rotten egg" odor) as a safety measure. It is not anticipated that maintenance activities beyond those already experienced by area residents would be required for the proposed Project.

Glare would potentially be visible from construction vehicles and equipment. Any glare experienced would be temporary in nature and would be similar to other sources of glare that exist in the environment (such as from vehicle on Wilson Avenue and residential streets, and glare from residential building materials).

PSCo has obtained a Storm Water Permit for Construction Activities from the Colorado Department of Public Health and Environment. The drainage plan for the proposed Project would consist of a SWMP and BMPs for the control of stormwater runoff during the construction period. Post-construction, the areas disturbed by trenching and boring activities for the natural gas pipeline would be recontoured to preconstruction conditions and revegetated as described in the SWMP.

PSCo adheres to the pipeline safety regulations established in the Code of Federal Regulations (CFR) at 49 CFR Part 192 by the U.S. Department of Transportation (DOT) to ensure public protection and to prevent accidents and failures. Specifically, the DOT Pipeline and Hazardous Materials Safety Administration is the federal authority for ensuring the safe, reliable, and environmentally sound operation of pipeline transmission systems under the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (PIPES Act).

Property Owners, Property, and Right-of-Way Acquisition

PSCo's land services representatives have worked with the landowner of the PUD to explain Project construction, operation, and maintenance activities and to negotiate the purchase of easements based on fair market value. The easement for the Estes Park Regulator Station would grant PSCo a permanent easement of 22,500 square feet (0.516 acres) to construct, operate, and maintain the regulator station. The permanent pipeline easements of 2.323 acres and temporary pipeline easements of 1.114 acres would grant PSCo a permanent 50-foot corridor and temporary 25-foot construction ROW to construct, operate, and maintain the natural gas pipeline within the Dakota Glen PUD. The landowner would maintain fee title to the land acquired under the easement. The land within the pipeline permanent and temporary easements granted to PSCo within the Dakota Glen PUD would be restored and revegetated and available for other uses upon completion of the construction period.

The Project includes the proposed landscaping as described in the introduction section of this document and shown on Sheets 7 and 8 of the Dakota Glen PUD First Amendment. PSCo will provide funds to the Homeowners Association President of the Dakota Glen Planned Unit Development for purchase of the landscaping materials and installation of the landscaping. Installation and maintenance of the landscaping will be the responsibility of the Dakota Glen PUD Homeowners Association.

Xcel Energy®

ESTES PARK REGULATOR STATION PROPOSED PLANTING PLAN

WEST MAIN NATURAL GAS PIPELINE REPLACEMENT PROJECT

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XCEL PLANNED UNIT DEVELOPMENT (4 OF 5)

DAKOTA GLEN 1 ST. SUBDIVISION
LOVELAND, COLORADO

BHA DESIGN, INC. • 1603 OAKRIDGE DRIVE bha FT. COLLINS, CO

SHEET 16 OF 16
MAY 6, 2013

PC ATTACHMENT 1

Larimer 2013—16" West Main Natural Gas Pipeline Replacement Project

Weed Management and Revegetation Plan

Draft

August 2012

Prepared for:

Xcel Energy℠
PUBLIC SERVICE COMPANY

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Contents

Page

1. **Introduction** 1
   1.1 Weed Management 1
   1.2 Site Description 2
      1.2.1 Ecoregional Setting 2
      1.2.2 Vegetation and Noxious Weeds 3
   1.3 Colorado Noxious Weed List 5
   1.4 Larimer County Weed List 7
2. **Weed Management Guidelines** 8
   2.1 Field Reconnaissance Weed Identification 8
   2.2 Pre-Construction Survey Goals and Protocol 8
   2.3 Pre-/Post-Disturbance Weed Treatment 9
   2.4 Construction Practices 9
   2.5 Post-Construction Monitoring 9
3. **Weed Control** 10
4. **Revegetation** 10
   4.1 Principles for Successful Revegetation 11
   4.2 Pre-Construction Vegetation Survey 11
   4.3 Conservation of Topsoil 11
   4.4 Best Management Practices 12
   4.5 Soil Preparation 12
   4.6 Plant Material Selection 13
   4.7 Planting Seed 14
5. **Implementation Schedule** 15
6. **References** 15

Appendices

Appendix A: Noxious Weed Profiles

Tables

Table 1: Colorado Noxious Weed List....5

Table 2: Noxious and Troublesome Weeds Regulated by Larimer County....7

Table 3: Noxious Weeds Identified during the Field Reconnaissance....8

Table 4: Recommended Seed Mix for Project Revegetation in the High Plains/Shortgrass Prairie Environment....13

Table 5: Weed Management and Revegetation Implementation Schedule....15

Figures

Figure 1: Preferred and Alternative Routes Overview Map....17

1. Introduction

As part of its West Main Natural Gas Pipeline Replacement Project, PSCo is proposing to construct, operate, and maintain approximately 5.1 miles of replacement 16-inch high-pressure natural gas pipeline in unincorporated Larimer County, Colorado. The 16-inch high-pressure replacement natural gas pipeline project is referred to as the Larimer 2013 Project (Project) and is located in Larimer County, Colorado.

The proposed Project is a system upgrade that would replace the existing 83-year-old, 8-inch natural gas transmission pipeline with a new high-pressure 16-inch natural gas pipeline to continue providing reliable, safe natural gas service for PSCo's current and new customers along the Colorado Front Range. The overall West Main Natural Gas Pipeline Replacement Project includes several counties and several incorporated communities, replacing approximately 77 miles of 95 miles of high pressure natural gas transmission pipeline between Westminster, Colorado, and the Colorado–Wyoming border.

The existing pipeline cannot reliably keep up with growing system demand to deliver natural gas and would be decommissioned in place as the new replacement pipeline is put into service. Like the existing 8-inch natural gas pipeline, the new 16-inch natural gas pipeline would be buried underground. The natural gas pipeline is proposed to be located in private rights-of-way (ROWs); county, state, and city roadway ROWs; and city and county public lands using a combination of existing and new easements. The final alignment of the natural gas pipeline is subject to negotiation with individual landowners.

Figure 1 shows the proposed and alternative routes, as well as the Project area in Larimer County, as of August 2012. It is assumed that weed management and revegetation will occur on all lands directly disturbed by the construction of this Project. This Weed Management and Revegetation Plan is intended as a guide for integrated weed management for the pre- and post-construction periods of this Project.

1.1 Weed Management

Noxious weeds are defined in the Colorado Revised Statutes (CRS 35-5.5):

> *"Noxious weed" means an alien plant or parts of an alien plant that have been designated by rule as being noxious or has been declared a noxious weed by a local advisory board, and meets one or more of the following criteria:*
>
> *(a) Aggressively invades or is detrimental to economic crops or native plant communities;*
> *(b) Is poisonous to livestock;*
> *(c) Is a carrier of detrimental insects, diseases, or parasites;*

(d) The direct or indirect effect of the presence of this plant is detrimental to the environmentally sound management of natural or agricultural ecosystems.

Noxious weeds have become one of the most important issues for owners and managers of agricultural and open space lands. Weeds can cause economic losses to agriculture in both croplands and rangelands. They can also crowd out native vegetation and generally provide lower quality wildlife habitats than native vegetation.

In recognition of the economic and ecological effects of noxious weeds, the General Assembly of the State of Colorado passed the Colorado Noxious Weed Act in 2003 (35-5.5 CRS). This act requires landowners to control noxious weeds on their properties. The act also requires each county to develop a noxious weed management plan and list of noxious weeds that must be managed on all lands in the county.

The following basic actions will be taken by PSCo to comply with the Colorado Noxious Weed Act and are described in further detail in this management plan:

- Survey for weed infestations before and after ground-disturbing activities are undertaken
- Use of appropriate construction practices to minimize noxious weed infestations
- Revegetation of disturbed areas
- Monitoring of disturbed areas
- Treatment of new infestations

1.2 Site Description

1.2.1 Ecoregional Setting

The Project area is completely situated in the High Plains Level III Ecoregion. The High Plains Ecoregion includes four Level IV ecoregions. The Project area lies within two of the Level IV ecoregions, the Flat to Rolling Plains (25d) and the Front Range Fans (25i). The following subsections describe the ecoregional setting as provided in *Ecoregions of Colorado* (Chapman et al. 2006).

1.2.1.1 Front Range Fans

The Front Range Fans (25L) Ecoregion covers the entirety of the Project area. The Front Range Fans ecoregion flanks the northern Front Range of the Southern Rockies in Colorado. Streams tend to be cooler than in other High Plains (25) regions and contain many Front Range aquatic species. The soils of the region have more outwash gravels than regions farther east, and they occupy old terraces, benches, and alluvial fans. The soils are formed from materials weathered from arkosic sedimentary rock, gravelly alluvium, and redbed shales and sandstone. Some soils have a high shrink-swell potential. Annual precipitation ranges from approximately 14 to 18 inches.

Typical plants include shortgrass and mixed grass prairie: blue grama (*Chondrosum gracile*), needle-and-thread (*Hesperostipa comata*), western wheatgrass (*Pascopyrum smithii*), buffalograss (*Buchloë dactyloides*), junegrass (*Koeleria macrantha*), and little bluestem (*Schizachyrium scoparium*). Big bluestem (*Andropogon gerardii*) is scattered in low concentrations throughout the region. Riparian areas contain cottonwood/shrub/herbaceous species. Land use is changing from mostly cropland and rangeland to more extensive urban development. Development has led to an increase in man-made lakes and gravel pits dotting the region.

1.2.2 Vegetation and Noxious Weeds

Six basic vegetation types were observed during the field review: shortgrass/mixed grass prairie, agricultural lands, riparian, palustrine emergent wetlands, disturbed/developed, and noxious weeds. These vegetation types, and common plant species observed within them, are described below.

1.2.2.1 Shortgrass/Mixed Grass Prairie

A mosaic of shortgrass and mixed grass prairie would be the dominant native ecosystem type in the Project area under natural conditions. Shortgrass and mixed grass prairie species were observed in only a few low-quality patches, often interspersed with, or surrounded by, development. No areas of high-quality unfragmented shortgrass/mixed grass prairie were observed within the Project area.

Typical shortgrass/mixed grass prairie species observed during the field review included buffalograss, blue grama, western wheatgrass, sand dropseed (*Sporobolus cryptandrus*), alkali sacaton (*Sporobolus airoides*), little bluestem, and sideoats grama (*Bouteloua curtipendula*).

1.2.2.2 Agricultural Lands

Agricultural lands, one of the most common land uses observed in the Project area, included row crops, corn, winter wheat, hay/alfalfa, and grazing lands. Agricultural lands in the Project area are located mostly peripheral to the metropolitan areas of Fort Collins, Loveland, Berthoud, Longmont, Boulder, and Louisville. Non-native grass species, originally planted for grazing or landscaping, were observed throughout the Project area and were dominated by smooth brome (*Bromopsis inermis*).

1.2.2.3 Riparian

Riparian zones are defined as the interface between a running water feature, such as a stream or river, and the surrounding landscape. Riparian vegetation types occur in the study area adjacent to the Cache la Poudre River, Big Thompson River, Little Thompson River, St. Vrain Creek, Dry Creek, Left Hand Creek, Boulder Creek, and, to a lesser extent, some of the ditches, especially the Highland ditch, Rough and Ready ditch, and the Boulder and Whiterock ditch. Native tree and shrub vegetation observed in riparian areas included plains cottonwood (*Populus deltoides),* peach-leaved willow (*Salix amygdaloides)*, and coyote

willow (*Salix exigua).* Non-native tree and shrub species observed in riparian areas included Russian-olive (*Elaeagnus angustifolia),* crack willow (*Salix fragilis*), and Siberian elm (*Ulmus pumila).* Common herbaceous plants observed in riparian areas included reed canarygrass (*Phalaris arundinacea)*, smartweed (*Polygonum* spp.*),* rushes (*Juncus* spp.), spikerushes (*Eleocharis* spp.), broad-leaved cattail (*Typha latifolia)*, narrow leaved cattail (*Typha angustifolia*), softstem bulrush (*Schoenoplectus acutus*), three-square (*Schoenoplectus pungens*), cockle-bur *(Xanthuim strumarium),* and barnyard grass (*Echinochloa crus-galli).*

1.2.2.4 Palustrine Emergent Wetlands

Palustrine emergent wetlands (PEM) are scattered throughout the Project area, either adjacent to streams or ditches or as isolated bodies such as ponds or stormwater retention basins. PEM sometimes overlaps with riparian areas. Wetlands in the Project area are dominated by broad-leaved cattail, narrow-leaved cattail, barnyard grass, reed canarygrass, softstem bulrush, three-square, coyote willow, arctic rush (*Juncus arcticus*), alkali bulrush (*Bolboschoenus maritimus*), and creeping spikerush (*Eleocharis palustris*). Russian olive, peach-leaved willow, and plains cottonwood also occur in some wetlands. Weed species are not abundant, but Canada thistle (*Breea arvensis*) and teasel (*Dipsacus sylvestris*) were noted in or around some of the observed wetlands.

1.2.2.5 Disturbed/Developed

Disturbed/developed lands are one of the most common land uses in the Project area. Disturbed or developed areas include roadside ROWs, "old fields" where active agriculture is no longer occurring, as well as residential, commercial, and industrial settings. Most disturbed/developed areas are not excessively weedy and are dominated by common reclamation grasses such as smooth brome, intermediate wheatgrass (*Thinopyrum intermedium*), crested wheatgrass (*Agropyron desertorum*), orchard grass (*Dactylis glomerata*), and Kentucky bluegrass (*Poa pratensis*), as well as the common pasture forb, alfalfa (*Medicago sativa*).

Weeds are often a small to moderate component in the vegetation of disturbed areas. Recently disturbed roadsides are the most common areas with weedy vegetation. Weedy species include dandelion (*Taraxacum officinale*), kochia (*Kochia scoparia*), whitetop (*Cardaria* spp.), diffuse knapweed (*Acosta diffusa*), mullein (*Verbascum thapsus*), chickory (*Cichorium intybus*), and filaree (*Erodium cicutarium*).

1.2.2.6 Noxious Weeds

Noxious weeds in the Project area were identified during the field reconnaissance that was performed in accordance with the requirements in the Colorado Noxious Weed Act from March 25 to April 2, 2012 (Tetra Tech 2012). Noxious weed species are present, but not abundant, throughout the Project area, particularly in recently disturbed areas, such as near roadways or disturbed riparian areas. Observations are further discussed in Section 2.1.

1.3 Colorado Noxious Weed List

The state of Colorado has designated three types of noxious weeds that require management actions (CDOA 2011b):

- *Colorado List A species are designated by the Commissioner for eradication.*
- *List B weed species are species for which the Commissioner, in consultation with the state noxious weed advisory committee, local governments, and other interested parties, develops and implements state noxious weed management plans designed to stop the continued spread of these species.*
- *List C weed species are species for which the Commissioner, in consultation with the state noxious weed advisory committee, local governments, and other interested parties, will develop and implement state noxious weed management plans designed to support the efforts of local governing bodies to facilitate more effective integrated weed management on private and public lands. The goal of such plans will not be to stop the continued spread of these species but to provide additional education, research, and biological control resources to jurisdictions that choose to require management of List C species.*

The state listed noxious weed species are summarized in Table 1.

Table 1:
Colorado Noxious Weed List

List	Common Name	Scientific Name
Colorado List A	African rue	*Peganum harmala*
	Camelthorn	*Alhagi pseudalhagi*
	Common crupina	*Crupina vulgaris*
	Cypress spurge	*Euphorbia cyparissias*
	Dyer's woad	*Isatis tinctoria*
	Giant salvinia	*Salvinia molesta*
	Hydrilla	*Hydrilla verticillata*
	Meadow knapweed	*Centaurea pratensis*
	Mediterranean sage	*Salvia aethiopis*
	Medusahead	*Taeniatherum caput-medusae*
	Myrtle spurge	*Euphorbia myrsinites*
	Orange hawkweed	*Hieracium aurantiacum*
	Purple loosestrife	*Lythrum salicaria*
	Rush skeletonweed	*Chondrilla juncea*
	Sericea lespedeza	*Lespedeza cuneata*
	Squarrose knapweed	*Centaurea virgata*
	Tansy ragwort	*Senecio jacobaea*
	Yellow starthistle	*Centaurea solstitialis*
Colorado List B	Absinth wormwood	*Artemisia absinthium*
	Black henbane	*Hyoscyamus niger*
	Bouncingbet	*Saponaria officinalis*
	Bull thistle	*Cirsium vulgare*

Table 1:
Colorado Noxious Weed List

List	Common Name	Scientific Name
	Canada thistle	*Breea arvensis (Cirsium arvense)*
	Chinese clematis	*Clematis orientalis*
	Common tansy	*Tanacetum vulgare*
	Common teasel	*Dipsacus fullonum*
	Corn chamomile	*Anthemis arvensis*
	Cutleaf teasel	*Dipsacus laciniatus*
	Dalmatian toadflax	*Linaria genistifolia* ssp. *damatica (L. dalmatica)*
	Dame's rocket	*Hesperis matronalis*
	Diffuse knapweed	*Acosta diffusa (Centaurea diffusa)*
	Eurasian watermilfoil	*Myriophyllum spicatum*
	Hoary cress	*Cardaria draba*
	Houndstongue	*Cynoglossum officinale*
	Leafy spurge	*Euphorbia esula*
	Mayweed chamomile	*Anthemis cotula*
	Moth mullein	*Verbascum blattaria*
	Musk thistle	*Carduus nutans*
	Oxeye daisy	*Chrysanthemum leucanthemum*
	Perennial pepperweed	*Lepidium latifolium*
	Plumeless thistle	*Carduus acanthoides*
	Quackgrass	*Elytrigia repens*
	Redstem filaree	*Erodium cicutarium*
	Russian knapweed	*Acroptilon repens*
	Russian-olive	*Elaeagnus angustifolia*
	Salt cedar	*Tamarix chinensis, T.parviflora, and T. ramosissima*
	Scentless chamomile	*Matricaria perforata*
	Scotch thistle	*Onopordum acanthium, and O. tauricum*
	Spotted knapweed	*Centaurea maculosa*
	Spurred anoda	*Anoda cristata*
	Sulfur cinquefoil	*Potentilla recta*
	Venice mallow	*Hibiscus trionum*
	Wild caraway	*Carum carvi*
	Yellow nutsedge	*Cyperus esculentus*
	Yellow toadflax	*Linaria vulgaris*
Colorado List C	Chicory	*Cichorium intybus*
	Common burdock	*Arctium minus*
	Common mullein	*Verbascum thapsus*
	Common St. Johnswort	*Hypericum perforatum*
	Downy brome	*Bromus tectorum*
	Field bindweed	*Convolvulus arvensis*
	Halogeton	*Halogeton glomeratus*
	Johnsongrass	*Sorghum halepense*

Table 1:
Colorado Noxious Weed List

List	Common Name	Scientific Name
	Jointed goatgrass	*Aegilops cylindrica*
	Perennial sowthistle	*Sonchus arvensis*
	Poison hemlock	*Conium maculatum*
	Puncturevine	*Tribulus terrestris*
	Velvetleaf	*Abutilon theophrasti*
	Wild proso millet	*Panicum miliaceum*

Source: Colorado Department of Agriculture (2011a)

1.4 Larimer County Weed List

The Larimer County Code (Chapter 30, Article III) provides guidance for managing noxious weeds and identifies the county list of noxious weeds. Noxious weeds and "watch list" weeds identified by Larimer County are listed in Table 2.

Table 2:
Noxious and Troublesome Weeds Regulated by Larimer County

Regulated Name	Scientific Name
Bull thistle	*(Cirsium vulgare)*
Canada Thistle	*(Cirsium arvense)*
Common Teasel	*(Dipsacus fullonum)*
Dalmatian Toadflax	*(Linaria genistifolia)*
Diffuse Knapweed	*(Centaurea diffusa)*
Hoary Allysum	*(Berteroa incana)*
Hoary Cress	*(Cardaria draba)*
Houndstongue	*(Cynoglossum officinale)*
Leafy Spurge	*(Euphorbia esula)*
Musk Thistle	*(Carduus nutans)*
Perennial Pepperweed or Tall Whitetop	*(Lepidium latifolium)*
Russian Knapweed	*(Acroptilon repens)*
Scotch Thistle	*(Onopordum acanthium)*
Spotted Knapweed	*Centaurea maculosa*
Tamarisk	*(Tamarix ramosissima, parviflora)*
Yellow Toadflax	*(Linaria vulgaris)*

Source: Larimer County (2012)

2. Weed Management Guidelines

The following guidelines were developed to limit the extent of effects and potential for dispersal and establishment of noxious weeds. The guidelines should be implemented as part of construction and maintenance activities associated with the Project.

2.1 Field Reconnaissance Weed Identification

During the field reconnaissance (Tetra Tech 2012), the survey team identified several state listed and non-listed weed species. Table 3 lists the noxious weeds identified during the field review in Larimer County. The noxious weeds were identified based on the Colorado Noxious Weed Act. Noxious weed species are present but not abundant throughout the Project area, particularly in recently disturbed areas, such as near roadways or disturbed riparian areas.

Table 3:
Noxious Weeds Identified during the Field Reconnaissance

Weed List (A, B, or C)	Common Name	Scientific Name	Observed in Larimer County
List B Weeds	Canada Thistle	*Breea arvensis*	X
	Diffuse Knapweed	*Acosta diffusa*	X
	Musk Thistle	*Carduus nutans*	X
	Russian-Olive	*Elaeagnus angustifolia*	X
	Whitetop, Hoary Cress	*Cardaria draba*	X
List C Weeds	Chickory	*Cichorium intybus*	X
	Common Mullein	*Verbascum thapsus*	X
	Downy Brome—Cheatgrass	*Bromus tectorum*	X
	Field Bindweed	*Convolvulus arvensis*	X
	Puncturevine (Goatheads)	*Tribulus terrestris*	X
	Redstem Filaree	*Erodium cicutarium*	X
Not Listed	Kochia	*Kochia scoparia*	X

2.2 Pre-Construction Survey Goals and Protocol

Most of the Project consists of constructing a 16-inch natural gas pipeline. The Project would need to make several crossings of surface water bodies, including the Cache la Poudre River, Dry Creek, and the Little Thompson River. Numerous other streams, irrigation ditches/canals, and wetlands would also need to be crossed. At this time, it is planned that the crossings would involve boring underneath the waterways or wetlands and avoiding trenching through them. In non-wetland areas or waterways, construction of the pipeline route would involve open trenching. The goals of a pre-construction survey would be to identify and map the presence of state and county listed noxious weeds, delineate the extent of infestations, and identify potential noxious weed sources adjacent to the Project ROW. Survey protocol would involve use of a Trimble GeoXT GPS receiver with accuracy of 1 to

5 meters to map the locations of weed infestations along the ROW. The survey would be conducted by a biologist with experience in mapping Colorado listed noxious weeds. Data would be collected in two ways: in situations where fewer than 25 stems of a given species are documented to be present in an area, only point data would be recorded with the GPS unit. In situations where more than 25 stems of a given species are documented to be present in an area, a polygon would be mapped with the GPS and the acreage for that species should be derived.

2.3 Pre-/Post-Disturbance Weed Treatment

Appendix A (Noxious Weed Profiles) provides species-specific biology and general control methods for species that must be managed in accordance with Colorado state weed law. Actual control methods would be selected by the individuals conducting the treatments based on the species to be controlled, the location of the infestations (for example, near a riparian area), and the individuals' experience with the types of treatments that are most effective in the local area.

2.4 Construction Practices

Bare ground represents an open ecological niche that allows for the establishment of undesirable species such as noxious weeds. It is important to limit disturbance footprints associated with construction activities to the extent possible to minimize opportunities for noxious weed invasion.

Clearing or blading should only occur in the minimum area needed for safe and efficient construction. Construction activities should avoid areas where noxious weeds are established to the extent possible.

All heavy equipment used during construction should be washed prior to use in the site area to ensure that weed seed from a different region is not transported into the Project area.

Washing of equipment within the Project area is not recommended. Onsite washing of equipment increases the chance of weed seed dispersal by drainage of water across and potentially offsite. Instead, accumulations of mud should be knocked off equipment. This method promotes containment of weed seeds on the work site, where it can be monitored and treated, if necessary.

2.5 Post-Construction Monitoring

The post-construction pipeline route should be monitored for noxious weeds during the first growing season following the construction process. The goal of monitoring will be to detect any infestations as soon as possible while they are still small to make recommendations for effective treatment. Monitoring should take place for at least one growing season following construction. A weed monitoring report should be written at the end of this first full growing season after completion of construction to help collect results and refocus strategy for any further weed control that may be necessary. This report should be shared with the Larimer and Boulder County weed management programs to ensure proper coordination of weed control efforts.

3. Weed Control

A number of management strategies are available for control of noxious weeds. The methods described in this weed management plan include mechanical, biological, chemical, and cultural control methods. Mechanical methods typically include means such as hand-pulling, digging, and mowing. Biological controls may include application of select insects into an infestation, and grazing by livestock. Chemical control methods typically rely on selective and non-selective herbicides. The type of herbicides would vary depending on the weed species to be controlled. Cultural control methods include establishment of competitive vegetation. Selection of a control method or combination of methods should consider the life history of the species, the extent of infestation, and potential environmental effects from the treatment.

Attempts to eradicate noxious weeds will likely be unsuccessful if the initial disturbance that allowed the species to become established is still occurring in the area. Treatments will also be unsuccessful if other locally established populations of noxious weeds are not controlled. Attempts to control noxious species may also be unsuccessful if there is not an active revegetation program or if there are not viable populations of native species to recolonize the area. Treatment of one noxious species may open up new habitat for other noxious species if native species are not reestablished. For these reasons, successful, complete, and timely implementation of the revegetation program will be a critical element to successful management of noxious weeds within the Project ROW and adjacent lands.

Any treatments to noxious weeds should be carefully documented at the time of the treatment. Detailed notes should be collected to map areas sprayed, log spray dates, and document time and money spent on the weed management program. Species-specific control methods for noxious weeds identified in the initial site reconnaissance are provided as Appendix A to this document.

4. Revegetation

The purpose of revegetation should include the re-establishment of existing soil contours to the extent possible and to reestablish vegetation that is removed during construction. By reestablishing native vegetation, the potential for soil erosion will be reduced and wildlife habitats will be repaired/re-created.

Disturbed areas should be recontoured and revegetated as soon as practical, using approved seed mixtures and techniques. Disturbance areas would be re-seeded using approved, certified weed-free seed. Other materials used as part of revegetation, such as hay mulch, manure, or fill material, should also come from certified weed-free sources. Additional details on revegetation are provided in the following subsections.

4.1 Principles for Successful Revegetation

The following principles should be applied to all sites where revegetation would be undertaken:

- Minimize disturbed areas. The larger the disturbed area, the more effort is required to reclaim, monitor, and maintain it. More disturbance means a greater area is primed for noxious weed invasion.
- Salvage and stabilize existing topsoil to use in reclamation. Plant reestablishment can be difficult without the use of expensive soil amendments if topsoil has not been salvaged.
- Use plant species that can be established and survive in the reclaimed environment. Native plant species currently established onsite are often the best plant choices, although availability of seed or nursery stock can be challenging.
- Control noxious weeds and other undesirable species. These plants can out-compete the desired species if not properly controlled, especially if they are already established on site.
- Monitor the site. Monitoring is needed to determine whether reclamation has been successful and whether noxious weed invasions require additional reclamation activities.
- Maintain the site. Maintenance is simply acting on any problems or concerns noted during monitoring. For example, controlling weeds, maintaining erosion control structures, planting additional container stock, or applying more native seed could be maintenance activities.

4.2 Pre-Construction Vegetation Survey

The sole purpose of a pre-construction vegetation survey would be to establish a baseline understanding of species diversity and percent ground cover in areas likely to be disturbed by pipeline construction or other ancillary infrastructure. The results of the survey will allow for the creation of legitimate revegetation goals at the conclusion of the Project in terms of the reestablishment of disturbed areas with appropriate species diversity, abundance, and ground cover percentage.

An average goal for revegetation is 80 percent ground cover on all disturbed areas within 2 years of the end of construction. This percentage may have to be adjusted after an evaluation of data from the pre-construction monitoring. If monitoring identifies any situations that are preventing attainment of the cover goal, such as weed infestations, poor plant vigor and survival, or other factors, corrective actions would be developed and implemented.

4.3 Conservation of Topsoil

Some areas that would be disturbed by this Project may not currently have topsoil in place (for example, around the perimeter of existing parking areas and road shoulders). Other areas that would be disturbed currently do have topsoil in place. In those areas where topsoil would otherwise be lost, it should be stripped and stockpiled for reclamation. If the topsoil stockpiles would not be replaced within 6 months, a cover crop of upland grasses should be planted on the stockpiled soils for stabilization purposes.

In those areas where topsoil is currently at approximately its post-construction final contours, construction crews should minimize the amount of disturbance. An example of such an area includes portions of the ROW that should be returned to native vegetation after construction. Of particular concern is mixing of topsoil with subsoil through unnecessary grading or other soil disturbance.

4.4 Best Management Practices

Best management practices (BMPs) have been developed for use during grading and construction to minimize erosion. These BMPs would be implemented and maintained to the extent that they are applicable during the reclamation phase of the Project. The BMPs include:

- Stabilize exposed soil surfaces and reduce flow velocities.
- Use silt fences and hay bales to stabilize streams and ditches in or adjacent to the ROW. The silt fence would be staked and placed on the downgradient side of the hay bales.
- Following completion of construction, stabilize and revegetate exposed areas and remove the silt fencing.
- Inspect soil erosion control measures (rip-rap stones, silt fence, or hay bales, etc.) after each rain event for damage from washouts or siltation and implement corrective measures to ensure adequate function is maintained.
- Clean sediment traps and basins and remove sediment as necessary from silt fences, stone outlet structures, and hay bales when material accumulates.
- Place soil stockpiles in well-drained areas with adequate temporary soil erosion and sediment control measures and at least 50 feet from wetlands and watercourses.
- Following completion of work, loosen and level compacted soils by scarifying, harrowing, disking, or other approved methods.
- Re-grade all disturbed areas and, where appropriate, re-seed with approved native vegetation to provide proper drainage, stabilize soils, and reduce erosion. During dry weather conditions, spray water over construction access roads to minimize creation of dust.

4.5 Soil Preparation

Disturbed soil should be re-contoured as close as possible to pre-construction contours. Where topsoil has been removed and stockpiled, it should be redistributed over the re-contoured subsoil. Areas that have been compacted by repeated equipment traffic should be ripped to allow water penetration and successful plant regrowth. If suitable topsoil is not available, or if it is poor quality, additional topsoil or other soil amendments may need to be brought on to the site. BMPs, as specified in Section 4.4, would be maintained or reinstalled as needed to ensure they remain functional through the reclamation phase of the Project.

4.6 Plant Material Selection

This Project lies within the High Plains Level III ecoregion, so grasses, forbs, and shrubs adapted to shortgrass prairie environments are recommended for the revegetation efforts. Grasses are likely to make up a significant proportion of the overall plant material for the revegetation process. Grasses should preferably be drill seeded, but they may be broadcast-seeded as necessary. A recommended reclamation seed mixture for high plains/shortgrass prairie environments is provided in Table 4. This seed mix was adapted from a high plains/shortgrass prairie seed mix suggested by Pawnee Butte Seed (Pawnee Butte Seed 2011) and using the reference Plants for Western Land Reclamation (DeAguero 1994). All seed must be certified weed free.

Table 4:
Recommended Seed Mix for Project Revegetation in the High Plains/Shortgrass Prairie Environment

Seed Mix	Common Name	Scientific Name	Percent of Mix[1]
Grass Seed	Blue grama	*Chondrosum gracile*	23
	Buffalograss	*Buchloë dactyloides*	10
	Green needlegrass	*Stipa virdula*	20
	Sideoats grama(W)	*Bouteloua curtipendula*	20
	Western wheatgrass	*Pascopyrum smithii*	25
	Sand dropseed	*Sporobolus cryptandrus*	25
Forb-Shrub Mix	Perennial gaillardia	*Gaillardia aristata*	5
	Gayfeather	*Liatris punctata*	10
	Plains coreopsis	*Coreopsis tinctoria*	5
	Purple prairie clover	*Dalea purpurea*	10
	Prairie sunflower	*Helianthus petiolaris*	10
	Scarlet globemallow	*Sphaeralcea coccinea*	5
	Northern sweetvetch	*Hedysarum boreale*	5
	Greenthread	*Thelesperma filifolium*	5
	Prairie coneflower	*Ratibida columnifera*	10
	Rubber rabbitbrush	*Chrysothamnus nauseosus*	15
	Winterfat	*Krascheninninkovia lanata*	10
	Fringed sage	*Artemisia frigida*	10

[1] Application rates would be determined following verification of seed purity and germination rates as published by the selected seed supplier.

In addition to a mix of warm and cool season grasses, the recommended species includes a mix of native forbs and shrubs for improved habitat and aesthetic qualities, increased biodiversity, enhanced soil stability and survivability in the reclaimed plant community. The grass and shrub species recommended in Table 4 were all observed in the Project area during site reconnaissance. These species are all native to the eastern high plains of Colorado. The average period of time for these shrubs to establish, mature, and flower may be as much as 3 to 4 years from planting (Monsen et al. 2004). Restriction of grazing in revegated areas will increase the chance of successful plantings.

The recommended overall proportions for the revegetation seed mix would be approximately 75 percent of the volume in grasses, 15 percent in forbs, and 10 percent in shrubs. All of the species listed in Table 4 should be commercially available from seed supply companies in northeastern Colorado.

4.7 Planting Seed

The preferred seed planting times are spring and fall. Actual seeding dates will depend on soil conditions. Planting should not occur when equipment would significantly compact or otherwise disturb the soil because of excessive soil moisture. Although spring and fall are the recommended times for seeding, it is important to establish a desirable vegetation cover as soon as possible after construction is complete to prevent establishment and spread of noxious weeds. In such instances, seed may be planted in the summer months.

Drill seeding is the recommended seeding method. Any seed drill used should be fitted with seed boxes that can accommodate the chosen species. A good fit is particularly important for fluffy or irregular seed shapes, or when a wide variety of seed sizes is included in the seed mix. To the extent possible, drill seeding will be along the contour.

Broadcast seeding may also be used, although the seeding rate would need to be doubled to account for seed loss and poorer soil-seed contact. Broadcast seeding may be accomplished with hand-held or vehicle-mounted equipment. Any site where broadcast seeding is used should be dragged or raked to improve contact between seed and soil.

Various types of mulch may be used to improve retention of soil moisture and plant establishment, especially where seed is broadcast. Certified weed-free straw is the preferred mulch material. Hydro-mulching may also be appropriate on steeper cut-and-fill slopes. The need for mulch should be determined during reclamation, based on slope, soil moisture availability, and other site conditions.

The use of fertilizer before, during, or after planting and seeding is not recommended, except in cases where little or no topsoil is available as a planting medium. The use of fertilizer tends to favor growth and spread of non-native plant species and noxious weeds over native species. The native plant species recommended for use in reclamation are adapted to natural levels of soil nutrients. Even when topsoil is sparse or lacking, the preferred action should be to import topsoil, rather than trying to amend the soil on site with fertilizers.

Irrigation would generally not be used on sites that are seeded. The native plant species selected for use on this Project are adapted to the natural precipitation regime of northeastern Colorado. In the event of a prolonged drought, PSCo may consider the use of supplemental irrigation to aid plant establishment and survival in seeded areas. The source of irrigation water is yet to be determined.

5. Implementation Schedule

The recommended weed management and revegetation implementation schedule is provided in Table 5. It is important to understand that weed management should continue throughout the construction process and beyond to obtain the very best results possible. Revegetation should be accomplished as soon after completion of construction as possible and should be monitored for success.

Table 5:
Weed Management and Revegetation Implementation Schedule

Task	Timing
Pre-Construction Weed Survey and Mapping	During the growing season prior to construction. Timeframe: August 2012, (depending on the final project layout being available)
Top Soil Stockpiling	Stockpile topsoil in areas that would only be temporarily disturbed during construction. Timeframe: throughout 2013.
Cover Crop on Topsoil Stockpile	Not necessary assuming rapid replacement of topsoils over trenched areas/disturbed areas.
Recontouring and Replacement of Topsoils	As soon as possible following completion of construction. Timeframe: summer 2013.
Drill and Broadcast Seeding	As soon as possible following completion of construction, recontouring, and topsoil replacement. Timeframe: fall 2013, spring 2014.
Post-Construction Weed Monitoring	The first growing season following completion of construction. Timeframe: late summer 2013.
Revegetation Monitoring	The first growing season following completion of construction. Timeframe: spring 2014.

6. References

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Tetra Tech (Tetra Tech EC, Inc.) 2012. Biological Resources Report. Prepared for Xcel Energy, West Main Natural Gas Pipeline Replacement Project.

May 8, 2013

05-13-13P02:40 RCVD

02:40 RCVD

Fran & Bettie Boruff
3430 Red Orchid Court
Loveland, CO 80537

City of Loveland Planning Commission
500 East Third Street
Loveland, CO 80537

Dear Commissioners:

We appreciate and thank you for the opportunity to address the Xcel Energy Estes Park Regulator Station proposal to be constructed and operated on the South Entrance to The Dakota Glen Subdivision.

We have lived in Colorado for over 35 years and have gained an appreciation for a good neighborhood, openness, natural habitat and wildlife. We looked for over three years in the Loveland area and in several sub-divisions before finding Dakota Glen. In addition to the type of homes and size of lots, we were so impressed with the open space along 14th St. and the beautiful entrance with excellent landscaping.
We just recently purchased our home here and were completely unaware that Excel Energy has proposed to construct an industrial complex near the entrance to our subdivision. This will not only obstruct our southern views, affect negatively our landscape on the south, but also devalue our property.

Michael Carroll, Dakota Glen Subdivision home owner, sent a letter to the Commissioners dated April 30 with several excellent and well thought out ideas and recommendations. We have read through all his information and greatly appreciate the hours he has spent in his investigation and research. We feel totally confident in his recommendations.

We strongly object to constructing this industrial complex on the south entrance to The Dakota Glen Subdivision. Thank you for your time and would appreciate your support in protecting the Dakota Glen Homeowners.

Sincerely,
Fran and Bettie Boruff

Fran & Bettie Boruff

Kerri Burchett

From: Erick Prohs <eprohs@gmail.com>
Sent: Monday, May 13, 2013 2:52 PM
To: Kerri Burchett
Subject: Proposed Xcel Energy Regulator Station along 14th Street

Hello Kerri,

We recently purchased a home in the Dakota Glen subdivision and it has come to our attention that there are plans to allow Xcel Energy to construct the Estes Park Regulator Station in our neighborhood. It is my understanding that there is a meeting tonight to vote on the final approval. We were told that we could email you comments on this proposal that you would share with the planning commissioners. Please find our comments below:

Dear Commissioners:

We appreciate the opportunity to comment on Xcel Energy's proposal to construct, operate, and maintain the Estes Park Regulator Station in the Dakota Glen neighborhood.

Ironically enough, we recently moved from Estes Park to the City of Loveland. We looked at homes in many neighborhoods in town before deciding on having a home built in the Dakota Glen subdivision. One of our main requirements was finding an area with open space and preserved natural areas. At no point in time did the developer's realtor ever mention the fact that the developer was negotiating with Xcel Energy to sell land that would be used to construct an unsightly industrial facility at the entrance of the subdivision. Had we known this was the case, there is a strong likelihood that we would have chosen to buy or build elsewhere.

It is almost certain that this project will negatively impact the property values in the area. I for one would not and do not want to look at an unsightly industrial building in my backyard. Would you?

We along with all the other residents of the Dakota Glen subdivision ask that you please support us in moving this facility to a more appropriate location.

Kind regards,

Erick and Jeanice Prohs
3411 Angora Drive, Loveland, CO 80537

Kerri Burchett

From: Barb <barbarabrekke@comcast.net>
Sent: Monday, May 13, 2013 12:26 PM
To: Kerri Burchett
Subject: Excel proposal: Estes Park Regulator Station

942 Prism Cactus Circle
Loveland, CO. 80537
May 13, 2013

City of Loveland Planning Commission
500 East Third Street
Loveland, CO. 80537

Dear Commissioners:

I am writing to you in regards to Excel Energy's proposal to "construct, operate, and maintain the Estes Park Regulator Station" in Dakota Glen's open space area.

I strongly believe that this proposal must be denied. I also totally agree with the objections and reasons which Mr. Michael Carroll spoke of in his letter to you which was dated May 3, 2013. I will not be redundant in siting all of that to you.

Please, please seriously consider the negative impact this station would have on the beautiful subdivision which I live in. Please deny this zoning change and proposal. Thank you.

Respectfully Yours,
Barbara Brekke

PC ATTACHMENT 3

Kerri Burchett

From: Shirley Eubanks <sjeubanks09@yahoo.com>
Sent: Monday, May 13, 2013 1:48 PM
To: Kerri Burchett
Subject: Dakota Glen Subdivision

Kerri:

If you would be as kind as to include my letter with all other letters being presented to the City of Loveland meeting on May 13, 2013 pertaining to the above mentioned subvision in Loveland.

My husband and I will not be able to attend the meeting as he is fighting cancer and I am his full-time caregiver. But we wanted to submit our concern for the proposal by Xcel Energy for a 'regulator station' just outside our 'door'. We have lived in Loveland since 1992, leaving for a short time to enjoy full-time RVing. We decided to return to Loveland for our duration of life. Knowing the area very well, we decided on Dakota Glen for a variety of reasons.Being our last home to purchase, we were confident in the value of the home and resale. With such a structure as Xcel is proposing, it will affect the value of all the homes. It was important for us to have a place that was peaceful with a view for my husband to enjoy with his illness....that will definitely be affected with such a structure. We have a lot of wild life in the area that use the open space and aspen tree area...that will be affected. These sound like minor things to the 'average' person, but trust me, when your days of life are limited and you make a big decision for all the right reasons at this stage of life and something such as what Xcel is proposing occurs, one feels sure the wrong decision was made, but cannot be redone. Please consider all input that has been shared.
Sincerely,
Shirley Eubanks

City of Loveland

Development Services
Current Planning
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Planning Commission Staff Report

May 13, 2013

Agenda #: Regular Agenda - 1

Title: Dakota Glen PUD First Amendment

Applicant: Public Service Company of Colorado, Dan Tekavec

Request: **Preliminary Development Plan Amendment**

Location: North of 14th Street SW and west of South Wilson Avenue.

Existing Zoning: Planned Unit Development

Staff Planner: Kerri Burchett

Staff Recommendation

APPROVAL of the PUD Amendment.

Recommended Motion:

Move to make the findings listed in Section VIII of the Planning Commission staff report dated May 13, 2013 and, based on those findings, recommend that City Council approve the Dakota Glen PUD First Amendment, subject to the conditions listed in Section IX, as amended on the record.

Summary of Analysis

This is a public hearing to consider an amendment to the Dakota Glen PUD Preliminary Development Plan (PDP). The amendment would modify the permitted uses in the PUD to allow the construction of an aboveground public utility facility and natural gas pipeline within the PUD boundaries. The applicant, Public Service Company of Colorado (PSCo), is proposing to construct a new regulator station on 14th Street SW and a 16-inch high pressure gas pipeline through the PUD's private open space. The regulator station would consist of a 528 square foot structure that would house controls for the flow of gas from higher to lower pressures and two areas with aboveground pipelines.

The PUD Amendment is part of a larger statewide Xcel Energy project to modernize its natural gas infrastructure. The complete project would replace approximately 77 miles of transmission pipeline between Westminster, Colorado and the Wyoming border with a 16 inch high pressure gas line. PSCo has indicated that the replacement project is necessary to improve service reliability, maintain safety of the system and meet future needs for natural gas.

Staff believes that all key issues have been resolved based on City Code and standards. At the neighborhood meeting, concerns were voiced regarding impacts of the facility on the wetlands and wildlife, aesthetics of the regulator station, location of the underground pipelines, impacts on property values, and construction timing. PSCo representatives provided responses to the concerns at the meeting (see Section VII.B in the staff report) and conditions of approval have been added by staff to address neighborhood concerns.

I. SUMMARY

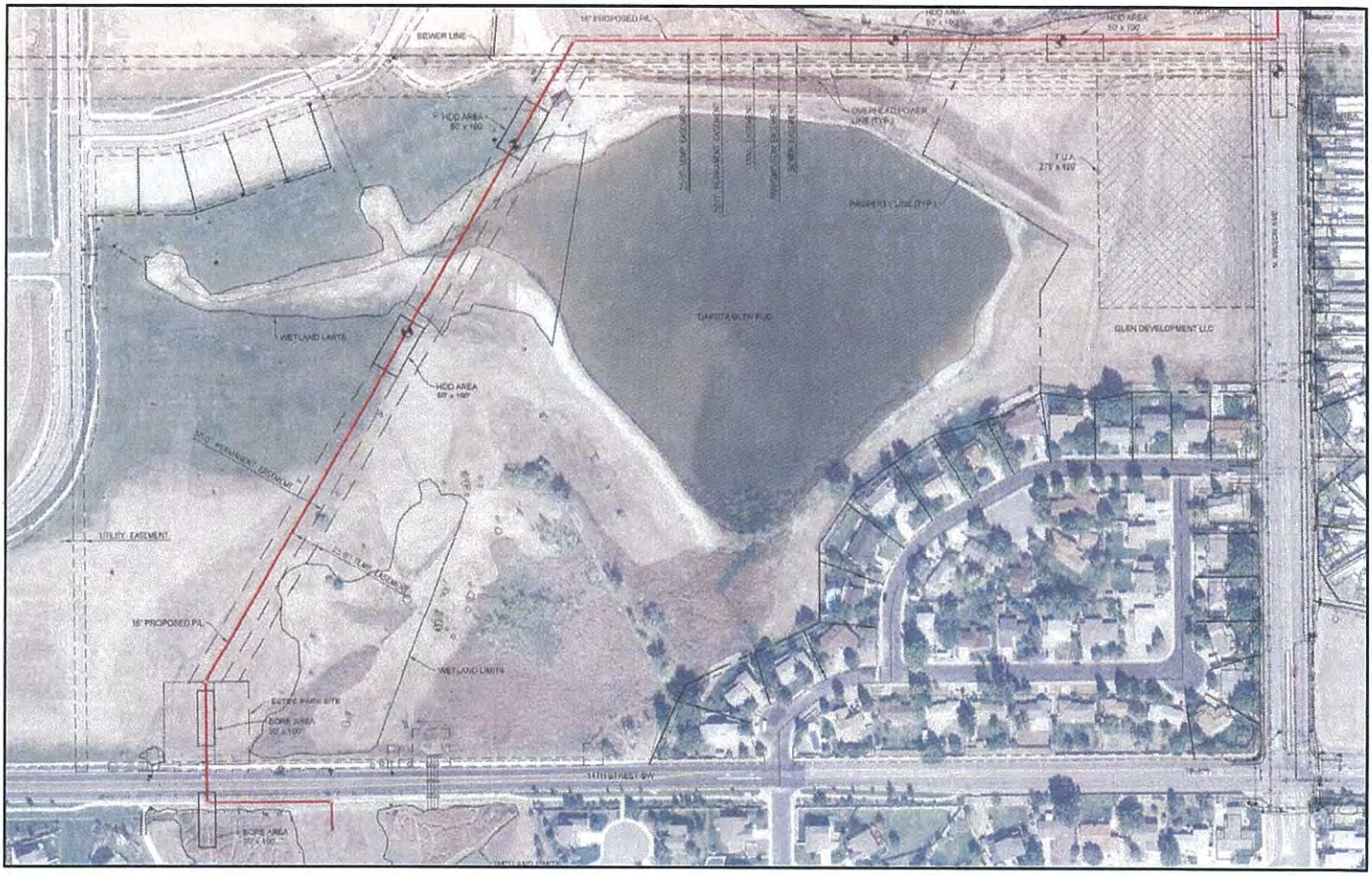
The application is for an amendment to the Dakota Glen PUD Preliminary Development Plan (PDP). The PUD is approximately 85 acres in size and is located north of 14th Street SW and west of South Wilson Avenue (see vicinity map on page 4). The PUD was designed as a low density residential development consisting of 205 single family attached and detached units. The applicant, Public Service of Colorado (PSCo), is requesting to modify the permitted uses established in the PUD and construct an aboveground public utility facility on 14th Street SW and a natural gas pipeline within the PUD's private open space area (see Figure 1 below).

The PUD Amendment is part of a larger statewide Xcel Energy project referred to as the West Main Natural Gas Pipeline Replacement Project. In an effort to modernize its natural gas infrastructure, PSCo is replacing approximately 77 miles of transmission pipeline between Westminster, Colorado and the Wyoming border. PSCo has indicated that the replacement project is necessary to improve service reliability, maintain safety of the system and meet future needs for natural gas. In Loveland, the complete project includes the construction of 2 regulator stations and a new 16 inch high pressure natural gas line located primarily along Wilson Avenue and West 29th Street. The new line would replace the existing natural gas line in Taft Avenue. The majority of the pipeline would be located within the Wilson Avenue and 29th Street rights-of-way or in adjacent public utility easements. PSCo has a franchise agreement with the City that permits the installation of pipelines in City rights-of-way and public utility easements without public preview. The construction drawings for those portions of the pipeline are being reviewed and approved at an administrative level.

There are three components of the natural gas pipeline replacement project that require public review. The first component is the aboveground regulator station within the Dakota Glen PUD. The regulator station requires an amendment to the PUD as the use of an aboveground public utility facility was not identified as a permitted use. This is a major amendment to the PUD and therefore requires City Council approval. The other two public review components of the project are being processed as special reviews. This includes a second regulator station located on Wilson Avenue, south of Eisenhower Boulevard, on property that is zoned B Developing Business and a small area of underground pipeline and a temporary staging area located in a DR Developing Resource zone district, adjacent to the Dakota Glen PUD. Both the aboveground regulator station and the underground pipeline are listed as special reviews in their applicable zone districts

The proposed regulator station in the Dakota Glen PUD is referred to as the Estes Park Regulator Station. The regulator station is necessary to control the flow of gas from higher to lower pressures as the gas would move from the 16-inch transmission pipeline to smaller lateral and distribution pipelines. The pipeline route enters the PUD near the intersection of 14th Street SW and Angora Drive, approximately 2,000 feet west of the intersection of 14th Street SW and Wilson Avenue. The pipeline then exits the regulator station and heads to the northeast through the open space within the Dakota Glen PUD. North of the cattail reservoir/detention pond, the pipeline turns due east toward Wilson Avenue leaving the PUD boundary and would continue north on Wilson Avenue.

Figure 1: Dakota Glen Pipeline location



The proposed regulator station would consist of a 528 square foot concrete block structure and two less than 380 square foot areas with aboveground pipelines. The appearance of the control house has been designed to be similar to architectural characteristics of the existing pumphouse on the northwest side of the cattail reservoir/detention pond within the Dakota Glen PUD. The control house would be painted a teal blue with cream trim to match the existing pumphouse and a 6 foot desert tan decorative steel fencing will be used to screen the aboveground pipelines from view on 14th Street SW. PSCo has worked with the Dakota Glen Homeowners Association on the aesthetics of the site and are in agreement with the proposal. A before and after photographic simulation of the proposed regulator station site as viewed from 14th Street SW is provided in Figure 2 on page 3.

Figure 2: Photographic Simulation of Regulator Station

Existing Environment

Photo Simulation

II. KEY ISSUES

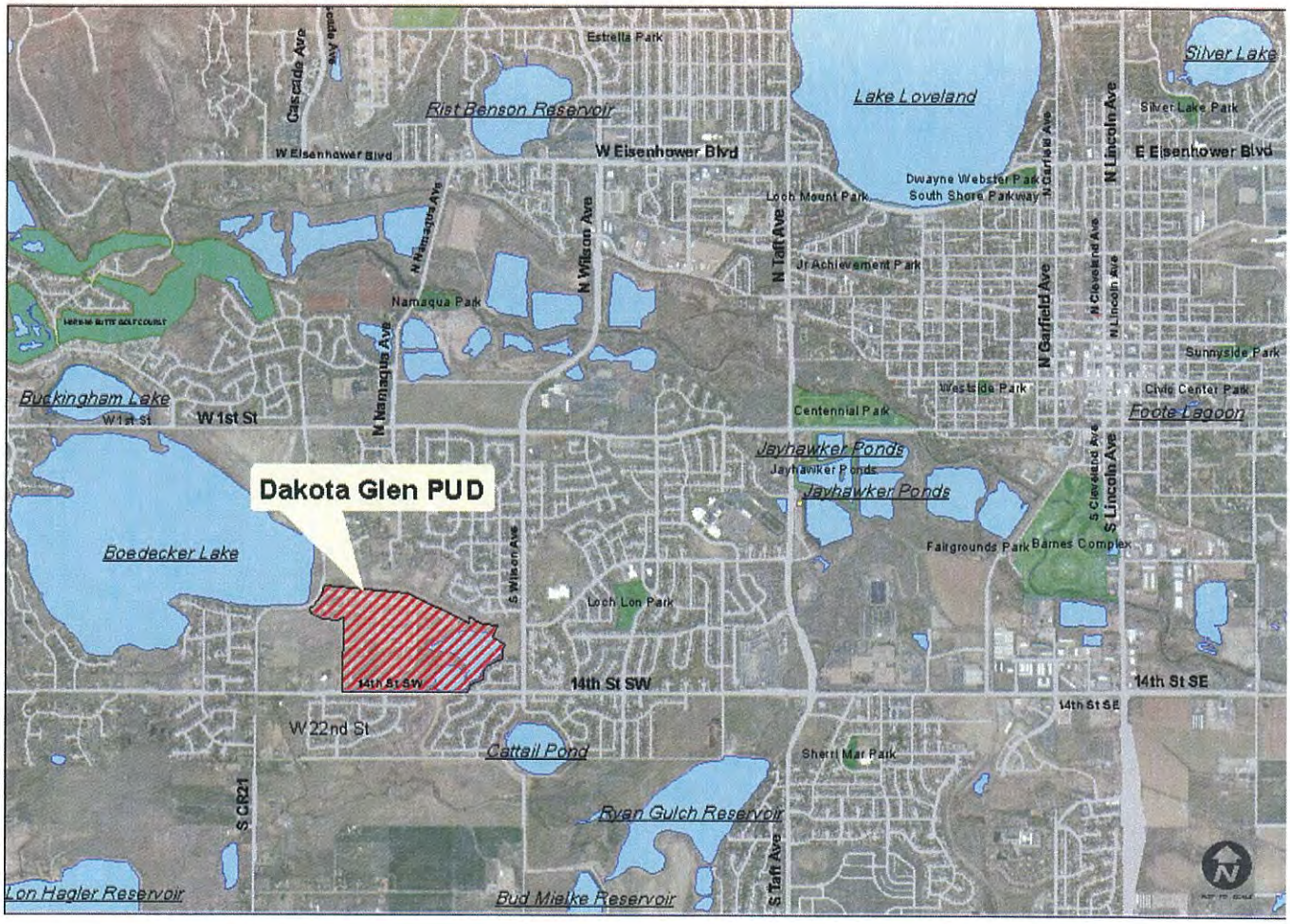
City staff believes that all key issues have been addressed in the development proposal and through the recommended conditions of approval. At the neighborhood meeting, concerns were voiced regarding environmental and wildlife impacts, aesthetics of the regulator station, location of the underground pipelines, impacts on property values, and construction timing. PSCo representatives provided responses to the concerns at the meeting (see Section VII.B in the staff report). They indicated that there will be no impacts on the adjacent wetlands and that the Army Corps has reviewed and approved their proposed pipeline location (see Attachment 3). In terms of the aesthetics of the regulator station, after the neighborhood meeting, PSCo met with Scott Bray, developer of Dakota Glen and the President of the Dakota Glen Homeowners Association, and agreed to add decorative fencing around the aboveground pipelines, matching the style of the fencing permitted in the PUD, and modify the colors of the control house to mimic the existing pumphouse in the subdivision. A letter of approval from the Dakota Glen Homeowners Association, is included as Attachment 4. City staff has evaluated the proposal in context with the comments received at the neighborhood meeting and believes that the regulator station and pipeline location will be is compatible with the neighborhood.

III. ATTACHMENTS

1. Project Narrative provided by Applicant
2. Excerpts from the Environmentally Sensitive Areas Report. The full report is available online on the City's Current Planning homepage at www.cityofloveland.org.
3. Letter from Army Corps of Engineers
4. Letter of Approval from Dakota Glen Homeowners Association
5 Letters from surrounding property owners

6. Dakota Glen PUD Amendment Preliminary Development Plan

IV. VICINITY MAP



V. SITE DATA

ACREAGE OF SITE GROSS	84.6 AC
MASTER PLAN DESIGNATION	LOW DENSITY RESIDENTIAL
EXISTING ZONING	PLANNED UNIT DEVELOPMENT
EXISTING USE	LOW DENSITY RESIDENTIAL
EXIST ADJ ZONING & USE - NORTH	COUNTY FA / SINGLE FAMILY RESIDENTIAL
EXIST ADJ ZONING & USE - SOUTH	R1 / SINGLE FAMILY RESIDENTIAL
EXIST ADJ ZONING & USE - WEST	B BUSINESS / CHARTER SCHOOL & COUNTY FA / VACANT
EXIST ADJ ZONING & USE - EAST	R2 TWO FAMILY RESIDENTIAL / RESIDENTIAL
UTILITY SERVICE	CITY OF LOVELAND

VI. BACKGROUND

The Dakota Glen Addition was annexed into the City in October 2006. A final subdivision plat was approved for the property in June of 2008 and was subsequently amended in August of 2010. The plat created 205 residential lots and approximately 65 acres of open space/natural areas. The property is currently being developed as single family residences.

VII. STAFF, APPLICANT, AND NEIGHBORHOOD INTERACTION

A. Notification: An affidavit was received from Phil Mazur with Western States Land Services certifying that written notice was mailed to all property owners within 1,000 feet of the property on April 9, 2013 and notices were posted in a prominent location on the perimeter of the site at least 15 days prior to the date of the Planning Commission hearing. In addition, a notice was published in the Reporter Herald on April 27, 2013.

B. Neighborhood Response: A neighborhood meeting was held at 5:30 p.m. on April 24, 2013 in the Gertrude Scott meeting room at the City library. The meeting was attended by 15 neighbors and interested parties along with City staff, the applicant and the applicant's consulting team. The following question/concerns were raised at the meeting. The response provided by Public Service representatives is shown in italics. After the neighborhood meeting, staff has received 2 letters of objections from surrounding property owners (see Attachment 5).

- Location of the Regulator Station: Why is the regulator station proposed in Dakota Glen?
  A regulator station needs to generally be located in the area around Wilson and 14th Street SW. There is a 6-inch high pressure line existing in 14th Street SW that will tie into the proposed 16-inch line. The regulator station is needed to regulate (lower) the pressure between the two lines. The station was originally proposed at the northeast corner of Wilson and 14th Street SW however due to public comments, PSCo decided to move the station to the west. On the south side of 14th Street SW, in the Blackbird Knolls Subdivision, the area available for the station was encumbered by wetlands. The current location in Dakota Glen is outside of the wetlands and was selected for the station. PSCo has secured easements for the station from the Dakota Glen Homeowners Association.

- Environmental Impacts: The line is proposed to go through wetlands and under the lake. How will this affect the environment and wildlife in the area? How will dust associated with the construction be controlled?
  The underground pipeline will be bored underneath the wetlands and lake. No disturbance to the wetlands or lake will occur. PSCo has completed geotechnical borings to guarantee that the line will be outside of the wetlands. The line will be bored at least 15 feet underneath the sensitive areas. The pipeline location has been reviewed and approved by the Army Corps of Engineers.

Wildlife in the area is being monitored to ensure minimal disruption. The pipeline construction along the ditch will take approximately 1 week to complete. In terms of dust mitigation, water trucks will be on site to make sure dust control is implemented.

Excerpts from the Environmentally Sensitive Areas Report (ESAR) including the letter from the Army Corps has been included as Attachments 2 and 3 to this report. The complete ESAR is available on the City's Current Planning homepage at www.cityofloveland.org.

- Aesthetics of the Control House and Aboveground Pipes. Can the aboveground pipes be contained in a building or placed underground? Can the building be made more attractive?
  There are certain regulations by CDOT that require the aboveground pipes to be accessible and therefore the pipelines cannot be placed inside a building. PSCo is committed to working with the neighborhood to enhance or screen the facility. PSCo would be willing to agree to a condition of approval with regards to working with the neighborhood on the design and screening if a resolution on the aesthetics cannot be achieved before the Planning Commission hearing.

- Safety Measures of the Facility
  PSCo has taken every reasonable measure to protect aboveground piping from hazards. There will be two 6-inch barriers (bollards) installed at the access off of 14th Street SW and a chain gate for access control. Heavy piping will be used above ground for additional integrity.

- Construction Timing: How long with the project take?
  The construction timing for the underground pipeline in Dakota Glen is estimated at approximately 2 weeks. The regulator station will be constructed separately at a different time. The entire project including the regulator station is estimated to be around 4-6 weeks.

- Declining Property Values
  Several members of the neighborhood voiced concerns that their property values would decline based on the location of the regulator station. PSCo did not provide a response, however Scott Bray, the developer of Dakota Glen, stated that based on his experience, he did not believe that property values would be affected by the station.

VIII. FINDINGS AND ANALYSIS

In this section of the report, the applicable findings contained in the Municipal Code and the Comprehensive Master Plan are specified in italic print followed by the staff analysis as to whether the findings are met by the submitted application.

A. City Utilities and Services

1. Loveland Municipal Code

a. Section 18.41.050.E.2:

(i) *Development permitted by the PDP will not have negative impacts on City utilities. If such impacts exist, Section 18.41.050.D.4(b) of the Loveland Municipal Code requires City staff to recommend either disapproval of the PDP or reasonable conditions designed to mitigate the negative impacts.*

(ii) *Whether development permitted by the PDP will be complementary to and in harmony with existing development and future development plans for the area in which the PDP is located by incorporating public facilities or infrastructure, or cash-in-lieu, that are reasonably related to the proposed development so that the proposed development will not negatively impact the levels of service of the City's services and facilities.*

b. Chapter 16.41: *A positive determination of adequacy, or a positive determination of adequacy with conditions, has been made in accordance with Section 16.41.100 for fire protection and emergency rescue services, Section 16.41.120 for water facilities and services, Section 16.41.130 for wastewater facilities and services, Section 16.41.140 for storm drainage facilities, and Section 16.41.150 for power.*

Fire Protection and Emergency Rescue Services (Section 16.41.100)

Fire protection and emergency rescue service (ERS) shall be deemed to be adequate and available for a proposed development is such services for the development meets or exceeds the applicable adopted level of service provided in Appendix A, and: (1) Adequate fire protection services and ERS are currently in place or will be in place prior to issuance of a building permit for the development; or (2) Provision of adequate fire protection service and ERS are a condition of the development application approval and are guaranteed to be provided at or before the approval of a final plat or issuance of the first building permit for the proposed development; or (3) Facilities necessary for providing adequate fire protection services and ERS are under construction and will be available at the time that the impacts of the proposed development will occur, or (4) Provision of fire protection service and ERS are guaranteed by an executed and enforceable development agreement which ensures that such service will be in place at the time that the impacts of the proposed development will occur.

Fire Prevention: Staff believes that this finding can be met based on the following facts:

- The project will comply with the requirements in the ACF Ordinance for response distance requirements for Loveland Fire Rescue Authority jurisdiction. (The first-due responding engine company varies with location.)
- The proposed development will not negatively impact fire protection for the subject development or surrounding properties.

Water Facilities and Services (Section 16.41.120)

Water facilities and services shall be deemed to be adequate and available for a proposed development if such facilities and services for the development meet or exceed the applicable adopted level of service provided in Appendix A, at the end of this Chapter, and: (1) A supply of raw water adequate to serve the projected needs of the proposed development is owned or controlled by the city and such water supply is or will be available for use by the proposed development prior to the issuance of the first building permit within the proposed development;

and (2) Sufficient raw water storage capacity, including on-site and off-site capacity, is available to serve the proposed development and such capacity is or will be available for use by the proposed development prior to the issuance of the first building permit within the proposed development; and (3) Sufficient water treatment capacity is available or, through new capacity improvements will be made available, to ensure a supply of potable water to the proposed development ; and (4) Sufficient water main capacity will be available or, through new capacity improvements will be made available, to serve the proposed development prior to the issuance of the first building permit within the proposed development.

Wastewater Facilities and Services (Section 16.41.130)

Wastewater facilities and services shall be deemed to be adequate and available for a proposed development if such facilities and service meet or exceed the applicable adopted level of service provided in Appendix A, at the end of this chapter, and: (1) The city of Loveland's central wastewater system or the central wastewater system of a sanitary sewer district is capable of connection to the proposed development; and (2) Sufficient wastewater treatment capacity is available or, through construction of new capacity improvements will be made available, to treat wastes generated by the proposed development prior to the issuance of the first building permit within the proposed development; and (3) Sufficient wastewater trunk line capacity is available and, where required, lift station capacity is available to serve the proposed development prior to the issuance of the first building permit within the proposed development.

Water/Wastewater: Staff believes that this finding can be met based on the following facts:

- This development is situated within the boundaries of, and accommodated by, the City's water and wastewater master plans. It is also located within the City's current service areas for Water and Wastewater.
- The proposed development will not negatively impact City water and wastewater facilities.

Stormwater Facilities (Section 16.41.140)

Stormwater facilities shall be deemed to be adequate and available for a proposed development if the development meets or exceeds the applicable adopted level of service provided in Appendix A, at the end of this chapter, and: (1) The proposed development meets all applicable requirements contained in the stormwater master plan, including the stormwater criteria manual; and (2) The proposed development provides for adequate major drainageways to convey stormwater flows from a one hundred year storm event which will minimize property damage; and (3) The proposed development meets all applicable drainage requirements of the city of Loveland.

Stormwater: Staff believes that this finding can be met based on the following facts:

- The development will not negatively impact City storm drainage utilities and will comply with the Adequate Community Services ordinance outlined in the Loveland Municipal Code, Section 16.41.140.
- No irrigation ditches traverse the site.
- No natural drainage courses/open channels traverse the site.

Power (Section 16.41.150)
Power facilities shall be deemed to be adequate and available for a proposed development if the development meets or exceeds the applicable adopted level of service provided in Appendix A, at the end of this chapter, and the proposed development will obtain utility services from the city through a system meeting all engineering and design standards applicable to the utility.

Power: Staff believes that this finding can be met based on the following facts:

- Three-phase underground power is available in a vault located along the south side of 14th Street SW.
- The existing underground feeder is an available and adequate source for electric distribution for the proposed development. No negative impacts on the City's electric system are foreseen. The proposed development meets the criteria for level of service outlined in the ACF ordinance.

B. Transportation

1. **Section 18.41.050.E.2:**
   a. *Development permitted by the PDP will not have negative impacts on traffic in the area. If such impacts exist, Section 18.41.050.D.4(b) of the Loveland Municipal Code requires City staff to recommend either disapproval of the PDP or reasonable conditions designed to mitigate the negative impacts.*
   b. *Whether development permitted by the PDP will be complementary to and in harmony with existing development and future development plans for the area in which the PDP is located by incorporating public facilities or infrastructure, or cash-in-lieu, that are reasonably related to the proposed development so that the proposed development will not negatively impact the levels of service of the City's services and facilities.*
2. **Section 16.41.110:** *A positive determination of adequacy, or a positive determination of adequacy with conditions, has been made for transportation facilities in accordance with Chapter 16.41 of the Loveland Municipal Code.*

Transportation Engineering Division: Section 16.41.110 of the Municipal Code (the ACF ordinance) requires a proposed PDP to comply with **one** of the following five standards in order for a positive determination of adequacy to be made:

Transportation facilities shall be deemed to be adequate and available for a proposed development if the development meets or exceeds the applicable adopted level of service provided in Section 4.5 of the Larimer County Urban Area Street Standards, which may be amended by resolution, and: (1) All transportation facilities are currently in place or will be in place prior to issuance of a building permit for the development; or (2) Provision of transportation facilities are a condition of the development approval and are guaranteed to be provided at or before the approval of a final plat or issuance of the first building permit for the proposed development; or (3) Transportation facilities are under construction and will be available at the time that the impacts of the proposed development will occur; or (4) Provision of transportation facilities needed to achieve the adopted

level of service are guaranteed by an executed and enforceable development agreement which ensures that such facilities will be in place at the time that the impacts of the proposed development will occur; or (5)Transportation facilities needed to achieve the adopted level of service are included in the capital improvements program (CIP): and (a.) The CIP contains a financially feasible funding system from available revenue sources which are adequate to fund the streets required to serve the proposed development, and (b.) The transportation facilities are likely to be constructed and available at the time that the impacts of the proposed development will occur, or at the time the city extends the transportation facilities to provided a logical link to the project.

Transportation Engineering: Staff believes that this finding can be met based on the following facts:

- The 16-inch natural gas pipeline replacement project falls under the "Insignificant Traffic Impact Development" definition within the Larimer County Urban Area Street Standards (LCUASS) and complies with the criteria set forth in the LCUASS and the ACF Ordinance for traffic.
- The proposal will not adversely impact any existing City infrastructure. A positive determination of adequacy for transportation facilities for the proposed PDP Amendment has been made under the provisions of item 1, above.

C. Land Use

1. Loveland Comprehensive Master Plan

Section 4.1 -Growth Management Plan

(iii) *Whether the PDP discourages leapfrog, scattered-site, and flagpole development.*

(iv) *Whether the PDP encourages infill development.*

(vi) *Whether the PDP is contiguous to other land that is already receiving public services.*

(vii) *Whether the PDP is at least 1/6 contiguous with existing development, as defined in Section 4.1 GM:3(D-1) of the Comprehensive Master Plan.*

2. Section 18.41.050.E.2:

The PDP conforms to the intent and objectives of Title 18 with regard to Planned Unit Developments and any applicable area plan.

Current Planning: Staff believes that this finding can be met based on the following facts:

C.1 The property has received approval of a preliminary and final development plan for single family residential uses. This application is for an amendment to the PDP to permit an aboveground public utility facility within the open space on 14th Street SW. Findings related to growth management policies are not applicable to the amendment request.

C.2 An objective of a planned unit development as provided in Section 18.41.020.E is to: *Encourage a more efficient use of lands and of public services or private services in lieu thereof, and to reflect changes in the technology of land development so that resulting economies may inure to the benefit of those who need homes.* Public Service has indicated that the pipeline replacement project is necessary to improve service reliability, maintain

safety of the system and meet future needs for natural gas. PSCo will also be modernizing the natural gas infrastructure that is currently 84 years old.

3. **Section 18.41.050.E.2:** *Development permitted in the PDP Amendment will not have detrimental impacts on property that is in sufficient proximity to the PDP to be affected by it. If such impacts exist, Section 18.41.050.D.4(b) of the Loveland Municipal Code requires City staff recommend either disapproval of the PDP or reasonable conditions designed to mitigate the negative impacts.*

Current Planning: Staff believes that this finding can be met based on the following facts:

- The proposed development of the regulator station will not negatively impact traffic in the area or city utilities, as indicated in the analysis in Finding A.1, above.
- The location of the proposed regulator station is situated in the PUD private open space along 14th Street SW. The nearest residential property is approximately 200 feet from the station, on the south side of 14th Street SW. Based on the location, the Division believes that the construction of the regulator station will not have detrimental impacts on the surrounding neighborhood.
- The proposed building materials and colors will be compatible with the surrounding neighborhood and match the colors on the existing pumphouse. PSCo has worked with the Scott Bray, the developer and president of the Dakota Glen Homeowners Association, to reach an agreement on the site improvements, including the installation of a decorative fence around the south, east and west sides of the pipelines (see photo simulation in Figure 2). PSCo and the Homeowners Association explored options to provide landscape screening around the facility, but due to the difficulties that the Association has experienced with keeping landscaping healthy and alive in the very dry environment along 14th Street SW, a 5 foot decorative fence was selected as the desired screening option.

4. **Section 18.41.050.E.2:** *Development permitted by the PDP will be complementary to and in harmony with existing development and future development plans for the area in which the PDP is located by:*
   - **a.** *Incorporating natural physical features into the PDP design and providing sufficient open spaces considering the type and intensity of proposed land uses.*
   - **b.** *Incorporating site planning techniques that will foster the implementation of the Loveland Comprehensive Master Plan.*
   - **c.** *Incorporating physical design features that will provide a transition between the project and adjacent land uses through the provisions of an attractive entryway, edges along public streets, architectural design, and appropriate height and bulk restrictions on structures.*
   - **d.** *Incorporating an overall plan for the design of the streetscape within the project, including landscaping, auto parking, bicycle and pedestrian circulation, architecture, placement of buildings and street furniture.*

Current Planning: Staff believes that this finding can be met based on the following facts:

4.a. The regulator station would be placed in the PUD open space on 14th Street SW, outside and to the west of the delineated wetland boundaries. PSCo has secured a permanent easement on 0.52 acres of land for the regulator station along with 2.3 acres of permanent easement and 1.11 acres of temporary easement for the pipeline alignment. The regulator station site consists of a two areas of less than 380 square feet each of aboveground pipes and a 528 square foot control house structure. The finding for providing sufficient open space is not applicable to the development of the station requested in the PDP amendment.

4.b. The Comprehensive Master Plan does not address the provision of non-city utilities in the community. Therefore, the finding regarding site planning techniques in reference to the City's Comprehensive Plan is not applicable to the PDP Amendment request.

4.c. The design standards proposed for the control house, including building materials, roof pitch and colors are designed to match the existing pumphouse in the subdivision and be compatible with residential structures in the neighborhood.

4.d. Vehicular access to the site will be from 14th Street SW. Auto and bicycle parking, pedestrian circulation and street furniture is not applicable to the request. The architecture of the control house was designed to be compatible with the existing pumphouse and has been approved by the Dakota Glen Homeowners Association (see Attachment 4).

5. **Section 18.41.050.E.2:** *The PDP complies with applicable land use and development regulations in effect as of the date that the GDP was approved and any land use and development regulations adopted by the City after that date if the Planning Division and Planning Commission expressly find that compliance with such regulations is necessary to protect public health, safety, and welfare.*

Current Planning: Staff believes that this finding is not applicable to the proposal:

- The Dakota Glen PUD was approved as a non-phased PDP, which means that the PDP was approved as the zoning document and there was not a general development plan (GDP) established. The finding that the PDP complies with the GDP on file is not applicable to this proposal. The PDP amendment was reviewed based on current standards and regulations.

D. Environmental Impacts:

1. **Section 18.41.050.E.2:** *The PDP incorporates environmentally sensitive areas, including but not limited to wetlands and wildlife corridors, into the project design. "Environmentally sensitive areas" are defined in Section 18.41.110 as: slopes in excess of 20%; floodplain; soils classified as having high water table; soils classified as highly erodible, subject to erosion or highly acidic; land incapable of meeting percolation requirements, land formerly used for land fill operations or hazardous industrial use; fault areas; stream corridors; estuaries; mature stands of vegetation; aquifer recharge and discharge areas; habitat for wildlife; and other areas possessing environmental characteristics similar to those listed above.*

Current Planning: Staff believes that this finding can be met based on the following facts:

- An environmentally sensitive areas report (ESAR) was submitted and reviewed with the PDP Amendment. Excerpts of the ESAR are included as Attachment 2 to this report. The entire ESAR is available on the City's Current Planning Division homepage at www.cityofloveland.org.

  The project site is located adjacent to and partially within the City's designated Site 51 natural areas. The ratings table for this area lists a medium enhancement potential. The ESAR evaluated the site based on the City's established criteria. The following is an excerpt from the ESAR concerning the assessment of potential impacts of the proposed development.

  The Study Area has been partially developed for residential use. Open areas surrounding the lake and wetlands have been landscaped. The proposed Project would avoid impacts to wetlands and potential sensitive or T&E animal and plant species. Prairie dogs are not present in the Study Area, and other wildlife was not observed during site biological reconnaissance, or field surveys. The role of the area as a north/south wildlife linkage would not be affected. Mature vegetation would not be disturbed and therefore, adverse effects to songbirds are not expected. No adverse effects to water birds are indicated because the lake and wetlands would not be disturbed by the proposed Project.

- The entire West Main Natural Gas Pipeline Replacement Project has been reviewed by the Army Corps of Engineers, who determined that based on the proposed pipeline location, a Department of Army Permit was not required (see Attachment 3).
- Conditions of approval are recommended by City staff to address environmental concerns voiced by the neighborhood. These conditions are also recommended in the ESAR to mitigate impacts resulting from the pipeline construction.

IX. RECOMMENDED CONDITIONS

Current Planning

1. All wetlands located adjacent to the permanent and temporary easements for the regulator station and associated pipelines shall be flagged or marked by a qualified biologist prior to the occurrence of any construction activities on the site to ensure that these features will not be disturbed during construction activities.

2. No construction shall occur in areas located outside of the project easements secured by Public Service as designated in the PDP Amendment.

3. Public Service shall implement and comply with the Weed Management and Revegetation Plan included as Attachment 7 to the Environmentally Sensitive Areas Report dated March, 2013. All

areas associated with the construction of the underground pipeline shall be revegetated and shall be monitored by Public Service to ensure revegetation is successful.

4. During construction, Public Service shall implement dust control measures such as water application to disturbed areas, erosion control techniques and revegetation of ground disturbance following construction with a drought-tolerant seed mixture. Water shall be used daily, or as needed, for dust suppression and soil compaction.

5. Prior to any construction activities occurring on the site, a raptor nest survey shall be completed and submitted to the Current Planning Division. Public Service shall observe all applicable Colorado Division of Wildlife buffers and timing restrictions based on the results of the raptor nest survey.

Fire

6. During project construction, the project manager or designee shall inform Loveland Fire Rescue Authority of any anticipated interruption of fire hydrant service or emergency vehicle access to properties, at least 48 hours in advance of the anticipated interruption of service or access.

2013—16" West Main Natural Gas Pipeline Replacement Project— Dakota Glen PUD First Amendment

Project and Legal Description

Prepared for the City of Loveland

Revised April 2013

Prepared for:

Xcel Energy℠
PUBLIC SERVICE COMPANY

Public Service Company of Colorado 1123 West 3rd Ave., Denver, CO 80223

Prepared by:

TETRA TECH

Tetra Tech, Inc., 1099 18th St., Suite 580, Denver, CO 80202

PC Attachment 1

Introduction

Public Service Company of Colorado (PSCo), an Xcel Energy company, is requesting a Planned Unit Development (PUD) Amendment as described in the City of Loveland Land Use Code Chapter 18.41. The Larimer 2013—16" West Main Natural Gas Pipeline Replacement Project (proposed Project) involves the construction, operation, and maintenance of a 16-inch high-pressure replacement natural gas transmission pipeline. The proposed Project encompasses Larimer, Weld, and Boulder counties and several incorporated communities and is approximately 77 miles long. An overview map showing all portions of the West Main Natural Gas Pipeline Replacement Project throughout Larimer County is included on the Project website: <http://www.xcelenergywestmainpipeline.com/west_main/route-maps/route-maps.html>. The existing 84 year old natural gas pipelines have reached the ends of their service lives, require safety upgrades, and cannot reliably keep up with growing system demand to deliver natural gas. The proposed Project would provide high-pressure transmission of natural gas with limited distribution systems taps as needed. It would provide an important link to future system upgrades for northern Colorado Front Range communities and would ensure more reliable natural gas delivery to customers in light of growing natural gas demand.

The proposed Project includes necessary pipeline and above-ground facilities located on private property within the Dakota Glen PUD in the city of Loveland. As part of its West Main Natural Gas Pipeline Replacement Project, PSCo is proposing to construct, operate, and maintain one new regulator station, referred to as the Estes Park Regulator Station, in the Dakota Glen PUD. Regulator stations control the flow of gas from higher to lower pressures as the gas would move from the 16-inch transmission pipeline to smaller lateral and distribution pipelines that serve the local community.

The preferred pipeline route enters the Dakota Glen PUD in the city of Loveland near the intersection of 14th Street Southwest (SW) and Angora Drive, approximately 2,000 feet west of the intersection of 14th Street SW and Wilson Avenue (CR17) at the Estes Park Regulator Station (see Sheet 12). The pipeline exits the Estes Park Regulator Station and heads to the northeast through undeveloped open land within the Dakota Glen PUD. North of the cattail reservoir/detention pond, the pipeline turns due east toward Wilson Avenue leaving the PUD boundary and continues north on Wilson Avenue.

A photographic simulation of the proposed Estes Park Regulator Station is provided in Sheet 14. The appearance of the control house has been designed to be similar to architectural characteristics of the existing pumphouse on the northwest side of the cattail reservoir/detention pond within the Dakota Glen PUD. The control house and aboveground piping would be painted beige to blend with the surrounding landscape.

This application requests approval specifically for the proposed Estes Park Regulator Station and pipeline within the Dakota Glen PUD boundary associated with the proposed Project. The proposed Project is an important part of PSCo's service plan to upgrade the existing natural gas transmission system along the northern Colorado Front Range with new natural gas pipelines that meet current safety, service, capacity, and reliability requirements while also meeting the increasing demand for natural gas in Larimer County, including the city of Loveland. The upgrade would involve replacing the existing 84-year-old, 8-inch natural gas transmission pipeline with a new high-pressure 16-inch pipeline to continue providing reliable, safe natural gas service.

Applicant Information

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Location and Legal Description

The Estes Park Regulator Station and pipeline within the Dakota Glen PUD boundary is located in Larimer County within the municipal limits of the city of Loveland. The Project area subject to this PUD is located in the Dakota Glen Subdivision near the intersection of 14th Street SW and Angora Drive, approximately 2,000 feet west of the intersection of 14th Street SW and Wilson Avenue (CR17) and the undeveloped open land near the cattail reservoir/detention pond. PSCo has obtained a permanent easement on 0.516 acres of land for this regulator station, and 2.323 acres of permanent easement and 1.114 acres of temporary easement for the pipeline alignment within the Dakota Glen PUD.

Purpose and Need

PSCo currently operates the natural gas supply for most of Larimer County including the city of Loveland. The purpose of the proposed Project is to reliably maintain delivery of natural gas to area customers. The proposed Project is an important part of PSCo's service plan to

meet growing natural gas demand in the area because the existing natural gas pipeline cannot meet load requirements at peak demand. The proposed natural gas pipeline upgrade would address safety, service reliability, and capacity concerns for the benefit of commercial and residential customers along the northern Colorado Front Range. Regulator stations are required to control the rate of gas flow and/or pressure though the station and maintain the desired pressure or flow level in the distribution system.

Project Construction Activities

The permanent ROW for operation and maintenance of the Project would be 50 feet. An additional temporary ROW needed for construction activities would be 25 feet.

Construction activities for the West Main Natural Gas Pipeline Replacement Project are proposed to begin approximately May 1, 2013, and operation of the replacement facility would begin during the fall/winter season of 2013.

In open trench areas, major activities involved in Project construction would include surveying, best management practice (BMP) installation, vegetation clearing, staging materials, pipeline trenching, pipeline installation and welding, pressure-testing, backfilling the pipeline trench, cleanup, re-grading the surface, revegetation, and revegetation monitoring. Surface disturbance would be limited to the permanent ROW and the temporary construction ROW and would include boring locations and modifications to regulator stations. Construction activities would be sequenced and likely would occur simultaneously in multiple locations. The pipeline trench would be approximately 72 inches deep with a width of approximately 24 to 36 inches. The new pipeline would sit approximately 48 inches below the final grade. Site restoration would occur according to the provisions of the Stormwater Management Plan (SWMP), which was provided to the City of Loveland on March 22, 2013. Temporary fencing would be utilized around the bore pits and trenches as needed to prevent public access and maximize safety.

Regulator station construction could run concurrently with natural gas pipeline construction. Surface disturbance associated with the Estes Park Regulator Station would be limited to the 0.516 acre permanent easement of the regulator station.

PSCo proposes to use boring techniques, as feasible, to avoid surface disturbance to wetlands, trails, and driveways. Boring techniques would involve drilling construction of the pipeline under these surface features. In wet areas, the natural gas pipeline would be weighted for stability to ensure that the pipeline remained securely in place during periods when soil might be saturated. All wetlands associated with the Dakota Glen PUD will be bored. As described in the Environmentally Sensitive Areas Report (ESAR) submitted under separate cover, the proposed Project would not affect mature stands of vegetation. A wetland delineation report was prepared for the proposed Project located within the PUD, and is

provided in Attachment 2 of the ESAR. The proposed regulator station is located in an area that is higher than the surrounding wetlands primarily located to the east and would therefore not impact wetlands. The proposed pipeline crosses one wetland located along the western portion of the lake. The proposed pipeline would avoid effects to this wetland through the use of boring techniques. The locations of the boring entry/exit locations are shown in Sheet 12. As documented in the agency correspondence included in Attachment 3 of the ESAR, the U.S. Army Corps of Engineers has indicated that a wetland permit (per the Clean Water Act) would not be required. The construction BMPs and site mitigation measures would protect potential impacts to adjacent wetlands during construction and operation of the Project as described in Section IV of the ESAR. As discussed in Section IV.2 of the ESAR, BMPs would be implemented as described in Attachment 6 of the ESAR to minimize or mitigate soil erosion and to revegetate any areas disturbed during construction of the proposed Project. PSCo also would follow the Weed Management and Revegetation Plan provided in Attachment 7 of the ESAR. The Plan includes a preconstruction survey for noxious weeds and follow-up monitoring to ensure revegetation is successful.

PSCo plans to off-load and string pipeline as it is delivered along the ROW. Any stockpiling of pipeline would take place at the proposed Project ROW (including the temporary and permanent easement areas) or at existing PSCo yards. Miscellaneous materials (such as valves, fittings, and other construction materials) would be stored and delivered to the pipeline construction area from PSCo's Fort Collins and Campion Service Centers.

PSCo would install signs (pipeline markers) in the permanent 50-foot easement to identify that a natural gas pipeline is buried nearby. These markers are required by federal regulations for pipeline safety (49 CFR 192). A typical pipeline marker is shown in Attachment 2. These markers provide adequate warning and location of the natural gas pipeline to local residents and future construction contractors performing work in the area. Markers identify the product carried in the pipeline (such as natural gas), the name of the pipeline operator, the operator's 24-hour emergency contact number, and the area's one-call center number. These markers are approximately 4 feet above ground and occur approximately every 500 feet or in-line of sight, on both sides of road, water, and railroad crossings, and at all changes in direction. There would be approximately 4 pipeline markers within the Dakota Glen PUD; one at the Estes Park Regulator Station, one at the angle point near the existing pump house, one at the east end of Dakota Glen near Wilson Avenue, and one on the straight line pipeline alignment within the PUD.

Noise from heavy machinery would be of short duration during construction of the proposed natural gas pipeline. Construction would be limited daily hours between 7 a.m. and 7 p.m. per City of Loveland Municipal Code Chapter 7.32 Sound Limitations, and would occur Monday through Friday. Construction may occur on weekends and other hours outside the 7 a.m. to 7 p.m. timeframe on an as-required basis, with prior approval from the City Manager. Noise

levels from equipment would be controlled through the use of standard maintenance procedures and the use of appropriate mufflers.

Construction of the natural gas pipeline and related facilities may generate a temporary increase in fugitive dust. PSCo would comply with state and Larimer County requirements for controlling dust emissions during the construction of the proposed Project. PSCo would employ BMPs for dust suppression, as described in the SWMP. During construction, water trucks would patrol work areas to control dust as necessary depending on weather and dust suppression, weed control, and soil conditioning.

Minimal odors from the proposed Project are expected, with the highest likelihood occurring during construction from vehicle exhaust, and during periods of maintenance activities when mercaptan may be noticeable. Mercaptan is a chemical injected into the natural gas product, as required by federal regulation, to produce a sulfurous odor ("rotten egg" odor) as a safety measure. It is not anticipated that maintenance activities beyond those already experienced by area residents would be required for the proposed Project.

Glare would potentially be visible from construction vehicles and equipment. Any glare experienced would be temporary in nature and would be similar to other sources of glare that exist in the environment (such as from vehicle on Wilson Avenue and residential streets, and glare from residential building materials).

PSCo has obtained a Storm Water Permit for Construction Activities from the Colorado Department of Public Health and Environment. The drainage plan for the proposed Project would consist of a SWMP and BMPs for the control of stormwater runoff during the construction period. Post-construction, the areas disturbed by trenching and boring activities for the natural gas pipeline would be recontoured to preconstruction conditions and revegetated as described in the SWMP.

PSCo adheres to the pipeline safety regulations established in the Code of Federal Regulations (CFR) at 49 CFR Part 192 by the U.S. Department of Transportation (DOT) to ensure public protection and to prevent accidents and failures. Specifically, the DOT Pipeline and Hazardous Materials Safety Administration is the federal authority for ensuring the safe, reliable, and environmentally sound operation of pipeline transmission systems under the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (PIPES Act).

Property Owners, Property, and Right-of-Way Acquisition

PSCo's land services representatives have worked with the landowner of the PUD to explain Project construction, operation, and maintenance activities and to negotiate the purchase of easements based on fair market value. The easement for the Estes Park Regulator Station

would grant PSCo a permanent easement of 22,500 square feet (0.516 acres) to construct, operate, and maintain the regulator station. The permanent pipeline easements of 2.323 acres and temporary pipeline easements of 1.114 acres would grant PSCo a permanent 50-foot corridor and temporary 25-foot construction ROW to construct, operate, and maintain the natural gas pipeline within the Dakota Glen PUD. The landowner would maintain fee title to the land acquired under the easement. The land within the pipeline permanent and temporary easements granted to PSCo within the Dakota Glen PUD would be restored and revegetated and available for other uses upon completion of the construction period.

2013—16" West Main Natural Gas Pipeline Replacement Project—Dakota Glen PUD First Amendment

Environmentally Sensitive Areas Report

Prepared for the City of Loveland

March 2013

Prepared for:

Xcel Energy℠
PUBLIC SERVICE COMPANY

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Prepared by:

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Contents

Page

I. Project Study Area 1

II. Site Inventory 2

II.1 Mature Stands of Vegetation 2
II.2 Legal or Jurisdictional Wetlands—U.S. Army Corps of Engineers (CWA) 4
II.3 Wildlife Habitat Areas and Corridors 4
II.4 Natural Areas Identified in the City of Loveland Natural Areas Inventory Study 7
II.5 Physical Linkages to Other Natural Areas or Open Spaces 8
II.6 Existing Drainage Patterns and Floodway and Flood Fringe Boundaries 8
II.7 Irrigation Canals and Ditches 9
II.8 Water Courses 9
II.9 Existing Slopes over 20% 9
II.10 Soils Having a High Water Table or Being Highly Erodible 9
II.11 Land Formerly Used for Landfill Operations or Hazardous Industrial Use 10
II.12 Fault Areas 10
II.13 Aquifer Recharge and Discharge Areas 10
II.14 Operating High Water Line (as defined in Loveland's Open Lands Plan, pg. 25) 10

III. Assessment of Potential Impacts of Proposed Development 11

IV. Recommendation: Protection Measures, Mitigation, Enhancement 12

IV.1 Water Quality and Hydrology 12
IV.2 Vegetation 12
IV.3 Air Quality 13
IV.4 Waste Management 13
IV.5 Emergency Procedures 13
IV.6 Wildlife 14

V. References 14

Attachments

Attachment 1: Threatened and Endangered Species Habitat Suitability Assessment and Survey Report

Attachment 2: Dakota Glen Wetland Report

Attachment 3: Biological Site Reconnaissance Report

Attachment 4: USFWS Concurrence Letter

Attachment 5: Geotechnical Engineering Study

Attachment 6: Best Management Practices

Attachment 7: Weed Management and Revegetation Plan

Photos

Photo 1: Looking North across the PUD Area.....3

Figures

Figure 1: Vicinity Map/Estes Park Basemap

Figure 2: Alignment Sheet

Figure 3: Estes Park Regulator Station, Conceptual Site Plan

Figure 4: Bald Eagle Habitat

Figure 5: Great Blue Heron Habitat

Figure 6: Osprey Habitat

Figure 7: Snow Geese Habitat

Figure 8: White Pelican Habitat

Figure 9: Slope

Figure 10: Soil Erodibility

Figure 11: Geologic Hazards Map

I. Project Study Area

Public Service Company of Colorado (PSCo), an Xcel Energy company, is requesting a Planned Unit Development (PUD) Amendment as described in the City of Loveland Land Use Code Chapter 18.41. The overall Larimer 2013—16" West Main Natural Gas Pipeline Replacement Project (West Main Project) involves the construction, operation, and maintenance of a 16-inch high-pressure replacement natural gas transmission pipeline. The West Main project encompasses Larimer, Weld, and Boulder counties and several incorporated communities and is approximately 77 miles long. The existing 83-year-old natural gas pipelines have reached the ends of their service lives, require safety upgrades, and cannot reliably keep up with growing system demand to deliver natural gas. The overall West Main project would provide high-pressure transmission of natural gas with limited distribution systems taps as needed. It would provide an important link to future system upgrades for northern Colorado Front Range communities and would ensure more reliable natural gas delivery to customers in light of growing natural gas demand.

The proposed Project includes necessary pipeline and aboveground facilities located on private property within the Dakota Glen PUD in the city of Loveland. Figure 1 is the vicinity map of the proposed Project area and Figure 2 is the overall plan view of the proposed Project area. The proposed Project also includes temporary use areas for staging of construction materials; these areas would be used during the construction period and would be completely restored upon completion of construction. A temporary staging area would be located along Wilson Avenue within the Dakota Glen PUD as indicated in the legal description (Attachment 1). As part of its West Main project, PSCo is proposing to construct, operate, and maintain one new regulator station, referred to as the Estes Park Regulator Station and a natural gas pipeline, in the Dakota Glen PUD. Regulator stations control the flow of gas from higher to lower pressures as the gas would move from the 16-inch transmission pipeline to smaller lateral and distribution pipelines that serve the local community.

The preferred pipeline route enters the Dakota Glen PUD in the city of Loveland near the intersection of 14th Street Southwest (SW) and Angora Drive, approximately 2,000 feet west of the intersection of 14th Street SW and Wilson Avenue (CR17) at the Estes Park Regulator Station (Figure 1). The pipeline exits the Estes Park Regulator Station and heads to the northeast through undeveloped open land within the Dakota Glen PUD. North of the cattail reservoir/detention pond, the pipeline turns due east to Wilson Avenue and continues north on Wilson Avenue. PSCo has obtained a permanent easement of 0.516 acres for this regulator station, and 2.899 acres of permanent easement and 1.412 acres of temporary easement for the pipeline alignment within the Dakota Glen PUD. PSCo has also acquired a temporary easement of 3.510 acres for a temporary use area on the east side of the Dakota Glen PUD adjacent to Wilson Avenue. The plan view of the proposed Project area is provided in Figure 2 and the conceptual site plan for the Estes Park Regulator Station in Figure 3.

The temporary use area within the Dakota Glen PUD would be used as a staging area in which to store pipe, construction trailers, storage trailers, and sanitary facilities for workers. Temporary fencing would be installed around the temporary use area. PSCo would access the temporary use area via an existing two-track road/trail with an existing curb cut along Wilson. The site would be used from mid-April 2013 through March 2014, with heaviest use anticipated in 2013. During active construction, a maximum of up to 50 daily trips (in and out) of the construction area are estimated. No grading is proposed. Any vegetation would be conserved to the maximum extent practicable. After the period of use is done, the temporary fencing would be removed, and site restoration would occur according to the provisions of the Stormwater Management Plan (SWMP) currently being prepared for the proposed Project. The SWMP will be provided to the City of Loveland prior to construction.

The fencing around the temporary use area would temporarily block public access to a portion of a social trail from Wilson Avenue to approximately 280 feet west of Wilson Avenue. The trail (through the DR Zone District) is not a designated trail according to the City of Loveland's current Recreational Trail and Bikeways Map, and is located on private land connecting the Dakota Glen development to the Wilson Avenue area sidewalks.

This application requests approval specifically for the proposed Estes Park Regulator Station and pipeline within the Dakota Glen PUD boundary associated with the proposed Project. The proposed Project is an important part of PSCo's service plan to upgrade the existing natural gas transmission system along the northern Colorado Front Range with new natural gas pipelines that meet current safety, service, capacity, and reliability requirements while also meeting the increasing demand for natural gas in Larimer County, including the city of Loveland. The upgrade would involve replacing the existing 83-year-old, 8-inch natural gas transmission pipeline with a new high-pressure 16-inch pipeline to continue providing reliable, safe natural gas service.

The Study Area for this Environmentally Sensitive Areas Report (ESAR) includes the proposed Project and the immediate surrounding area as is relevant for each resource or issue of potential concern described in Section II. In general the Study Area includes the proposed Project and the surrounding Dakota Glen PUD.

II. Site Inventory

II.1 Mature Stands of Vegetation

The Study Area for vegetation includes the proposed Project and immediate surrounding landscape. According to a survey conducted for the entire proposed Project including the Dakota Glen PUD in August 2012 (Attachment 1), the plant communities at Dakota Glen wetlands and lake site in the vicinity of the proposed Project consist of a mosaic of palustrine emergent wetlands dominated by stands of reed canarygrass (*Phalaroides arundinacea*) and narrow-leaved cattails (*Typha angustifolia*), hardstem bulrush (*Schoenoplectus tabernaemonti*), alkali bulrush (*Bolboschoenus maritimus*), clustered field sedge (*Carex*

praegracilis), a variety of rush species (*Juncus* spp.), spikerush species (*Eleocharis* spp.), and wetland grasses. There are minor amounts of peach-leaved willow (*Salix amygdaloides*) at sapling size. There is also an overstory layer dominated by plains cottonwood (*Populus deltoides* ssp. *monilifera*) to the east of the wetland on the eastern side of the proposed regulator station site and proposed pipeline route. However, most of the Study Area is generally open with very little shade (see Photo 1).

Photo 1: Looking North across the PUD Area

There are a number of Russian olives (*Elaeagnus angustifolia*), Siberian elms (*Ulmus pumila*), and salt cedar (*Tamarix ramosissima*) saplings in the open area of the Dakota Glen PUD. However, these tree species would be avoided during construction of the proposed Project. The ecotone or transition area between the wetlands and the surrounding uplands within the PUD are dominated by many weedy herbaceous species such as Canada thistle (*Breea arvensis*), field bindweed (*Convolvulus arvensis*), and prickly lettuce (*Lactuca serriola*).

The proposed Project would not affect mature stands of vegetation. The proposed Project site is part of the landscaped PUD and is vegetated by planted grasses including western

wheatgrass (*Pascopyrum smithii*), perennial rye (*Lolium perenne*), crested wheatgrass (*Agropyron cristatum*), and smooth brome (*Bromopsis inermis*).

II.2 Legal or Jurisdictional Wetlands—U.S. Army Corps of Engineers (CWA)

Jurisdictional wetlands and other waters of the U.S. (WoUS) are subject to regulation under the federal Clean Water Act (CWA). A wetland delineation report was prepared for the proposed Project located within the PUD, and is provided in Attachment 2. The mapped wetlands, as well as the proposed Project site are shown in Attachment 2 (Figure 1 in Attachment 2). The proposed regulator station is located in an area that is higher than the surrounding wetlands primarily located to the east and would therefore, not impact wetlands. The proposed pipeline crosses wetland #1 (see Figure 1 in Attachment 2) located along the western portion of the lake. The proposed pipeline would avoid effects to this wetland through the use of boring techniques. The locations of the boring entry/exit locations are shown in Figure 2. As documented in the agency correspondence included in Attachment 3, the U.S. Army Corps of Engineers has indicated that a wetland permit (per the CWA) would not be required. The construction best management practices (BMPs) and site mitigation measures would protect potential impacts to adjacent wetlands during construction and operation of the Project as described in Section IV.

II.3 Wildlife Habitat Areas and Corridors

Wildlife information for the proposed Project Study Area (the proposed Project and immediate surrounding area) is based on field reconnaissance, several field surveys, desktop evaluation, and evaluation of GIS data. The Study Area is within a PUD and no prairie dog colonies exist at the site. No wildlife species were observed during the site visits as discussed below.

Biological Reconnaissance Survey

An initial evaluation of biological resources was performed for the overall West Main project (including the proposed Project) from March 22 to April 1, 2012 (see Attachment 3), through a combination of windshield reconnaissance and pedestrian surveys of publicly accessible land. A one-day follow-up survey was completed April 13, 2012. The objective of the initial evaluation was to provide an understanding of whether suitable habitat exists for sensitive species, including federal and state listed species, bald and golden eagles, and migratory birds, within the overall West Main Project area, defined as a 1,000-foot corridor (500 feet on either side) around the proposed pipeline route. Specifically, the initial evaluation involved identifying and mapping vegetation communities that exist within the West Main Project area, including native and introduced vegetation, and state and county listed noxious weeds; identifying birds (especially raptors/raptor nest sites, burrowing owls, and mountain plovers); identifying reptiles, amphibians, and mammals, with special attention to prairie dog colonies; and identifying other natural and physical features of the landscape, including lakes, streams, riparian areas, wetlands, agricultural lands, and native prairie ecosystems. The

reconnaissance survey indicated that the Dakota Glen PUD area had wetlands and potential habitat for several federally Threatened and Endangered (T&E) Species.

Threatened and Endangered Species Habitat Study

A follow-up survey was performed during August 2012 to further evaluate the T&E species habitat, resulting in a Threatened and Endangered Species Habitat Suitability Assessment and Survey Report for the Ute ladies'-tresses orchid (*Spiranthes diluvialis* Sheviak), the Colorado butterfly plant (*Gaura neomexicana* ssp. *coloradensis*), and the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) (PMJM) (see Attachment 1). This report was prepared in connection with the overall West Main Project. The report details habitat suitability for each species at a number of surface water/wetland locations. Potential species identified for the Study Area included Ute Ladies'-Tresses Orchid (ULTO), the Colorado Butterfly Plant (COBP), and the PMJM.

The Colorado butterfly plant is a short-lived perennial herb that is listed as threatened under the federal Endangered Species Act. The plant is only found within a small area of southeastern Wyoming, western Nebraska, north-central Colorado (Larimer County near the Wyoming state line), and in a new site in Westminster, Colorado. Habitat for the Colorado butterfly plant is typified by sub-irrigated alluvial soils on relatively level floodplains and drainage bottoms, often in bends in wide, actively meandering stream channels.

The Ute ladies'-tresses orchid is typically found in sub-irrigated alluvial soils along streams, and in open wet meadows in floodplains. The preferred habitat is open and moist without dense surrounding vegetative cover. The normal flowering period is July 20 to August 31. Potential habitats in the Project area include palustrine emergent wetlands (PEM) and stream banks. The species is not tolerant of long-term standing water and would not successfully compete with species that form dense monocultures, such as cattails (*Typha* spp.) and reed canarygrass (*Phalaroides arundinacea*). It prefers well-drained soils with a high moisture content that may contain some gleying or mottling but that are not continuously anaerobic or permanently saturated. The orchid occurs with grasses, sedges, rushes, and shrubs or riparian trees, such as willows. It rarely occurs in deep shade, preferring open glades or pastures and meadows in full sunlight.

The survey within the Dakota Glen wetlands and the nearby lake did not result in documented observance of ULTO or COBP. However, the site did exhibit some elements of habitat suitability for each of these species, including:

- Presence of several species generally associated with ULTO and COBP habitat
- Site was open and sunny in general
- There is a perennial lake (reservoir) with shoreline habitat

Based on the presence of surface water (i.e., lake site and probable seasonally saturated or inundated wetlands), this site may represent suitable habitat for both ULTO and COBP. Construction of the natural gas pipeline would be placed using boring techniques to avoid

disturbance to the wetland and lacustrine (lake) ecosystems and associated potential ULTO and COBP habitat.

The PMJM is a federally threatened species that occurs only in a band along the Front Range from Wyoming to Colorado Springs, including known occurrences in Larimer County. PMJM trappings are reported by CNHP (2011) in quadrangles that cross the overall West Main Project area, including the Fort Collins and Loveland quadrangles in Larimer County. Distribution of PMJM is typically within 100 meters of 100-year flood plains. Typical PMJM habitat consists of multi-storied riparian vegetation with an understory of grasses and forbs and a canopy of *Salix* spp. or other species. Suitable habitat is typically found adjacent to relatively undisturbed grassland communities (native shortgrass prairie) and a permanent water source. Habitat for the PMJM was judged to be marginal in the area of the proposed Project considering the poor development of a consistent shrub layer at this crossing site, and poor quality native grassland for dispersal.

The proposed Project is located and designed to entirely avoid effects to potential habitat for ULTO, COBP, and PMJM. The U.S. Fish and Wildlife Service provided concurrence that effects to these species can be avoided in a letter dated November 13, 2012 (Attachment 4).

Bald Eagle

Larimer County GIS data document the occurrence of winter and summer range for the bald eagle. Bald eagle habitat is located north of the Study Area within the Big Thompson River corridor and is also associated with lakes and reservoirs near the Study Area (Figure 4). Winter forage areas are located approximately 0.5 mile northwest (Boedecker Reservoir) and approximately 1.25 mile north (Big Thompson River corridor) of the proposed Project. The nearest mapped nest is located approximately one mile southeast of the Study Area.

The bald eagle is no longer federally listed; however, it is a state species of special concern in Colorado, and is protected under the Bald and Golden Eagle Protection Act (BGEPA) and the Migratory Bird Treaty Act (MBTA). Colorado Parks and Wildlife (CPW) recommends no surface occupancy within 1,320 feet (0.25 mile) of an active bald eagle nest site, and the recommended buffer for human encroachment is 2,640 feet (0.5 mile) from a bald eagle nest. The proposed Project would not impact any known bald eagle habitat or nest sites.

Migratory Bird Treaty Act

The MBTA (16 United States Code 703-712) makes it unlawful to take any migratory bird, or any part, nest, or eggs of a migratory bird. The list of migratory birds is long and covers virtually all birds in Colorado. The USFWS is responsible for implementing the MBTA.

No birds were observed during the site reconnaissance conducted in March and April of 2012, or the T&E survey performed during August 2012. Larimer County GIS data document the occurrence of foraging areas for the great blue heron and osprey (Figures 5 and 6, respectively). Foraging areas are located approximately 0.5 mile northwest (Boedecker Reservoir), approximately 0.5 southeast (Ryan Gulch Reservoir), and approximately 1.25

mile north (Big Thompson River corridor) of the Study Area. The nearest osprey foraging area is located more than a mile to the southwest at Lon Hagler Reservoir. Larimer County GIS data document the occurrence of habitat areas for snow geese and white pelican (Figures 7 and 8, respectively). The Study Area is located in a winter range and foraging area for snow geese. The nearest foraging areas and overall range for the white pelican are located approximately 0.5 mile northwest (Boedecker Reservoir) and approximately 0.25 southeast (Cattail Ponds). An overall range area for the white pelican is also located approximately 1.25 mile north (Big Thompson River corridor) of the Study Area.

Construction activities for the West Main project are proposed to begin on approximately May 1, 2013, and operation of the replacement facility would begin during the fall/winter season of 2013. The regulator station construction could run concurrently with natural gas pipeline construction. Long-term surface disturbance associated with the Estes Park Regulator Station includes the 0.516 acre permanent easement. The 2.899 acre of permanent easement and 1.412 acre of temporary easement for the pipeline within the Dakota Glen PUD would also incur surface disturbance during construction activities in trenched areas, as well as at boring entry/exit locations. The temporary use area for Project construction would cause temporary surface disturbance to 3.510 acres of the PUD.

Construction effects would include construction noise and removal of vegetation (much of which is non-native based on field reconnaissance). No exterior lighting would be used during construction or operation of the proposed Project. Construction likely would affect wildlife movement patterns only temporarily, and no permanent effects to wildlife life cycle functions would occur. A raptor nest survey will be performed in spring 2013 prior to the initiation of construction activities, and construction crews would observe applicable CPW buffers and timing restrictions.

II.4 Natural Areas Identified in the City of Loveland Natural Areas Inventory Study

The July 2008 Update: City of Loveland Natural Areas Sites was reviewed to determine if the proposed Project would affect designated natural areas. Natural areas are defined as undeveloped lands containing potential natural values such as wildlife habitat, plant diversity, and wetlands. According to the July 2008 Update map, the proposed Project is located adjacent and partially within Site 51 as listed in the July 2008 update. This site is described as follows in the Update:

> ***SITE 51—LAKES NW OF WILSON AVE. AND 14TH ST. SW.*** *Site 51 is the upper portion of a large wetland drainage. The site contains two lakes with residential development to the east. Portions of the shorelines contain narrow fringes of cattails. The western lake appears turbid and has several patches of algae. The poor water quality in this lake may be due to runoff from adjacent agricultural lands. The narrow fringe of cattails will contribute to water quality improvement, however, it's likely that the amount of*

> *wetlands present in the lakes is too small to make a significant difference. Areas of wetlands should be expanded where possible. Existing cattails should be thinned to prevent overgrowth, which would create mosquito habitat. Native trees and shrubs should be established along the shorelines to improve songbird habitat. Runoff from adjacent fields and residential areas should be monitored to determine long-term effects to the aquatic environment. The DOW notes that these lakes are frequently used by pelicans and a variety of ducks. Raptors also perch in the cottonwoods west of the site. (City of Loveland Natural Areas Sites, July 2008 Update).*

The Update ratings table classifies Site 51 with a medium enhancement potential and notes that the site is inactive due to development and preservation. Numerical ratings are further discussed in Section III.

The proposed Project would be constructed entirely outside the delineated wetland areas as discussed further in Section II.2. Construction of the proposed Project would not impact wetlands or other identified natural amenities including wildlife and vegetation as described in Sections II.1 and II.3. The identified amenities associated with Site 51 would be supported with the BMPs and proposed mitigation described in Section IV.

II.5 Physical Linkages to Other Natural Areas or Open Spaces

The proposed Project is located near wetlands, a lake, and surrounding open areas that provide a link with the Home Supply Ditch located along the northern edge of the PUD property. The irrigation ditch links Boedecker Lake with the Cottonwood Natural Area and the Big Thompson floodplain corridor to the north. The wetland, lake, and surrounding open area provide a link with an adjoining drainage area to the south which also adjoins a rural area of Larimer County including a city and county open space (Lon Hagler SWA) and a county conservation easement (Lazy J Bar S CE).

The proposed regulator station would be constructed entirely within a small portion (0.516 acre) of the linkage area and would not impact the ability of the overall area to function as a physical linkage. The regulator station facility would not be fenced, and would not cut-off the greater open area that includes the wetlands, trees, and lake. The pipeline would be constructed entirely underground and would not impact the physical linkage during operation of the Project. Construction BMPs and mitigation are described in Section IV.

II.6 Existing Drainage Patterns and Floodway and Flood Fringe Boundaries

There are no floodplains or floodways in the Study Area and the Study Area does not have a perennial flowing stream system. The existing Study Area wetland and lake system has been reworked as part of the development of the Dakota Glen PUD. The general landscape slopes very shallowly to the northeast and includes a regional northeast-trending drainage and a more local east-trending drainage inlet to the lake. The regional drainage is associated with

the wetland and lake that are a continuation of drainage features located across SW 14th Street SW to the south/southwest. The wetland (Wetland #4 on Figure 1, Attachment 2) associated with the regional drainage is a depressional wetland in an area that was formerly inundated by a man-made lake. The wetland appears to be supported by seasonal inundation and/or near-surface groundwater. During the wetland survey date (August 20, 2012), no standing surface water was evident in the Study Area wetlands. Surface water was present in the lake and in Home Supply Ditch further to the north, outside the PUD boundary.

The drainage inlet to the lake is also associated with a wetland (Wetland #1, on Figure 1 Attachment 2) located along the west side of the lake. The lake outlet drains to the north into the Home Supply Ditch. Drainages outside the Study Area trend northeast toward an eventual junction with the Big Thompson River northeast of the Study Area. The natural gas pipeline would be bored under: a wetland along the western edge of the lake associated with the drainage inlet to the lake, and a storm drain along the northern PUD boundary (see Figure 2).

II.7 Irrigation Canals and Ditches

The proposed Project would not impact irrigation canals or ditches. A regional drainage that trends northeast is located immediately east of the proposed regulator station site as discussed in Section II.6. The proposed natural gas pipeline would be bored under the local drainage inlet to the lake as shown in Figure 2. The George Rist Ditch is located approximately 0.4 mile south of the site, and the Home Supply Ditch that originates at Boedecker Reservoir is located just north of the PUD northern boundary. The Home Supply Ditch would be crossed by the natural gas pipeline outside the PUD within the Wilson Avenue right-of-way.

II.8 Water Courses

The proposed Project is not located in the immediate vicinity of any significant natural water courses. Drainage and surface water features in the Study Area are discussed in Section II.6.

II.9 Existing Slopes over 20%

Slopes in the general Study Area are shown on Figure 9. None of the existing slopes in the Study Area or immediate surrounding area is greater than 20 percent.

II.10 Soils Having a High Water Table or Being Highly Erodible

Soil erodibility in the Study Area is shown on Figure 10. No highly erodible soils occur in the Study Area or the surrounding area. A high water table is not indicated according to the wetland delineation. The proposed regulator station is adjacent to delineated wetlands as further discussed in Section II.2. The proposed natural gas pipeline would be bored under wetlands and the drainage inlet area to the lake.

II.11 Land Formerly Used for Landfill Operations or Hazardous Industrial Use

The proposed Project is located within the Dakota Glen PUD. There is no available information to suggest that a landfill or industrial activities occurred in the Study Area. Any requirement for additional information regarding potential landfill operations or hazardous industrial use was waived by the City of Loveland during a meeting held between PSCo and city representatives on January 31, 2013.

II.12 Fault Areas

As shown on Figure 11, the proposed Project is located in an area of low geologic hazard. A geotechnical study was performed during December 2012 and included a boring at the proposed regulator station site (see Attachment 5). According to the site boring, shale bedrock is present approximately 12 feet below ground surface, and is overlain by clay and clayey sand. The geotechnical study provides specific recommendations for design of the facility in relation to the site soil and bedrock information. The geotechnical study does not indicate the presence of soil or geologic conditions that would prevent or seriously affect construction or operation of the regulator station facility or pipeline.

II.13 Aquifer Recharge and Discharge Areas

The Study Area is not located within or adjacent to an important aquifer recharge or discharge area. Site drainage is discussed in Section II.6. The area shallow aquifer likely is affected primarily by local topographic features as well as the characteristics of the uppermost unconsolidated soil and geologic strata as described in Attachment 5. Groundwater was encountered in the Study Area in December 2012 at approximately 8 feet below ground surface at an interface with a clayey sand layer.

II.14 Operating High Water Line (as defined in Loveland's Open Lands Plan, pg. 25)

As discussed in Section II.6, the Study Area is not in the vicinity of floodplains or floodways. In addition, the proposed Project would not require water or water facilities for its operation.

III. Assessment of Potential Impacts of Proposed Development

As discussed in Section II, the proposed Project would not adversely affect any environmentally sensitive resources. Protection and mitigation measures that will be implemented during construction and operation of the proposed Project are described in Section IV.

The Study Area is located adjacent to and partially within the Site 51 natural area. The Update ratings table classifies Site 51 with a medium enhancement potential and notes that the site is inactive due to development and preservation. Numerical ratings range from low (1) to high (10). In general, the ratings indicate that Site 51 is characterized by medium quality plant and wildlife habitat. The potential for occurrence of raptors is lowest with a rating of 3, while the potential for waterbirds is highest with a rating of 6.

The ratings for Site 51 are as follows:

- Overall Habitat: 5
- Wetland: 4
- Animal Diversity: 4
- Plant Diversity: 4
- Songbird: 4
- Raptor: 3
- Waterbird: 6
- Mammal: 4
- Herptile: 4

As previously discussed, the Study Area has been partially developed for residential use. Open areas surrounding the lake and wetlands have been landscaped. The proposed Project would avoid impacts to wetlands and potential sensitive or T&E animal and plant species. Prairie dogs are not present in the Study Area, and other wildlife was not observed during site biological reconnaissance, or field surveys. The role of the area as a north/south wildlife linkage would not be affected. Mature vegetation would not be disturbed and therefore, adverse effects to songbirds are not expected. No adverse effects to water birds are indicated because the lake and wetlands would not be disturbed by the proposed Project.

IV. Recommendation: Protection Measures, Mitigation, Enhancement

Major activities involved in Project construction would include surveying, BMP installation, vegetation clearing, staging materials, grading, installation of the regulator station and natural gas pipeline facilities including the building and gravel maintenance parking area, pressure-testing, site cleanup, revegetation, and revegetation monitoring.

IV.1 Water Quality and Hydrology

PSCo would obtain a Storm Water Permit for Construction Activities from the Colorado Department of Health and Environment (CDPHE) prior to construction. The drainage plan for the proposed Project would consist of a SWMP and BMPs for the control of stormwater runoff during the construction period. Measures that would be employed to protect surface water and control erosion are provided in Attachment 6.

All wetlands adjacent to the proposed Project easements would be flagged/marked prior to the initiation of construction activities to ensure that these features are not disturbed during construction activities. Construction BMPs would be implemented to avoid altering wetland hydrology, existing natural vegetation, and wetland functions. Waterways and drainages would be protected with BMPs described in Attachment 6.

IV.2 Vegetation

Effects to vegetation from the proposed Project would be permanent for the regulator station facility area (gravel area and aboveground facilities and building) as shown in Figure 3. There would also be temporary effects associated with construction in the easement area of the regulator station and pipeline as shown in Figure 2. The proposed Project would not permanently or adversely affect native vegetation communities, and no unique or high-quality vegetation or riparian communities have been identified within the easements that would be used for the proposed Project. Construction equipment would disturb existing vegetation within the proposed Project easements. BMPs would be implemented as described in Attachment 6 to minimize or mitigate soil erosion and to revegetate any areas disturbed during construction of the proposed Project. PSCo also would follow the Weed Management and Revegetation Plan provided in Attachment 7.The Plan includes a preconstruction survey for noxious weeds and follow-up monitoring to ensure revegetation is successful. A seed mix consisting of drought-tolerant native grasses would be included in the SWMP for the revegetation of disturbed areas surrounding the graveled area and aboveground facilities and building, as well as the underground natural gas pipeline as shown in Figure 2. Construction activities would not take place on any areas outside the proposed Project easements and the temporary staging area as shown in Figure 2.

The proposed regulator station building would be designed and constructed to match the existing Dakota Glen PUD pump station.

IV.3 Air Quality

PSCo would comply with state requirements for controlling dust emissions during the construction of the overall West Main project. Because the size of the construction area for the overall West Main project is greater than 25 acres, PSCo would be required to obtain a General Construction Permit from CDPHE and prepare a Fugitive Dust Plan and Air Pollution Emission Notice (APEN). The Fugitive Dust Plan would be completed and the APEN would be obtained prior to the initiation of construction activities.

Construction activities, such as vehicles driven over unprotected ground, general disturbance to vegetated areas, or soil stockpiles susceptible to winds, can cause fugitive dust. During construction, PSCo would implement dust control measures such as speed limits for construction vehicles; water application to disturbed areas, dirt access roads, and stockpiles; erosion control techniques; and revegetation of ground disturbance following construction with a drought-tolerant seed mixture. Water would be used daily, or as needed, for dust suppression and soil compaction.

IV.4 Waste Management

Construction, operation, and maintenance activities involving PSCo or its construction contractor bringing any hazardous materials onto the Project site would comply with applicable federal, state, and local laws and regulations regarding the use of hazardous substances. In its contract with the construction contractor, PSCo would require that the contractor comply with applicable laws.

Fueling requirements would be met prior to arrival at the construction site. No bulk fuel storage would occur on site. Fueling vehicles would be equipped with spill kits and fire extinguishers and personnel would be properly trained in spill prevention, control, and countermeasures. No vehicle maintenance would occur on site, and appropriate BMPs would be utilized and documented if on-site maintenance becomes necessary.

Construction and operation and maintenance activities would follow BMPs for the management of wastes to avoid and minimize impacts from potential spills or other releases to the environment. A summary of BMPs to protect water resources from potential contamination is provided in Attachment 6. Adverse impacts from the release of construction or operations wastes are not expected.

IV.5 Emergency Procedures

PSCo owns and operates an extensive network of natural gas pipelines that delivers natural gas to customers in residential and business areas and to local gas distribution companies. Providing safe and reliable natural gas requires PSCo to have quick access to maintain or repair pipelines, related facilities, and ROWs.

In addition, PSCo adheres to the pipeline safety regulations established in 49 CFR Part 192 by the DOT (U.S. Department of Transportation) to ensure public protection and to prevent accidents and failures. Specifically, PHMSA (Pipeline and Hazardous Materials Safety Administration) is the federal authority for ensuring the safe, reliable, and environmentally sound operation of pipeline transmission systems under the PIPES Act (Pipeline Inspection, Protection, Enforcement and Safety Act of 2006).

The proposed Project is located in Loveland's Fire Protection District. The fire district would be notified of construction activities when they commenced, and on-site personnel would not be required during construction or operation of the pipeline.

IV.6 Wildlife

A raptor nest survey will be performed during the spring of 2013 prior to the initiation of construction activities. All wetlands and other sensitive wildlife habitat adjacent to the proposed Project easements will be flagged/marked prior to the initiation of construction activities in order to ensure that these features are not disturbed during construction activities.

V. References

CNHP (Colorado Natural Heritage Program). 2011. ArcMap Geodatabase., Statewide Elements by Quad, Preble's Meadow Jumping Mouse. <http://www.cnhp.colostate.edu/download/gis.asp#element>. Accessed March and April 2012.

City of Loveland 2008. City of Loveland Natural Areas Sites—July 2008 Update. Prepared by Cedar Creek Associates for the City of Loveland. July 2008.

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
DENVER REGULATORY OFFICE, 9307 S. WADSWORTH BLVD
LITTLETON, COLORADO 80128-6901

May 22, 2012

Mr. Patrick Murphy
Tetra Tech
1099 18th Street
Suite 580
Denver, CO 80202

RE: Xcel West Main 2012 Natural Gas Project
Corps File No. NWO-2012-1293-DEN

Dear Mr. Murphy:

Reference is made to the above-mentioned project on behalf of Public Service Company of Colorado to directional bore 76 aquatic sites consisting of streams, wetlands and ditches. This work is located in Larimer and Weld Counties as identified in your May 18, 2012 report to Mr. Terry McKee of my office.

This project has been reviewed in accordance with Section 404 of the Clean Water Act under which the U.S. Army Corps of Engineers regulates the discharge of dredged and fill material, and any excavation activity associated with a dredge and fill project in waters of the United States.

Based on the information provided, a Department of the Army (DA) Permit will not be required for work on this project. Although a DA Permit will not be required for the project, this does not eliminate the requirement that other applicable federal, state, and local permits be obtained as needed.

If there are any questions call **Mr. Terry McKee** of my office at **(303) 979-4120** and reference **Corps File No. NWO-2012-1293-DEN**.

Sincerely,

Timothy T. Carey
Chief, Denver Regulatory Office

tm

2707 W. EISENHOWER, #106 LOVELAND, CO 80537 • 970.663.1897 • WWW.GLENCOMPANIES.COM

May 6, 2013

Kerri Burchett
City of Loveland Development Services Department
Current Planning Division
500 E. 3rd Street, Suite 310
Loveland, CO 80537

Re: Dakota Glen PUD Amendment—Condition of Approval, Item 1

Dear Ms. Burchett:

I have met with the Public Service of Colorado (PSCo) project team to address one of your recommended conditions of approval for the Dakota Glen First Amendment application and discussions held at the neighborhood meeting on April 24, 2013. The proposed condition states:

1. *Prior to approval of the Final Development Plan Amendment, a letter of approval from the Dakota Glen Homeowner's Association shall be submitted to the Current Planning Division approving the building materials, colors, and site improvements. The Final Development Plan shall reflect all changes agreed to by Public Service.*

As the managing member of Glen Development, LLC and President of the Dakota Glen PUD Homeowners Association, I have successfully negotiated the Estes Park Regulator Station building design and screening of aboveground gas piping with PSCo. The details of the building and screening materials are identified in Table 1, and a revised photo simulation of the Estes Park Regulator Station is attached.

Table 1: Estes Park Regulator Station Facility Details

Parameter	Control House	Aboveground Pipeline	Fence	Bollard
Use	Controls the flow of gas from higher to lower pressures as the gas would move from the 16-inch transmission pipeline to smaller lateral and distribution pipelines	Transmission of natural gas	Screening of aboveground gas piping	Entrance Gate
Quantity	1	2	2 locations	2
Height	~12 feet (similar roof pitch to existing pump house)	6.1 feet; 6.5 feet	6-feet	3.5 feet
Length	24 feet	17 feet; 11 feet	South Fence: 108-feet East Fence: 56-feet	N/A
Width	22 feet	18 feet; 6.5 feet	South face: 32-feet East face: 24-feet	N/A

Kerri Burchett
City of Loveland Planning Department

2107 W. EISENHOWER, #306 LOVELAND, CO 80537 - 970.667.1397 - WWW.GLENCOMPANIES.COM

Table 1: Estes Park Regulator Station Facility Details

Parameter	Control House	Aboveground Pipeline	Fence	Bollard
Size	528 square feet	6.5-inch-diameter pipeline; footprints are 306 square feet; 71.5 (377.5 square feet total)		6.5 inch diameter
Architectural Design	Similar in character to existing pump house located north of the gas regulator station site	Painted steel fence, 6 feet	Similar in character to Dakota Glen subdivision fence guidelines	N/A
Exterior Materials	Walls: Split face concrete block Windows/Openings: Glass block/metal louvers Roof: Metal shingles	Painted steel	Ornamental Steel	Painted steel
Color	Walls: Teal blue, or similar to match hue of existing pump house Trim: Cream, to match hue of existing pump house Roof: Warm gray, to match hue of existing pump house	Medium/light tan	Medium/light tan	Medium/light tan

I accept the Estes Park Regulator Station building and fence design, materials, colors, and site improvements as set forth in Table 1 and attached photo simulation, and I consent to the recordation of any information pertaining thereto.

In addition, PSCo and I will negotiate funding for landscaping improvements within the Dakota Glen PUD near the Estes Park Regulator Station. PSCo will provide funding for a portion of the landscaping improvements along 14th Street Southwest and along the west side of the proposed Estes Park Regulator Station and pipeline easement as conceptually shown on Sheets 7 and 8 of the Dakota Glen PUD First Amendment. Selection of plant species has not been finalized due to recent experience with the poor quality of soils and the introduction of the PSCo gas facility since the original PUD was prepared. A qualified arborist will be used to select species best suited for the soil conditions and installation. Dakota Glen PUD would be responsible for installation and maintenance of all landscaping improvements. PSCo would be responsible for construction and operation and maintenance of all facilities within the Estes Park Regulator Station site and pipeline easement. I approve this agreement on behalf of the homeowners within the Dakota Glen PUD.

2707 W. EISENHOWER, #106 LOVELAND, CO 80537 • 970.663.1897 • WWW.GLENCOMPANIES.COM

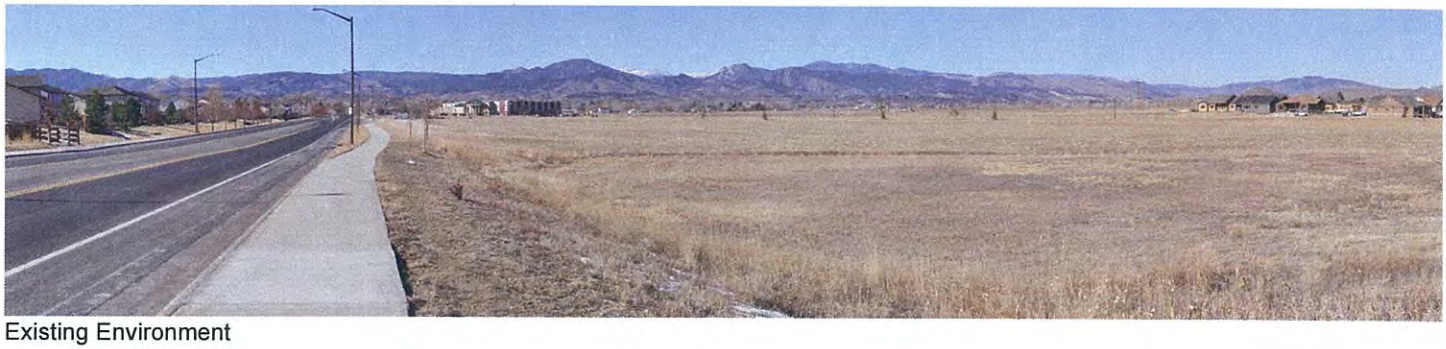
Sincerely,

Glen Development, LLC

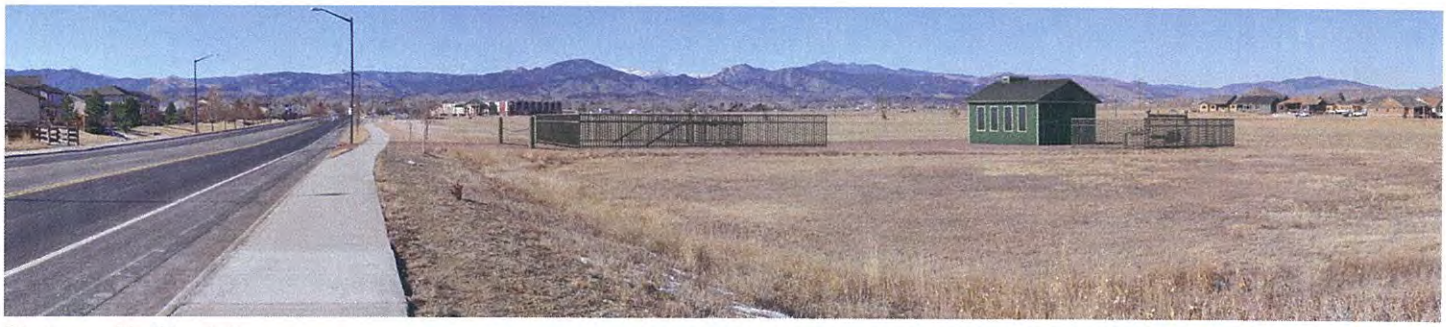
Scott Bray
Homeowners Association President, Dakota Glen Planned Unit Development
Office: (970) 663-1897

Attachment:

1. Photo simulation of Estes Park Regulator Station



Existing Environment



Photographic Simulation

Parameter	Control House	Aboveground Pipeline	Fence	Bollard
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Length	24 feet	17 feet; 11 feet	South Fence: 108-feet East Fence: 56-feet	N/A
Width	22 feet	18 feet; 6.5 feet	South face: 32-feet East face: 24-feet	N/A
Size	528 square feet	6.5-inch-diameter pipeline; footprints are 306 square feet; 71.5 (377.5 square feet total)		6.5 inch diameter
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Disclaimer: Detailed design drawings to be submitted with building permit applications. Design drawings will substantially comply with the details included on this drawing.

Existing Environment

Photographic Simulation

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Disclaimer: Detailed design drawings to be submitted with building permit applications. Design drawings will substantially comply with the details included on this drawing.

927 Prism Cactus Circle
Loveland, CO 80537
May 7, 2013

City of Loveland Planning Commission
500 East Third Street
Loveland, CO 80537

Dear Commissioners:

I thank you for the opportunity to comment on Xcel Energy's proposal to construct, operate, and maintain the Estes Park Regulator Station in the Dakota Glen neighborhood.

Dakota Glen is a new housing development composed of approximately 50% open space and with homes designed to enjoy the views of the HOA's natural areas and of the wildlife that routinely lives and is found traveling through the area.

Xcel Energy has proposed to destroy the views and habitat by creating an industrial complex right in the middle of our southern view and at the entrance to our community. This industrial area is absolutely inconsistent with the neighborhood, seriously damages the value of existing homes and destroys the very concept of a natural open space upon which homeowners relied upon when investing $400,000 to $500,000 in Dakota Glen homes.

Let us examine why Xcel Energy finds it necessary to create such a blight on a high value Loveland neighborhood. Xcel contends that it must build a regulator station in the area because they choose to install a pipeline serving Estes Park, not Loveland, with equipment incapable of safely handling the pressure in the Loveland line. Now Xcel contends that Loveland residents must endure an industrial complex in a residential neighborhood because they saved money installing equipment of lesser capability. I ask the Commission, Is it right for Dakota Glen residents to suffer the consequences of Xcel's money saving initiatives? Of course not; however, that is the proposal you have before you today.

Because of Xcel's choices, it may be necessary to have a regulator station in the proximity of the pipeline that now ends on the south side of 14th St. SW. (see photo) in the Blackbird Knolls neighborhood. Now I'm sure the residents of Blackbird Knolls don't want an industrial regulator station in their neighborhood any more that the residents of Dakota Glen. However, playing favorites by allowing Xcel to blight Dakota Glen in favor of Blackbird Knolls is unacceptable. It is also unacceptable to force the blight at the entrance to Dakota Glen when the prior planned location of the regulator station at the corner of 14th St SW and Wilson was rejected because the residents objected.

What is the answer to this problem created by Xcel? First and foremost, the answer is to move the industrial facility out of a residential neighborhood or at a minimum to the very outskirts of a residential area. Here we have a number of choices. The regulator station could be

co-located at the corner of 14th and Taft with Xcel's existing facility. (see photos) Yes, this will require Xcel to lay some additional pipe, but this is far more appropriate solution to Xcel's choosing undersized, less expensive equipment than is requiring any neighborhood to assume the cost through reduced home values. This option would also allow the line to run straight down Wilson, as it does throughout the remainder of its journey through Loveland, rather than taking a jog through Dakota Glen.

Further west of 14th lies the Calvary United Reform Church property located at 3901 14th St. SW. (see photo 3) This non-residential property is closer to the proposed location, does not rely on open space to supports views or property value, and would not suffer a significant negative impact from the regulator station. In fact, I wouldn't be the least bit surprised if the church wasn't interested in leasing a portion of its land to Xcel to help fund its operations.

A much less desirable option is to move the regulator station to the edge of the subdivision and away from our entrance, open space, wildlife area and natural area views. There are several options, but I believe the best is at the southwest corner or the northeast corner of the development. Either of these choices will reduce, but not eliminate the very negative impact of an industrial zone at the entrance to a high dollar residential neighborhood.

There are many other options. I only sight the above options as examples where respecting the rights of Loveland citizens over Xcel profits can easily lead to an acceptable, if not perfect solution.

I ask the commission to once again look at the photos of the existing Xcel facility similar to that proposed for Dakota Glen. Now envision a facility approximately twice this size[1] and ask yourself if this is what we want at the entrance to our Loveland neighborhoods. Please ask yourself if this is how we want to treat open space within the city. Please ask yourself if this is an appropriate use of residential space. Please ask yourself if Loveland residents should suffer the consequences of such an eye sore simply so Xcel can profit. Obviously you must answer no to each question and deny Xcel's request. However, if you feel compelled to bring this blight upon the citizens of Loveland, then I must ask that you require significant camouflage to mitigate the damage.

Xcel acknowledged at the neighborhood meeting that they have existing stations located completely underground. They stated that they didn't want to install the proposed Dakota Glen station underground because they have problems with vault corrosion and perhaps the accumulation of natural gas. Neither of these concerns is close to a valid reason for not hiding the proposed industrial complex underground. Why, because Xcel can easily overcome the stated concerns by using proper materials (my basement doesn't corrode) and by eliminating gas leaks - something we don't want regardless of where the station is located, and by including proper ventilation.

Another option is to install the equipment within a structure in conformance with those existing within the neighborhood. Again Xcel objected to this option because once every seven

[1] The facility size was estimated by counting 8 foot sections of fence. It is approximately 64' X 30' using this method. The proposed Dakota Glen site is 100' x 150'.

years they need to run an "inspection pig" though the line to verify its condition. They "need" this pig to exit the pipe 4 feet above ground so they can have easy access with a boom truck. Again, this is an unsupported objection since the end of the pipe could protrude a very short distance through the wall of the structure much like a fire hose connection point or stylish access doors could easily be installed to allow the necessary access 1 day every seven years. It is noted that the citizens of Loveland and Dakota Glen will see this industrial, above ground regulator station every minute of every day if the current plan is approved. You cannot let that happen.

During the neighborhood meeting attempting to camouflage the industrial complex with a fence, foliage and/or a berm was discussed. These options are simply unrealistic because of the proposed location of the station. Xcel's proposal is to locate the station in an area approximately 5 feet below the surface of the road. Add to this the four plus feet the pipes are proposed above ground and the height of a person walking, biking, or driving along 14th St. SW and it is easy to see any camouflage would need to be a minimum of 12 feet high. Since privacy fences are not allowed in the development to protect the views of our open space and since 12 foot high berms are totally out of place in the area and since 12 foot high hedges simply don't exist in the area no proposed method of camouflage even comes close to hiding the industrial complex proposed by Xcel. Additionally, Xcel proposed an open to 14th St. SW entrance blocked from view by bollards and a chain. In other words, no proposal to block the view from the street within approximately 50 yards of the community's entrance is even proposed. Obviously, property values will fall with Xcel's industrial complex in full view of any property buyer entering the neighborhood.

Camouflaging brings to light another concern and that is vandalism. Please note that Xcel has found it necessary to surround their existing facility at 14th and Taft with a very tall chain length fence topped with barbed wire. While these fences are prohibited in the community, I must wonder what security concerns Xcel had when determining that this expensive enclosure was warranted and what security concerns will Dakota Glen be subjected to if this complex is installed.

The second issue is with tunneling under Dakota Glen open space rather than following Wilson Street as the rest of the pipeline does. Xcel stated that their engineers studied the area and are sure that there will be no negative impact to the surface area, wetland, pond or dam. If Xcel is allowed to deviate through Dakota Glen then I suggest that Xcel be required to post a bond sufficient to cover the expected future costs of repairing any damage occurring as a result of the pipeline. This bond should run concurrent with the life expectancy of the pipe and 20 years beyond to account for the eventual collapse of the pipe.

Finally, there were comments at the public meeting that insinuated that the developer owned the area and could approve whatever he chooses. This is simply not the case. The developer owns an ever diminishing percentage of the development and as the developer he rightly has the opportunity to maximize his profit. However, until the Dakota Glen is completed the developer is also in control of the HOA, which actually owns the open space. The HOA Board has a fiduciary duty to all homeowners to protect and where possible improve the value of the community. This fiduciary duty supersedes the developer's right to maximize short term

profits if maximizing developer profits has a detrimental impact on the long term value of the community. In this case, the developer must act to protect the long term value of the community.

Additionally, this issue before the Commission is one of zoning. The developer has a right to express his opinion regarding zoning proposals; however, the Commission's duty is to protect the community and in doing so must weigh the concerns of the citizens it represents much more heavily than the profit motive of a business interest.

I thank you for your time and ask that you choose to protect Dakota Glen homeowners from the blight proposed by Xcel Energy.

Sincerely,

Rick & Tammy Mathis
927 Prism Cactus Circle
Loveland, CO 80537

Note:

This letter was original written by Michael J. Carroll and was so well done and which expressed our views so well that we chose not to write our own letter. Please consider this copy of Mr. Carroll's letter as our opinions and objections to this project for the record as well.

Kerri Burchett

From: Michael Carroll <mandjcarroll@msn.com>
Sent: Monday, May 06, 2013 12:22 PM
To: Kerri Burchett
Subject: Re: Dakota Glen Proposed Zoning Change Objection
Attachments: Regulator Stations Objection Followup, May 6, 2013.docx

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Thank you Ms. Burchett:

I have attached a follow-up letter to the Commission addressing the conceptual drawing of a fence surrounding the Xcel industrial complex that I was shown this weekend by the Developer's on-site realtor.

Sincerely,

Michael Carroll

photo 1, Fence from road elevation

Fence example 2

Fence Example 3

Fence Example 4

----- Original Message -----
From: Kerri Burchett
To: 'Michael Carroll'
Sent: Monday, May 06, 2013 8:39 AM
Subject: RE: Dakota Glen Proposed Zoning Change Objection

Good morning, Michael.

I received your letter of objection to the Dakota Glen PUD Amendment and will include it as an attachment to the Planning Commission staff report.

Please let me know if you have any questions.

Kerri Burchett, AICP
Principal Planner
City of Loveland
(970) 962-2566

Kerri.Burchett@cityofloveland.org

These photos will be available on SkyDrive for 30 days. To learn more about SkyDrive, click here.
To share high quality pictures with your friends and family using MSN Photo E-mail, join MSN.

3402 Red Orchid Ct.
Loveland, CO 80537
May 6, 2013

City of Loveland Planning Commission
500 East Third Street
Loveland, CO 80537

Dear Commissioners:

I am writing as a follow-up to my letter of May 3, 2013, objecting to the installation of the proposed Xcel Estes Park Regulator Station at the entrance to the Dakota Glen residential neighborhood. Since that time the developer's representative has shown me and others in the neighborhood an artist's conception of the proposed Regulator Station obscured by a steel fence.

While I applaud the artist, the picture does not match the reality of a steel fences ability to obscure anything or the location of the above ground 8" and or 16" gas piping. Steel fences are the allowable type of fencing in Dakota Glen. These fences, according to the "Design Guidelines for Dakota Glen," paragraph 5.5 is limited to 60" in height. Residents choosing these fences as well as those who have successfully lobbied to eliminate the acceptability of cedar fences have done so because they do not obscure the view – either from the home out or from outside in.

As noted in my earlier letter, the proposed site for the Xcel industrial complex is approximately 5 feet below the grade of both roads next to the proposed site. As you can see from the attached picture 1 of a lovely Dakota Glen home with an approved steel fence, when the area surrounded by the fence is below grade, nothing is obstructed. Photos, 2-4 are also of approved Dakota Glen steel fences taken from ground level. Please note that contrary to the artist conceptual drawing; these fences do nothing to obstruct the content of the yard.

Commissioners, I ask that you not be deceived by the drawings and that your decision is based on the facts presented in the attached actual photographs.

If for some reason you choose Xcel and the developer over the citizen of Dakota Glen and if you choose their proposed steel fence, I implore you to, at the very least, specify exactly what is required and who is liable for the initial construction costs and ongoing cost of maintaining the 100' x 150' proposed complex, the fence, equipment and grounds within. For example, the fences depicted in the attached photographs appear to have a 4" gap between the spindles in accordance with the Design Guidelines that designate a maximum 4" gap. Because this gap clearly obscures nothing, a much tighter gap, perhaps 1 inch, must be mandated to match the artist's conceptual representation.

Initial and ongoing costs are another significant concern from Dakota Glen residents. At the neighborhood meeting hosted by Ms. Burchett for the City of Loveland, the developer

insisted that he be responsible for the ongoing maintenance. Unfortunately, the developer is also the HOA President so it is impossible to know who will be responsible for the ongoing maintenance of the grounds and fence. If it is Xcel, as it should be, their responsibilities must be clearly laid out in any approval. If it is the developer, his responsibilities must be clearly defined as well as the length of his obligation since his relationship with the community will be relatively short lived. If it is the homeowners who will suffer a reduction in property values while Xcel and the developer profit, I can only ask why.

In conclusion, I ask the commission to carefully consider any conceptual renderings of the proposed site, the accuracy and completeness of the renderings and the motivation of the individuals supporting the degradation of a once beautiful open space and neighborhood before granting approval of the Estes Park Regulator Station.

Sincerely,

Michael J. Carroll

Attachment:
Photos of the approved fences in Dakota Glen

Kerri Burchett

From: Michael Carroll <mandjcarroll@msn.com>
Sent: Friday, May 03, 2013 12:22 PM
To: Kerri Burchett
Cc: Mike and Judy Carroll
Subject: Dakota Glen Proposed Zoning Change Objection
Attachments: Regulator Station Objection.docx

msn Photo E-mail View slideshow | Download images

Dear Ms. Burchett:

Thank you for conducting the public meeting to discuss the Xcel proposal to install a massive Regulator Station within the residential Dakota Glen PUD. I have attached my written objection to the proposal and request that you provide my objection to the Planning Commission for consideration during their May 13, 2013 meeting. If you have any questions or if I can provide additional information, please feel free to telephone me at 970-776-9258.

Please confirm receipt of this email and attachments via return email.

Current termination point of gas line

Calvary Church site 1

Calvary Church Site 2

Xcel site @ 14th & Taft, photo 1

Xcel site @ 14th & Taft photo 2

Xcel site @ 14th $ Taft photo 3

proposed station site looking north

Dakota Glen open space

Dakota Glen entrance

Dakota Glen entrance from proposed site

Sincerely,

Michael J. Carroll

These photos will be available on SkyDrive for 30 days. To learn more about SkyDrive, click here.
To share high quality pictures with your friends and family using MSN Photo E-mail, join MSN.

PC ATTACHMENT 5

3402 Red Orchid Ct.
Loveland, CO 80537
May 3, 2013

City of Loveland Planning Commission
500 East Third Street
Loveland, CO 80537

Dear Commissioners:

I thank you for the opportunity to comment on Xcel Energy's proposal to construct, operate, and maintain the Estes Park Regulator Station in the Dakota Glen neighborhood.

Dakota Glen is a new housing development composed of approximately 50% open space and with homes designed to enjoy the views of the HOA's natural areas and of the wildlife that routinely lives and is found traveling through the area.

Xcel Energy has proposed to destroy the views and habitat by creating an industrial complex right in the middle of our southern view and at the entrance to our community. This industrial area is absolutely inconsistent with the neighborhood, seriously damages the value of existing homes and destroys the very concept of a natural open space upon which homeowners relied upon when investing $400,000 to $500,000 in Dakota Glen homes.

Let us examine why Xcel Energy finds it necessary to create such a blight on a high value Loveland neighborhood. Xcel contends that it must build a regulator station in the area because they choose to install a pipeline serving Estes Park, not Loveland, with equipment incapable of safely handling the pressure in the Loveland line. Now Xcel contends that Loveland residents must endure an industrial complex in a residential neighborhood because they saved money installing equipment of lesser capability. I ask the Commission, Is it right for Dakota Glen residents to suffer the consequences of Xcel's money saving initiatives? Of course not; however, that is the proposal you have before you today.

Because of Xcel's choices, it may be necessary to have a regulator station in the proximity of the pipeline that now ends on the south side of 14th St. SW. (see photo) in the Blackbird Knolls neighborhood. Now I'm sure the residents of Blackbird Knolls don't want an industrial regulator station in their neighborhood any more that the residents of Dakota Glen. However, playing favorites by allowing Xcel to blight Dakota Glen in favor of Blackbird Knolls is unacceptable. It is also unacceptable to force the blight at the entrance to Dakota Glen when the prior planned location of the regulator station at the corner of 14th St SW and Wilson was rejected because the residents objected.

What is the answer to this problem created by Xcel? First and foremost, the answer is to move the industrial facility out of a residential neighborhood or at a minimum to the very outskirts of a residential area. Here we have a number of choices. The regulator station could be

co-located at the corner of 14th and Taft with Xcel's existing facility. (see photos) Yes, this will require Xcel to lay some additional pipe, but this is far more appropriate solution to Xcel's choosing undersized, less expensive equipment than is requiring any neighborhood to assume the cost through reduced home values. This option would also allow the line to run straight down Wilson, as it does throughout the remainder of its journey through Loveland, rather than taking a jog through Dakota Glen.

Further west of 14th lies the Calvary United Reform Church property located at 3901 14th St. SW. (see photo 3) This non-residential property is closer to the proposed location, does not rely on open space to supports views or property value, and would not suffer a significant negative impact from the regulator station. In fact, I wouldn't be the least bit surprised if the church wasn't interested in leasing a portion of its land to Xcel to help fund its operations.

A much less desirable option is to move the regulator station to the edge of the subdivision and away from our entrance, open space, wildlife area and natural area views. There are several options, but I believe the best is at the southwest corner or the northeast corner of the development. Either of these choices will reduce, but not eliminate the very negative impact of an industrial zone at the entrance to a high dollar residential neighborhood.

There are many other options. I only sight the above options as examples where respecting the rights of Loveland citizens over Xcel profits can easily lead to an acceptable, if not perfect solution.

I ask the commission to once again look at the photos of the existing Xcel facility similar to that proposed for Dakota Glen. Now envision a facility approximately twice this size[1] and ask yourself if this is what we want at the entrance to our Loveland neighborhoods. Please ask yourself if this is how we want to treat open space within the city. Please ask yourself if this is an appropriate use of residential space. Please ask yourself if Loveland residents should suffer the consequences of such an eye sore simply so Xcel can profit. Obviously you must answer no to each question and deny Xcel's request. However, if you feel compelled to bring this blight upon the citizens of Loveland, then I must ask that you require significant camouflage to mitigate the damage.

Xcel acknowledged at the neighborhood meeting that they have existing stations located completely underground. They stated that they didn't want to install the proposed Dakota Glen station underground because they have problems with vault corrosion and perhaps the accumulation of natural gas. Neither of these concerns is close to a valid reason for not hiding the proposed industrial complex underground. Why, because Xcel can easily overcome the stated concerns by using proper materials (my basement doesn't corrode) and by eliminating gas leaks - something we don't want regardless of where the station is located, and by including proper ventilation.

Another option is to install the equipment within a structure in conformance with those existing within the neighborhood. Again Xcel objected to this option because once every seven

[1] The facility size was estimated by counting 8 foot sections of fence. It is approximately 64' X 30' using this method. The proposed Dakota Glen site is 100' x 150'.

years they need to run an "inspection pig" though the line to verify its condition. They "need" this pig to exit the pipe 4 feet above ground so they can have easy access with a boom truck. Again, this is an unsupported objection since the end of the pipe could protrude a very short distance through the wall of the structure much like a fire hose connection point or stylish access doors could easily be installed to allow the necessary access 1 day every seven years. It is noted that the citizens of Loveland and Dakota Glen will see this industrial, above ground regulator station every minute of every day if the current plan is approved. You cannot let that happen.

During the neighborhood meeting attempting to camouflage the industrial complex with a fence, foliage and/or a berm was discussed. These options are simply unrealistic because of the proposed location of the station. Xcel's proposal is to locate the station in an area approximately 5 feet below the surface of the road. Add to this the four plus feet the pipes are proposed above ground and the height of a person walking, biking, or driving along 14th St. SW and it is easy to see any camouflage would need to be a minimum of 12 feet high. Since privacy fences are not allowed in the development to protect the views of our open space and since 12 foot high berms are totally out of place in the area and since 12 foot high hedges simply don't exist in the area no proposed method of camouflage even comes close to hiding the industrial complex proposed by Xcel. Additionally, Xcel proposed an open to 14th St. SW entrance blocked from view by bollards and a chain. In other words, no proposal to block the view from the street within approximately 50 yards of the community's entrance is even proposed. Obviously, property values will fall with Xcel's industrial complex in full view of any property buyer entering the neighborhood.

Camouflaging brings to light another concern and that is vandalism. Please note that Xcel has found it necessary to surround their existing facility at 14th and Taft with a very tall chain length fence topped with barbed wire. While these fences are prohibited in the community, I must wonder what security concerns Xcel had when determining that this expensive enclosure was warranted and what security concerns will Dakota Glen be subjected to if this complex is installed.

The second issue is with tunneling under Dakota Glen open space rather than following Wilson Street as the rest of the pipeline does. Xcel stated that their engineers studied the area and are sure that there will be no negative impact to the surface area, wetland, pond or dam. If Xcel is allowed to deviate through Dakota Glen then I suggest that Xcel be required to post a bond sufficient to cover the expected future costs of repairing any damage occurring as a result of the pipeline. This bond should run concurrent with the life expectancy of the pipe and 20 years beyond to account for the eventual collapse of the pipe.

Finally, there were comments at the public meeting that insinuated that the developer owned the area and could approve whatever he chooses. This is simply not the case. The developer owns an ever diminishing percentage of the development and as the developer he rightly has the opportunity to maximize his profit. However, until the Dakota Glen is completed the developer is also in control of the HOA, which actually owns the open space. The HOA Board has a fiduciary duty to all homeowners to protect and where possible improve the value of the community. This fiduciary duty supersedes the developer's right to maximize short term

profits if maximizing developer profits has a detrimental impact on the long term value of the community. In this case, the developer must act to protect the long term value of the community.

Additionally, this issue before the Commission is one of zoning. The developer has a right to express his opinion regarding zoning proposals; however, the Commission's duty is to protect the community and in doing so must weigh the concerns of the citizens it represents much more heavily than the profit motive of a business interest.

I thank you for your time and ask that you choose to protect Dakota Glen homeowners from the blight proposed by Xcel Energy.

Sincerely,

/signed/

Michael J. Carroll

Attachments:
Area photos

3499 Angora Drive
Loveland, CO 80537
May 3, 2013

City of Loveland Planning Commission
500 East Third Street
Loveland, CO 80537

Dear Commissioners:

Thank you for the opportunity to comment on Xcel Energy's proposal to construct, operate, and maintain the Estes Park Regulator Station in the Dakota Glen neighborhood.

We recently moved to the area and specifically chose the city of Loveland and the Dakota Glen subdivision due to its promise of open space and commitment to maintaining natural areas. The proposal to construct an unsightly industrial facility at our entrance is distressing, and we strongly object to building this facility in our neighborhood.

In his letter to you, Michael Carroll has clearly outlined the objections we have as residents. He has also offered a number of alternatives that are available and more appropriate. We will not reiterate those items here. Suffice it to say that the station is not appropriate within a residential neighborhood.

It appears that this project was misrepresented to the residents of Dakota Glen by the developer. As Michael Carroll mentioned, the developer and the HOA have an obligation to do what is best for the neighborhood. Clearly, the proposed regulator station will not enhance the community and is not in the best interest of the residents. The business interests should not be allowed to overrule the interests of the community members who will have to look at this monstrosity on a daily basis, when other more appropriate alternatives are readily available. Additionally, this development is just starting to grow. It is going to be filled with homes that range from the low $400's and up to over $500,000 each. This regulator station, if approved, will devalue those properties, and make it much more difficult for prospective buyers to invest in this development, which as you know, has an impact on property taxes going forward. I would think that would be a consideration for the future of Loveland?

This proposal is disturbing on several levels. Economically, it has a negative impact on our property values. The residents here have invested a significant amount on the promise of open space and preserved natural areas. Aesthetically, it is unsightly and detracts from the views and image of our neighborhood. We all chose this area for its natural beauty without industrial obstructions. Finally, there is an inherent and fragile trust that the citizens can appeal to their government representatives to listen to them and respect their opinions and interests, and act responsibly. We ask you – would you want this is your "front yard"?

Please support us in moving this industrial facility to another more appropriate location.

Respectfully,

David and Beth Anderson

Dakota Glen PUD First Amendment to the PUD Preliminary Development Plan
PRELIMINARY DEVELOPMENT PLAN NARRATIVE

Purpose of the Project

The following development standards apply to the Dakota Glen Planned Unit Development. The purpose of this Final Development Plan (FDP) is to provide for flexibility and innovative design for this very unique area of the City. The objective of the plan is to meet the growing demands of its residents by providing variety in the style, design, and layout of buildings.

Land Use

Overall Concept: Residential neighborhoods will be designed in a cohesive manner to accommodate the varied design requirements of the types of dwellings they will contain. The home types and densities will be designed to be appropriate to surrounding considerations, such as street patterns, adjacent uses, and location of project amenity areas. The development plan provides for a mix of varied housing types, including conventional single-family detached homes on standard lots, single family detached homes on patio lots, and single family attached. The gross density of the plan is 2.07 du / acre.

Land Use Categories: It is the intent of this plan to provide a mechanism by which land can be developed such that flexibility and innovative design are encouraged, in accordance with Chapter 18.41 of the Loveland Municipal Code and in compliance with other applicable land use and development regulations.

__Permitted Uses__

Residential Areas: Permitted uses within the residential areas include the following:

1. Residential - Conventional single family dwellings on standard lots, single family dwellings on patio lots, and single family attached dwellings.
2. Other - Recreational facilities
3. Tracts - Permitted uses within tracts include the following:
   a. Open space
   b. Private park area (see parks and open space definition below)
   c. Trails
   d. Utilities and drainage improvements, including irrigation pumps.
4. Open Space Preservation Tracts - permitted uses include open space, trails (locations shown on the FDP plan), utilities and drainage improvements (including irrigation controllers), and recreational access to Cattail Reservoir
5. Temporary Parking - temporary parking will be permitted on vacant lots for model home visitors.
6. Pump house - A pump house will be constructed to use cattail reservoir for raw water irrigation. Refer to sheet 10 of 10 for elevations.
7. Essential above-ground public utility and public service installations and facilities - A permanent easement of 2.84 acres for a natural gas regulator station and 16 inch natural gas pipeline within the Dakota Glen PUD (see Sheets 11 through 15)

Definitions - The following definitions apply to residential uses with this PUD:
(Refer to Loveland Municipal Code section 18 for land use definitions not provided in this FDP)

1. __Single Family Detached standard lot__ - A one-family dwelling that is not attached to any other dwelling by any means, located on individual fee simple lots. Minimum lot size shall be 7,150 s.f. These Units will be either one or two story with three options for garage location.

2. __Single Family Detached patio lot__ - A one-family dwelling that is not attached to any other dwelling by any means, located on individual fee simple lots. Minimum lot size shall be 6,500 s.f. These units will be one story with a three car garage located on the front of the house.

3. __Single Family Attached Dwelling Unit__ - A one-family dwelling attached to a one-family dwelling by a common vertical wall in which each unit has its own front and rear entrance and in which no unit is located over another unit. Minimum lot size shall be 3,000 s.f.

Setbacks: Staggered setbacks shall be provided so as to create a visually interesting streetscape. This will be achieved by prohibiting identical minimum front setbacks on adjacent lots that face the same street through the enforcement of varying minimum setback widths of a two feet minimum. Refer setback table this sheet for setback information, and typical lot layout on sheet 9 and 10 of 10.

Building Height: The maximum height for structures is 35 feet. Refer to the Loveland Municipal Code section 18.54 for information on calculating building height.

Neighborhood Structure: Arterial/collector streets and open space generally border neighborhoods. Neighborhoods will be designed in accordance with the development sta[illegible] ds set forth in this development plan. Primary areas providing structure to the neighborhoods include private open space [illegible] le play areas, a neighb[illegible] hood wide trail system, and open space areas around Cattail Reservoir.

Overall Concept: Primary access to the site will be from SW 14th Street, and County Road 21. Which are classified as a two-lane arterial and a major collector street respectively. An internal collector street and local streets will distribute traffic throughout the site. An interparcel connection is provided in the southwest part of the property.

__Components__

1. **Vehicular:** Local streets will provide access within the neighborhoods. Local streets may vary in width, according to the amount of traffic to be accommodated and the specific design requirements of each neighborhood.

2. **Pedestrian:** An overall system of pedestrian access is provided along streets and through open space areas. Meandering walks are provided along perimeter streets, and the minor collector street through the site will have detached sidewalks, while all of the local residential streets will have attached sidewalks. Proposed trails are shown throughout the plats open space.

3. **Performance Standards:** Street improvements and new streets will be constructed in accordance with the street-cross sections shown in the engineering drawings. The associated plat provides for dedication of necessary Right of Way to accommodate the arterial roadway's ultimate development.

Public Facilities

Overall Concept: Public facilities and services are readily available to the site, and will be provided for as described below

Water and Sewer: The City of Loveland will provide water and sewer service. Domestic water will be delivered by extension of existing water mains as a loop through the site. Sanitary sewer service will be provided by use of the existing 8" sewer on site in accordance with the City's master plan. The trunk sewers will be extended to maximize the benefits of gravity flow from the majority of the PUD. Details of services have been provided on the preliminary development plan.

Storm Drainage: Storm drainage shall be collected and carried on the surface through the designed street pattern. As necessary to provide capacity, catch basins and storm sewers will be installed to transport storm flows to points of discharge. Most of the storm water will be discharged into cattail reservoir. A small portion of the storm water will be discharged directly into the Hanome exchange ditch. All points of discharge will be adequately designed to minimize erosion and to protect the environmental integrity of the lake in accordance with City standards.

Electric: The City of Loveland Water and Power Department will provide service.

Gas: Public Service Company of Colorado.

Cable: Comcast.

Phone: Qwest.

Private Parks and Open Space: The development will incorporate a large open space private park area including open turf areas, a lake, trails, boardwalks, natural areas, and recreational amenities may include any or all of the following: Clubhouse, pool, hot tub, tennis court(s), basketball court(s), trails, playground structures, sand volley ball court(s), and a sand beach. In addition to the large private park area, numerous green belts with trail systems will loop through the neighborhoods providing connection to the park for residents.

Landscape Concept: The design intent for the Dakota Glen PUD is to create a comprehensively planned community through the careful integration of the natural features of the site. The creation of a well conceived overall landscape program for the development would serve to provide for a unique identity as well as an overall sense of continuity amongst the various neighborhoods. Several design elements will be used to reinforce the image of this community. The elements include: consistent perimeter treatments, continuity of the man-made site amenities (signage, fencing, play areas and other architectural site features), provision of a comprehensive landscape treatment, and architectural treatments of the various housing types.

__Edge Treatment__

1. **Architecture:** One of the most important aspects of the development's overall appearance, as viewed from its edge, is the appearance of the residential structures. Rear and side elevations of structures will be detailed to provide visual interest from adjoining streets. Appropriate setbacks and detached sidewalks with street trees have been provided along the site's perimeter and proper buffering will be incorporated.

2. **Landscaping:** Perimeter landscape treatment will receive careful attention due to a portion of the site's edge that faces an arterial roadway. Arterial streets will feature landscaped areas outside of the right-of-way, tree lawns, berms, and detached sidewalks. 14th Street will have a thirty-five foot landscape buffer and County road 21 will have a twenty-six foot minimum landscape buffer. Landscape buffers will provide ample buffering from adjacent development and to create a park-like environment.

3. **Access:** Entry points are proposed from the site's abutting roadways. Each entry point will be designed as a part of the development's overall theme in terms of landscape and architectural treatment.

4. **Fencing:** The use of fencing as a part of the development's edge treatment will be minimized, and the dominant form of edge treatment for screening and buffering will be landscape. Fencing is not required in this development, however if a property owner is so inclined the following fencing options will be allowed:

   A. Single Family Detached - standard lot - will allow cedar fencing at a 48 inch maximum height to the property line (see sheet 9 of 10 for typical fence details).

   B. Single Family detached - Patio lots - will allow steel picket fence of 36 inch maximum height to the property line

   C. Single family attached will allow steel picket fencing at 36 inch maximum height in designated areas, fencing will not be allowed to the property lines (see typical floor plan sheet 10 of 10)

Streetscape: Landscaping will be designed with a comprehensive theme for the entire development. The overall concept will include the treatment of the roadways as tree-lined lanes reflective of early, established communities typical of northern Colorado. One 2-inch caliper tree shall be planted in each single-family lot, with two, 2-inch caliper street trees planted on corner lots (one per street frontage). Single-family attached homes shall have two, 2-inch caliper trees per street frontage while corner lots shall have 3.

Open Space Areas: Lake edges will be enhanced with additional trees, grasses and shrubs as recommended in the Environmentally Sensitive Areas Report, (ESAR) dated June 1, 2006. The open space within the buffer will be used for passive uses only. The private neighborhood park and the multi-purpose play areas are intended to provide for active and passive play. Large open irrigated turf areas will support this type of activity.

The large open space area near the lake has been designed to allow humans and wildlife to coexist in harmony. It is envisioned that the design of this area will enhance and protect the vitality and environmental quality of this beautiful area. Less than 1 acres of the wetlands will be filled in. Cedar Creek Associates has reviewed the open space plan and has confirmed that it is in compliance with the environmentally sensitive areas report.

High quality wetlands in the southeastern area of the property shall be left undisturbed in their current location, with no disturbance, removal, replacement or mitigation during construction or thereafter, except as otherwise provided for under condition 3, below. These include the wetland where Cattail Reservoir No. 1 was previously located, and wetlands along the southern shore of Cattail Reservoir No. 2. These high-quality wetlands shall also be protected with an approximate 75-foot buffer. Within this buffer, no development shall take place. Passive, non-intrusive use shall be allowed (e.g., bird-watching from a distance).

Prior to approval of the FDP, the developer may, at his discretion, submit a natural area modification plan prepared by a qualified environmental consultant. Said plan shall be subject to approval by the Current Planning Manager.

Signage will be included at the edge of high quality wetlands, to be shown on FDP. Interpretive and educational signage should be placed along the edge of high quality wetlands (approximately 5 signs). The signs should stress the need for no wildlife harassment or human intrusion into important habitat areas. Text for signage follows the recommendations in the ESAR report.

Maintenance: The landscaped areas of the development, including perimeter areas, common open space, entry features, patio home lots, and single family attached lots will be maintained by a Home Owners Association. Maintenance of landscaping within each standard home lot will be the responsibility of homeowner.

Architecture and Site Requirements

Overall Concept: These performance standards are intended to insure that each neighborhood or development area within Dakota Glen incorporates the use of unifying architectural elements to create an overall, cohesive theme. The intent of these guidelines is to provide direction to builders and designers in the planning, design, and construction of dwellings to ensure that they are compatible with the overall design intent for the PUD. These guidelines are intended to provide flexibility in terms of design style, within a coordinated architectural concept or theme for each neighborhood area as defined by common architectural elements.

Supplemental Requirements for Single Family:

One of the most important aspects to a detached large lot single family neighborhood is its streetscape and the over all appearance and feelings generated as it is viewed by surrounding residents, neighbors, and general public. Recognizing this, the following standards are required (refer to PDP sheets 9 and 10 of 10 for typical plans and elevations):

1. **Porches:** All homes must incorporate a covered front porch for homes that use the front porch to recess the garage. The narrowest dimension of which shall be six feet deep and eight feet wide.

2. **Garages:** Garages shall have front elevations that compliment, rather than dominate, the architectural details of the living portion of the dwelling. The front elevation of side-load garages shall incorporate the use of windows, wall breaks, and or building material changes to more aesthetically enhance the front wall elevation. Garages that have doors for more than two vehicles must have one door recessed a minimum of two feet from the others. Garage doors, visible as part of the front building elevation, shall not comprise more than forty percent (40%) of the ground floor street facing linear building frontage on single family lots. Garage doors, visible as part of the front building elevation, shall not comprise more than fifty percent (50%) of the ground floor street facing linear building frontage on patio home lots. Corner lots are exempt from this condition.

3. **Varying Streetscape:** Single family detached lots (standard and patio) will have enough variety in building elevations and model type such that no identical front elevation is adjacent to or across a common street from one another. Significant changes to the front elevation will be determined by the architectural review committee.

4. **Architectural Review Committee:** The architectural review committee will be the reviewing authority for architectural character within the development. Architectural features such as colors, materials, roofs, windows, doorways, balconies, and changes in plane will all be reviewed under the authority of the architectural review committee.

5. **Materials:** Roofing materials, windows, building materials and finish, will all be carefully coordinated to achieve a cohesive appearance. Exterior wall materials must incorporate brick, natural or synthetic stone, or stucco. Permitted building materials will be established with the design of each neighborhood or development area, and must be consistent within the neighborhood to present an overall design.

6. **Colors:** Exterior wall colors shall be compatible with surrounding buildings, with natural (earth tones) encouraged. Primary or other bright colors are only to be used as accents.

7. **Garage Setbacks:** Garages that have more than two vehicle doors shall have one door recessed a minimum of 2 feet from the other doors.

8. **Accessory Structures:** Accessory structures on residential lots are not allowed within this development.

9. **Pump House:** The pumphouse will be developed using the same materials as much of the residential architecture. The character of the building will be that of a residential building in an effort to blend in with the development. The pump house will be allowed within the 75 foot lake buffer. See typical elevation on sheet 10 of 10.

Landform Modification

The Dakota Glen site is relatively flat with approximately 2 percent slope through out most of the site. Some landform modification will occur in order to create visual interest throughout the site, and to provide management of drainage.

Implementation Procedures: Proposed development within the Planned Unit Development will be processed in accordance with the procedures contained in Chapter 18.41 of the Loveland Municipal Code dated 3-97, Section 18.41.50, Procedures for approval of a Planned Unit Development, and shall require approval of Final Development Plans in accordance with the requirements thereof.

__CONDITIONS OF PRELIMINARY APPROVAL__

Current Planning Conditions

1. The PDP, "Supplemental Requirements for Single Family", notes be revised to read:
   a. Garage doors, visible as part of the front building elevation, shall not comprise more than forty percent (40%) of the ground floor street facing linear building frontage on single family standard lots.
   b. Garage doors, visible as part of the front building elevation, shall not comprise more than fifty percent (50%) of the ground floor street facing linear building frontage on single-family patio lots.

Parks and Recreation Conditions

2. As a condition of FDP approval, if the developer wishes to conduct clean-up activities in the natural area, the management techniques described in a letter from Cedar Creek Associates dated October 4, 2006 shall be followed. These management techniques shall be carried out according to the map accompanying Cedar Creek's letter, which depicts the locations on the site where seven of the techniques identified shall be applied. According to Cedar Creek's letter, three of the techniques may be applied site-wide, and one of the techniques identified in a previous letter has been removed from consideration as a site management technique at this time. If any of the eleven management techniques identified by Cedar Creek are implemented, an annual monitoring report shall be submitted to the Current Planning Manager and Natural Areas Manager on November 1 of each year. The monitoring report shall describe the management technique employed, the results of those techniques, and the current status of any restoration or revegetation efforts. If clean-up activities are not pursued, the natural area shall be left in its natural state.

Engineering Conditions

3. Notwithstanding any information presented in the PDP or accompanying preliminary plat and preliminary construction plan documents (text or graphical depictions), all public improvements shall conform to the Larimer County Urban Area Street Standards adopted on October 2002, as amended, unless specific variances are requested and approved in writing.
4. The following public improvements shall be designed and constructed by the developer unless designed & constructed by others. All improvements shall be completed prior to the issuance of any building permits, unless otherwise approved pursuant to the provisions in Section 16.40 of the Loveland Municipal Code
   a. 14th Street SW to 2-lane arterial standards adjacent to the property including detached sidewalk.
   b. CR 21 to major collector standards adjacent to the property including detached sidewalk. A cash-in-lieu payment, or other form of security acceptable to the City, for all or part of these improvements may be accepted by the City if approved by the City Engineer
   c. Angora Drive to minor collector standards within the property.
   d. Westbound right-turn lane on 14th Street SW into Angora Drive.

Fire Prevention Conditions

5. Prior to approval of the Final Plat, the design for the emergency access roadway serving the proposed phases I and II shall be approved by the Fire Department
6. Prior to approval of any building permits within the Property all courts shall be provided with a "Fire Lane - No Parking" signs approved by the Fire Department.

Power Conditions

7. When the property being annexed into the City of Loveland is currently located within the REA certified territory, this property is subject to a five percent (5%) surcharge on electrical energy as defined in 40-9.5-204, CRS, and the City of Loveland Municipal Code 13.12.180. This surcharge applies to any subsequent subdivisions of property annexed after January 31, 1987 within the REA certified service territory. In this case a note will be added to the final plat that reads as follows:
   a. A surcharge of 5% will be added to all bills for the sale of electric power to additional services which come into the existence after January 31, 1987, within the territory herein annexed which surcharge will expire ten years after effective date of this annexation.
8. A letter of approval from Western Area Power Authority for landscape plans proposing landscaping within a WAPA easement or under WAPA power lines must be submitted with the Final Plat and Final Construction Drawings submittal.
9. All multifamily, condominium, apartment and town home units will have meters centrally located on or near the unit's exterior building wall. Town homes will not be individually metered.

__VESTING__
Vesting was granted for this development plan OCTOBER 14, 2006 for a period of 3 years.

SETBACK TABLE (all numbers refer to minimum condition)

UNIT TYPE	FRONT SETBACK, EVEN # LOTS	COMMON WALL SETBACK	FRONT SETBACK, ODD # LOTS	REAR SETBACK	SIDE SETBACK**	CORNER LOT SIDE SETBACKS
SINGLE FAMILY - STANDARD LOT *	24'	N/A	25'	15'	5'	15'
SINGLE FAMILY-PATIO LOT *	22'	N/A	25'	10'	5'	15'
ATTACHED SINGLE FAMILY LOT *	15'	N/A	15'	N/A	5'	15'

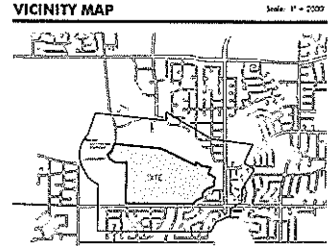
* Setbacks measured from the back of sidewalk
** The 1:3 ratio shall apply with 5 feet being the minimum.

PDP LANDUSE TABLE

LAND USE	AREA	NUMBER OF UNITS	DENSITY	PERCENTAGE OF SITE
SINGLE FAMILY - STANDARD LOT	26.48 ac.	93	1.09 du/ac. (net)	20.9%
SINGLE FAMILY - PATIO LOT	12.22 ac.	78	.83 du/ac. (net)	9.6%
SINGLE FAMILY ATTACHED	8.39 ac.	42	.58 du/ac. (net)	6.6%
OPEN SPACE	34.75 ac.	N/A	N/A	27.4%
TOTAL DEVELOPED AREA	87.84 ac.	293	2.42 du/ac. (net)	64.4%
RESERVOIR	21.6 ac.	N/A	N/A	17%
WETLANDS	5.9 ac.	N/A	N/A	4.6%
R.O.W.	14.82 ac.	N/A	N/A	11.7%
PUBLIC UTILITY EASEMENT	2.84 ac.	N/A	N/A	2.2%
TOTAL	127 ac.			100%

VICINITY MAP

Scale: 1" = 2000'



DAKOTA GLEN

Approvals

1. Approved this ______ day of ______, year ______ by the Current Planning Manager of the City of Loveland, Colorado.

Current Planning Manager

2. Approved this ______ day of ______, year ______ by the City Engineer of the City of Loveland, Colorado.

City Engineer

3. Approved this ______ day of ______, year ______ by the City Attorney of the City of Loveland, Colorado.

City Attorney

4. Approved this ______ day of ______, year ______ by the City Planning Commission of the City of Loveland, Colorado.

Chairperson

5. Approved this ______ day of ______, year ______ by the City Council of the City of Loveland, Colorado.

Mayor ______ Attest

Ownership Certification

KNOW ALL MEN BY THESE PRESENTS THAT

being all the lawful record owners of the property shown on this ______ (type of plan) ______, except any existing public streets, roads, or highways, do hereby certify that I/we accept the conditions and restrictions set forth on said plan and in the conditions of approval by the City of Loveland, dated ______, and that I/we consent to the recordation of any information pertaining thereto.

(owner)

(owner)

STATE OF COLORADO)
)
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this ______ day of ______, 2008 by ______

Witness my hand and official seal
My commission expires

______ NOTARY PUBLIC

______ address

Developer:
Glen Development LLC
P.O. Box 118
Loveland, CO 80539
970.663.1897

SHEET INDEX

SHEET 1 PDP NARRATIVE
SHEET 2 OVERALL PLAN
SHEET 3 SITE / LANDSCAPE PLAN
SHEET 4 SITE / LANDSCAPE PLAN
SHEET 5 SITE / LANDSCAPE PLAN
SHEET 6 SITE / LANDSCAPE PLAN
SHEET 7 SITE / LANDSCAPE PLAN
SHEET 8 SITE / LANDSCAPE PLAN
SHEET 9 ARCHITECTURE
SHEET 10 ARCHITECTURE
SHEET 11 XCEL PLANNED UNIT DEVELOPMENT (1 OF 5)
SHEET 12 XCEL PLANNED UNIT DEVELOPMENT (2 OF 5)
SHEET 13 XCEL PLANNED UNIT DEVELOPMENT (3 OF 5)
SHEET 14 XCEL PLANNED UNIT DEVELOPMENT (4 OF 5)
SHEET 15 XCEL PLANNED UNIT DEVELOPMENT (5 OF 5)

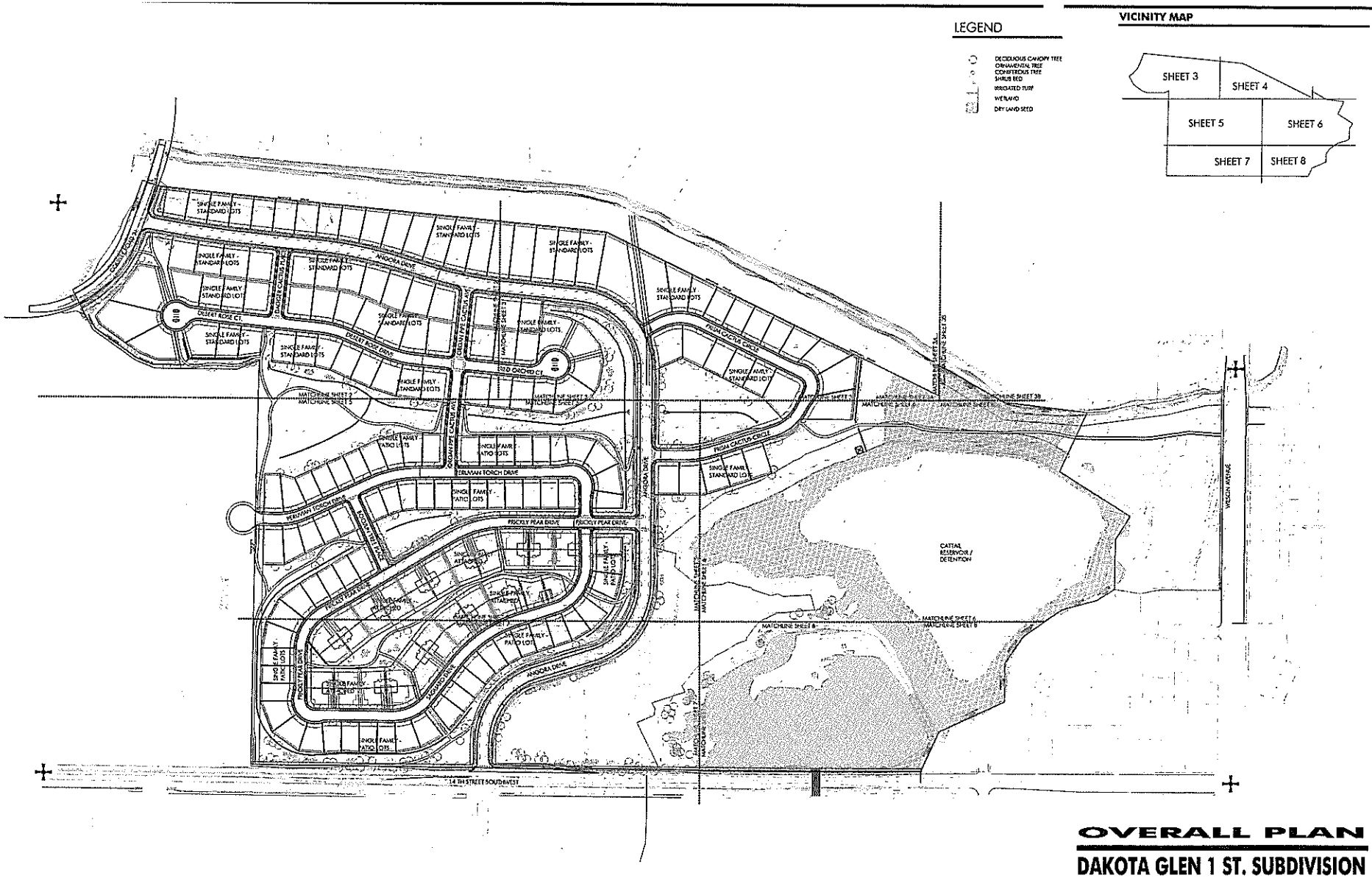
PDP NARRATIVE

DAKOTA GLEN 1 ST. SUBDIVISION
LOVELAND, COLORADO

BHA DESIGN, INC. • 1603 OAKRIDGE DR

SHE
APRI

PC ATTACHMENT 6



OVERALL PLAN

DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

BHA DESIGN, INC. • 1603 OAKRIDGE DR.

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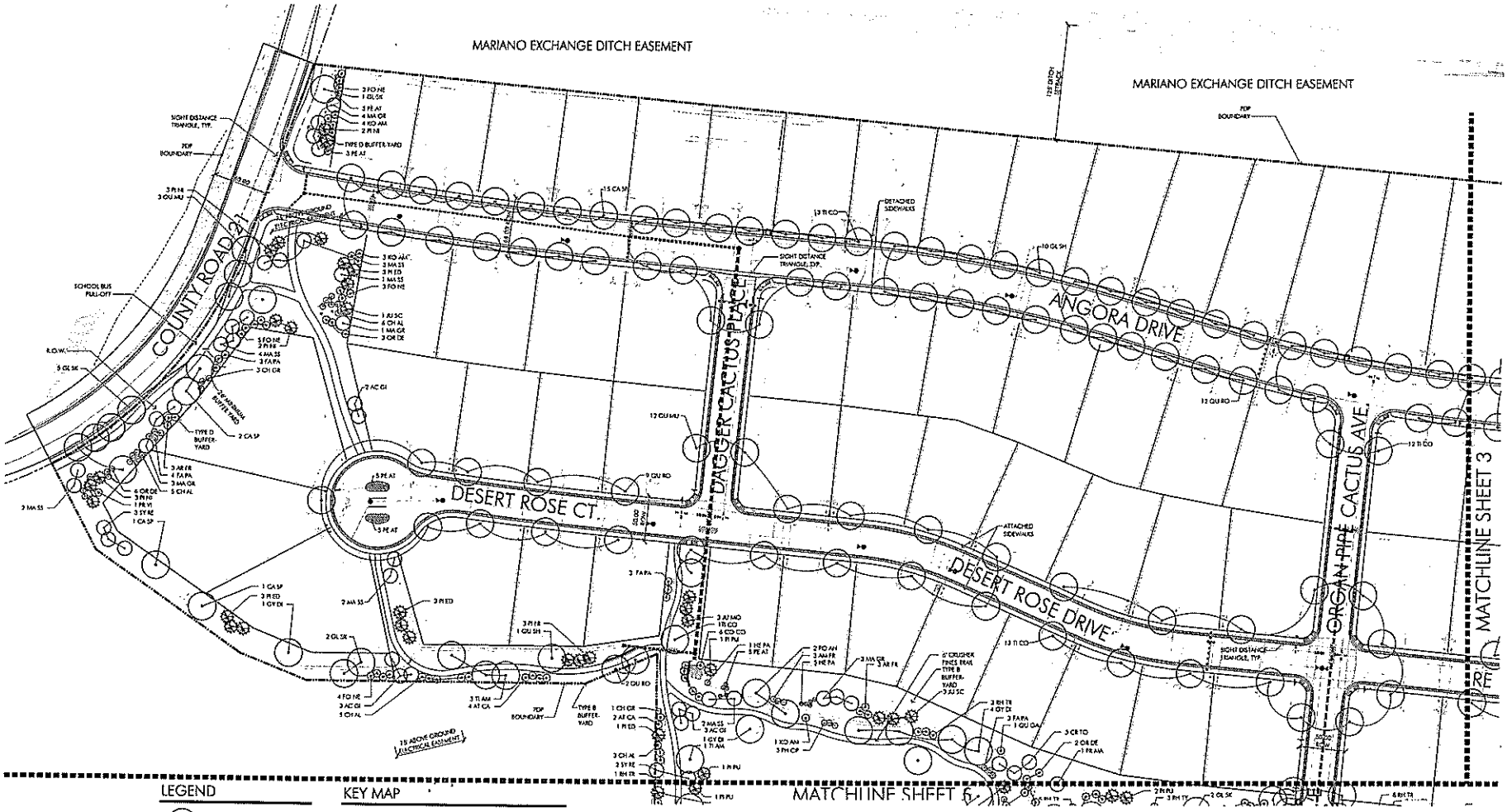

SITE / LANDSCAPE PLAN

DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

BHA DESIGN, INC. • 1603 OAKRIDGE DR.

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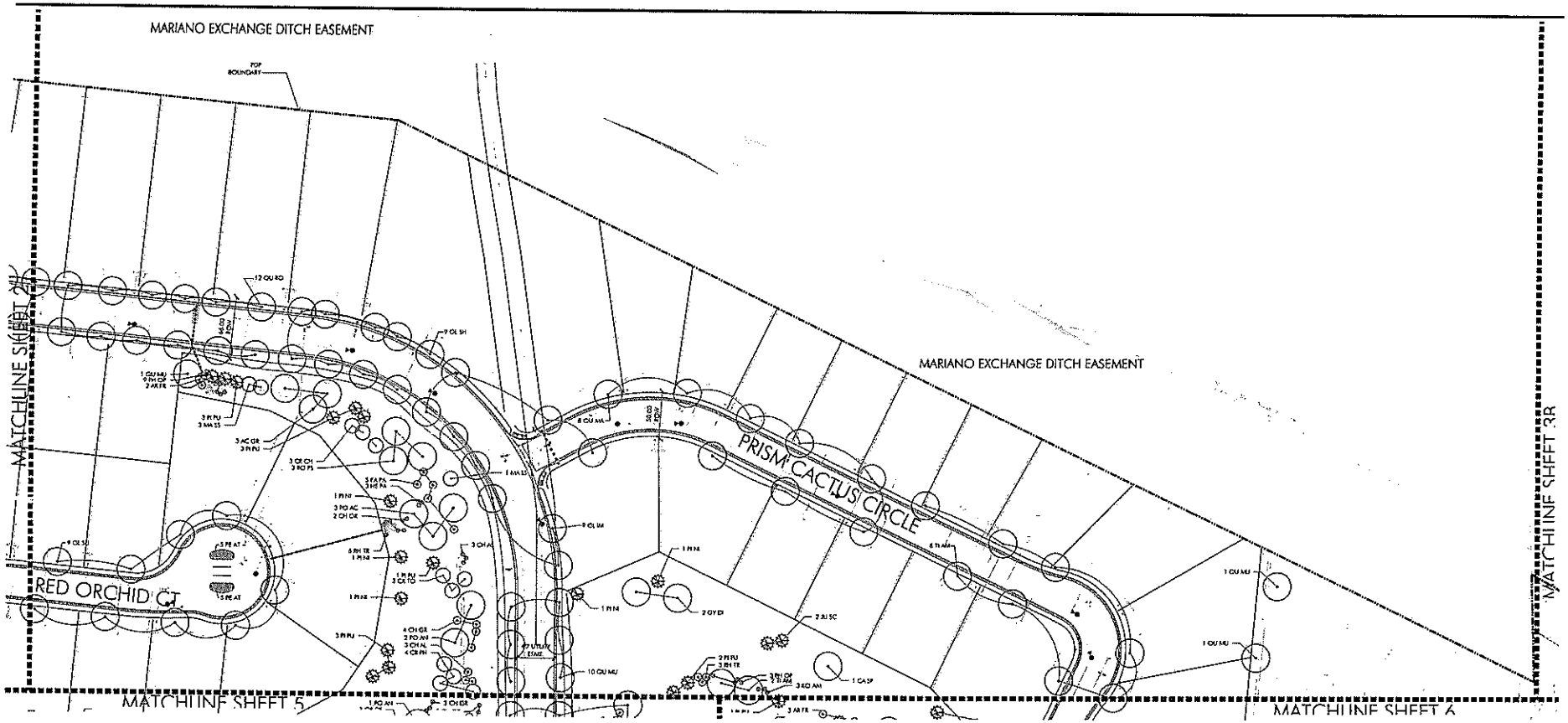
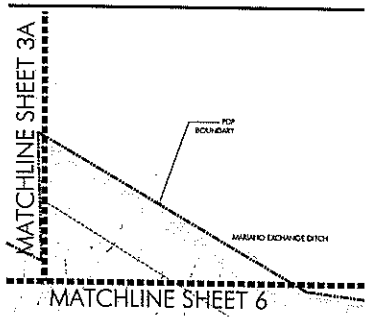
PC ATTACHMENT 6

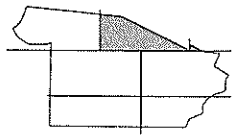
SHEET 3A



SHEET 3B



KEY MAP



LEGEND

- DECIDUOUS CANOPY TREE
- ORNAMENTAL TREE
- CONIFEROUS TREE
- SHRUB BED
- IRRIGATED TURF
- NATIVE MIX
- TRANSITION SEED
- DRY LAND SEED

NORTH 0 25' 50' 100'

SITE / LANDSCAPE PLAN

DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

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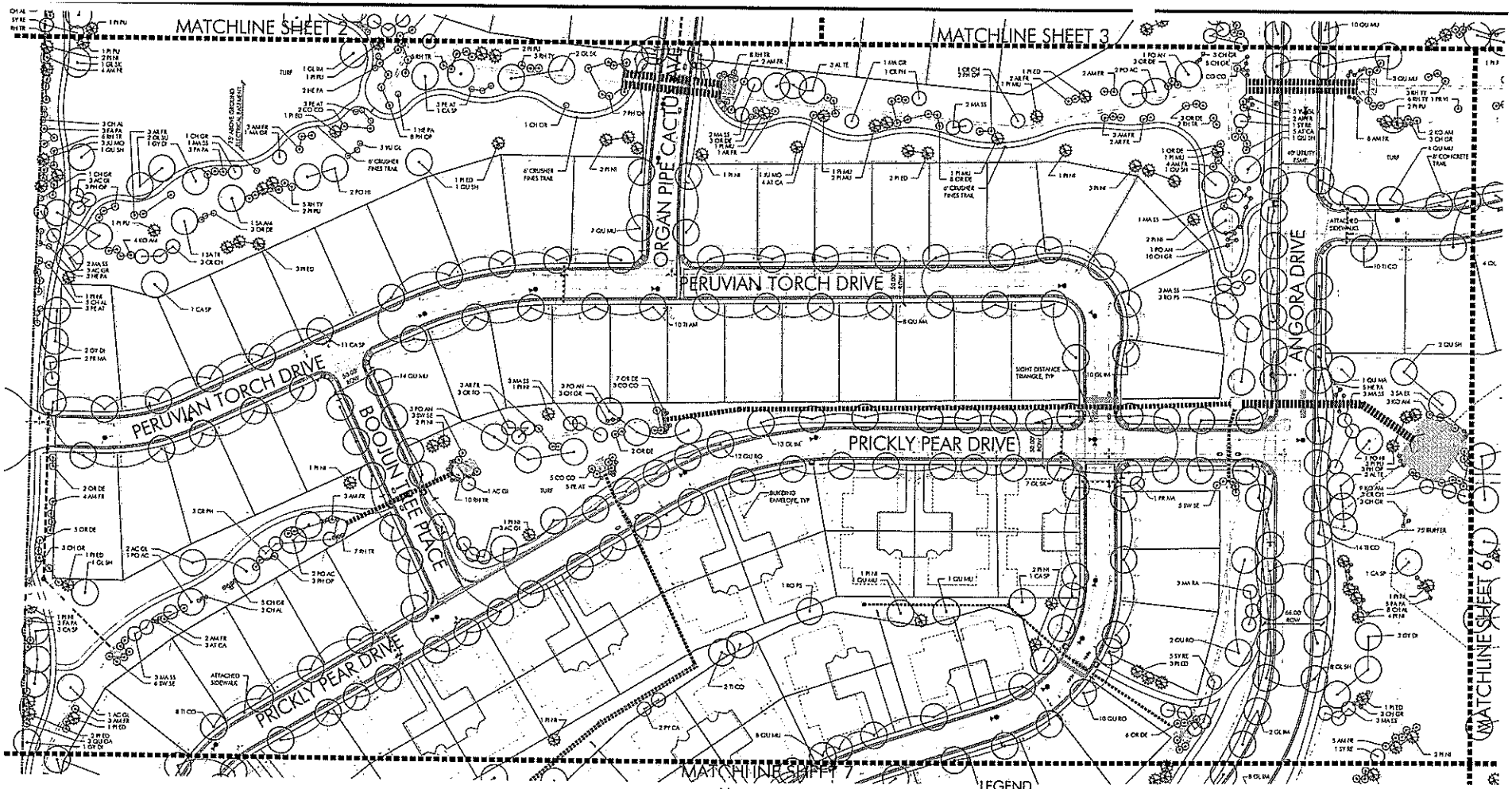
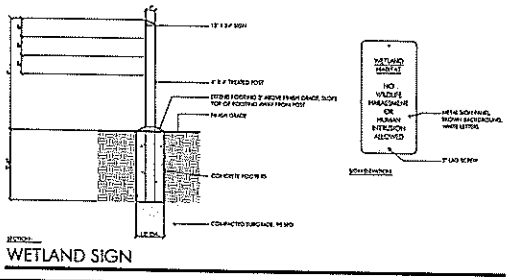
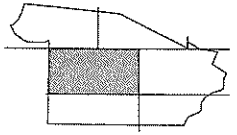




Note:

Development other than trails are prohibited within the 75 foot buffer

KEY MAP



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SITE / LANDSCAPE PLAN

DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

BHA DESIGN, INC. • 1603 OAKRIDGE D

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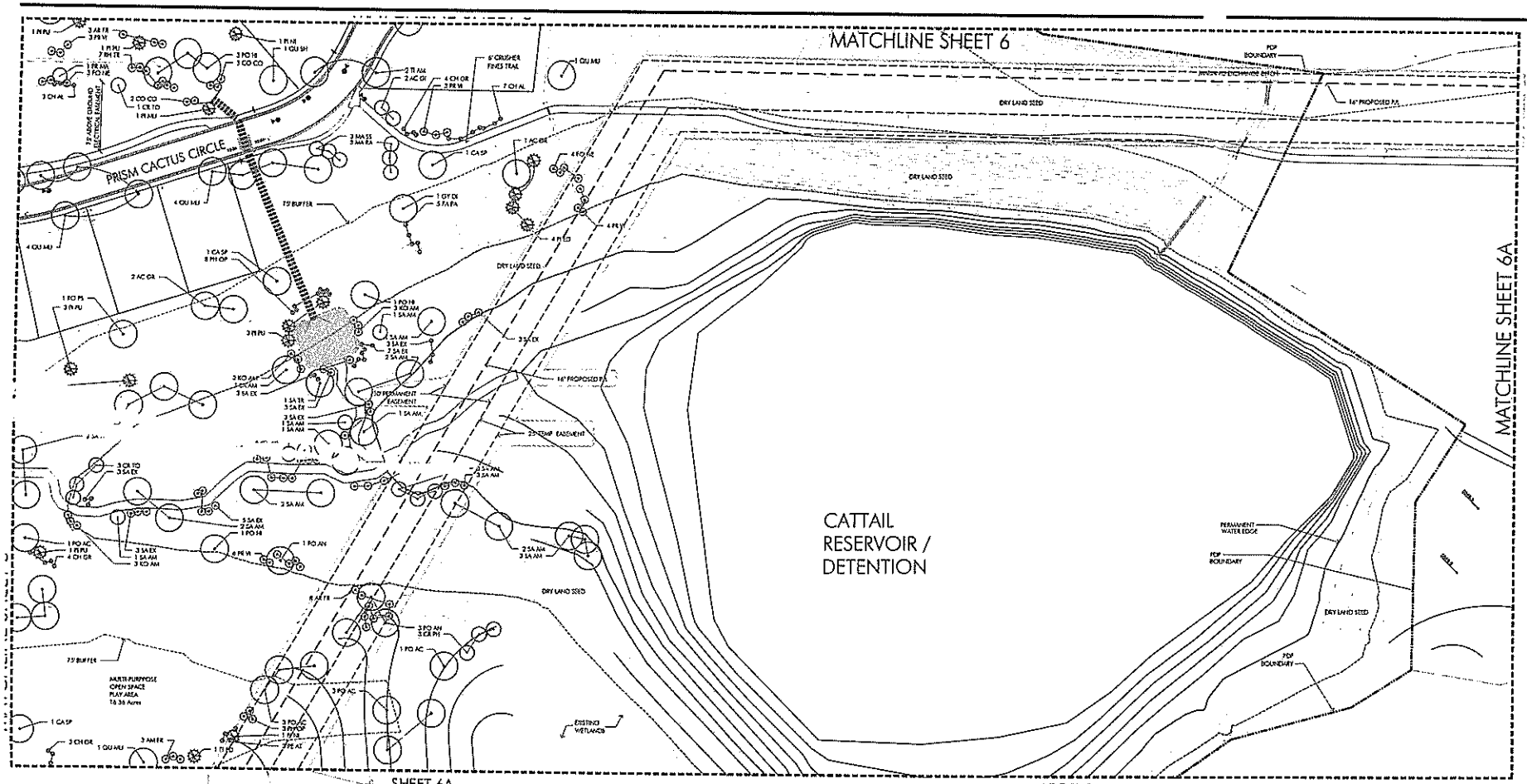

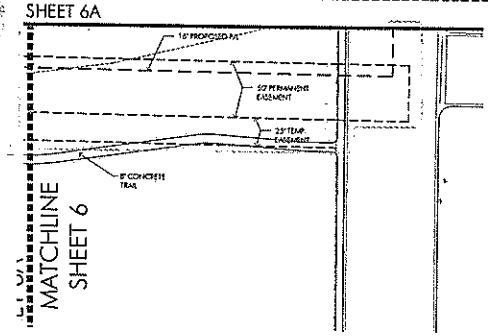

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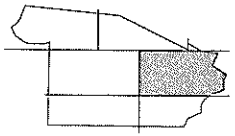

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SITE / LANDSCAPE PLAN

DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

BHA DESIGN, INC. • Fort Collins, CO

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APRI

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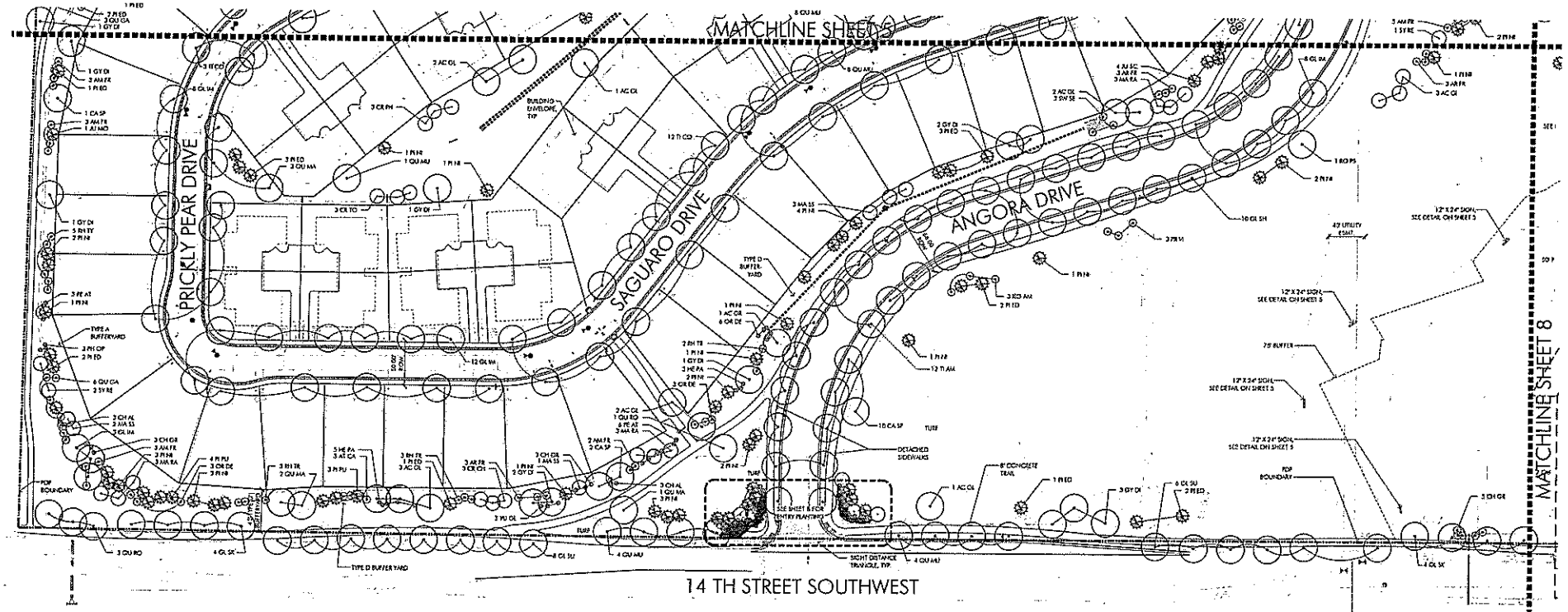

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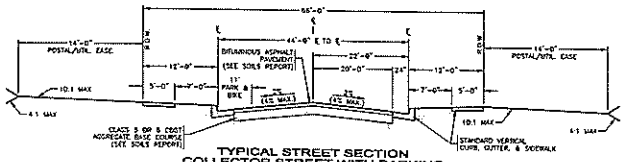

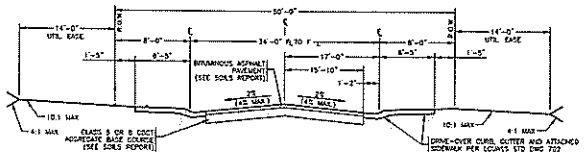

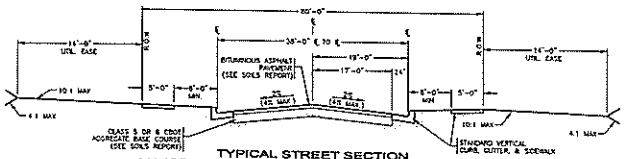

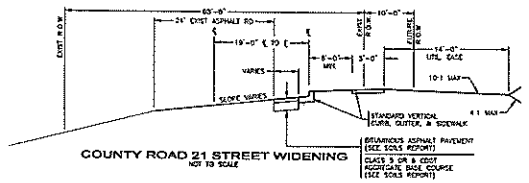

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SITE / LANDSCAPE PLAN

DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

BHA DESIGN, INC. • 1603 OAKRIDGE DR

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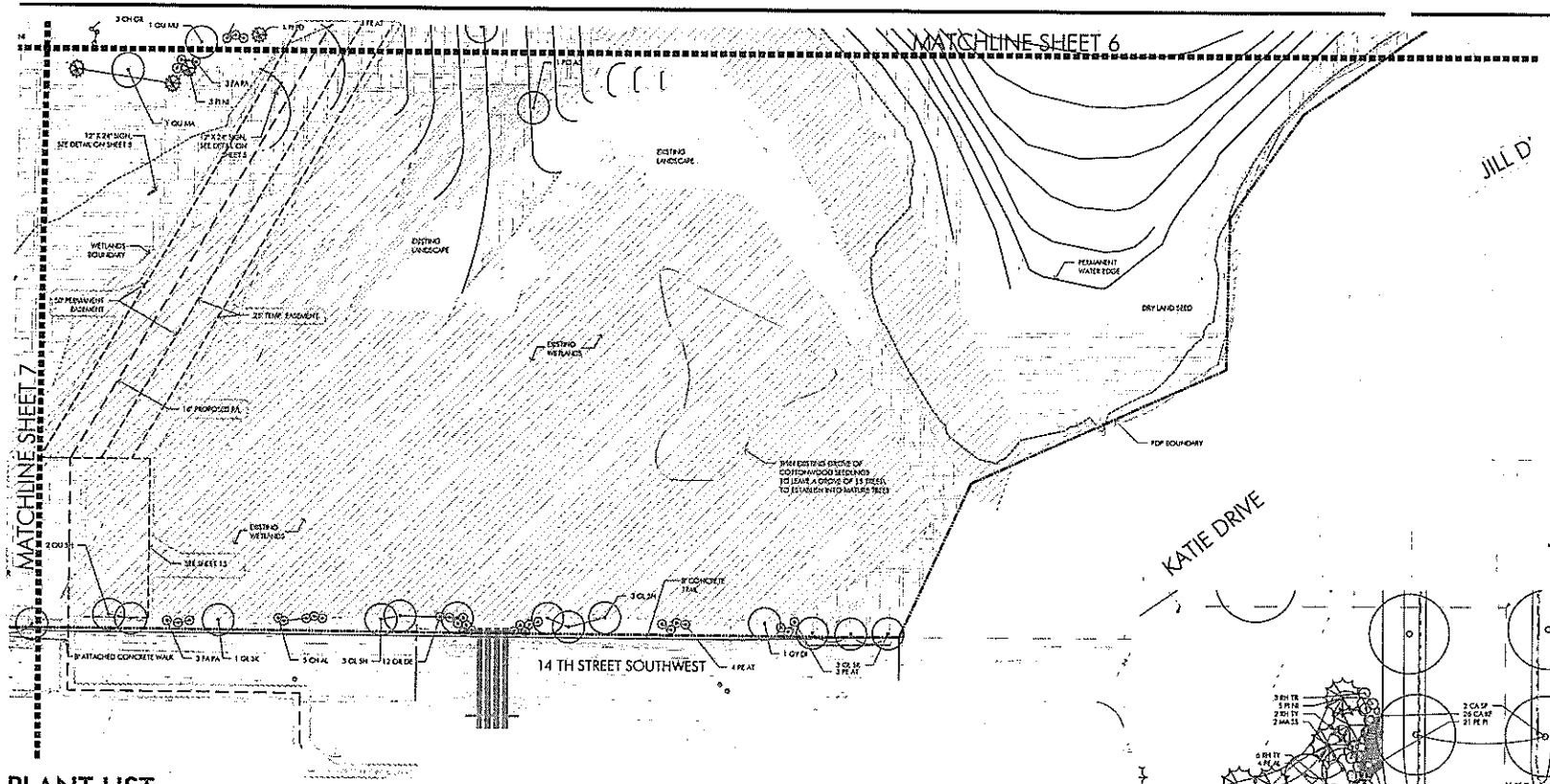

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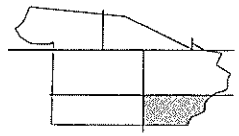

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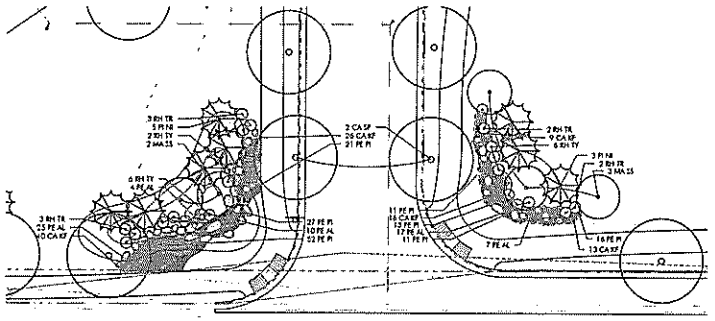


ENTRY PLANTING

SCALE: 1" = 20'

PLANT LIST

Key	Botanical name	Common Name	Size	Root	Spacing	Phase 1
DECIDUOUS CANOPY TREES						
AC GR	Acer grandidentatum	Big Tooth Maple	2" Cal.	BB	See Plan	12
AL TE	Alnus tenuifolia	Thinleaf Alder	2" Cal.	BB	See Plan	6
CA SA	Catalpa speciosa	Western Catalpa	2" Cal.	BB	See Plan	33
GL NA	Gleditsia triacanthos inermis 'Imperial'	Imperial Honeylocust	2" Cal.	BB	See Plan	66
GL SH	Gleditsia triacanthos inermis 'Shade Master'	Shade Master Honeylocust	2" Cal.	BB	See Plan	66
GL SK	Gleditsia triacanthos inermis 'Skyline'	Skyline Honeylocust	2" Cal.	BB	See Plan	20
GL SU	Gleditsia triacanthos inermis 'Sunburst'	Sunburst Honeylocust	2" Cal.	BB	See Plan	25
GY DI	Gymnocladus dioica	Kentucky Coffeetree	2" Cal.	BB	See Plan	20
PO AC	Populus acuminata	Lanceleaf Cottonwood	2" Cal.	BB	See Plan	16
PO AN	Populus angustifolia	Narrowleaf Cottonwood	2" Cal.	BB	See Plan	14
PO HI	Populus 'Highland'	Highland Cottonwood	2" Cal.	BB	See Plan	9
QU MA	Quercus macrocarpa	Bur Oak	2" Cal.	BB	See Plan	24
QU MU	Quercus x Mus Muskingi	Chinkapin Oak	2" Cal.	BB	See Plan	93
QU RO	Quercus rubra	English Oak	2" Cal.	BB	See Plan	33
QU SH	Quercus shumardii	Shumard Oak	2" Cal.	BB	See Plan	9
RO PS	Robinia pseudoacacia 'Purple Robe'	Purple Robe Locust	2" Cal.	BB	See Plan	9
SA TR	Salix alba 'Tristis'	Golden Weeping Willow	2 1/2" Cal.	BB	See Plan	6
SA AM	Salix amygdaloides	Peach Leaf Willow	2" Cal.	BB	See Plan	31
TI RN	Tilia x euchlora 'Redmond'	Redmond Linden	2" Cal.	BB	See Plan	28
TI CO	Tilia cordata 'Greenspire'	Greenspire Linden	2" Cal.	BB	See Plan	68
DECIDUOUS ORNAMENTAL TREES						
AC GI	Acer ginnala 'Flame'	Flame Amur Maple	1 1/2" Cal.	BB	See Plan	20
CE CH	Cerasus chimonia	Chinese Hawthorn	1 1/2" Cal.	BB	See Plan	13
CR PH	Crataegus phaenopyrum	Washington Hawthorn	2" Cal.	BB	See Plan	14
CR TO	Crataegus 'Toba'	Toba Hawthorn	1 3/4" Cal.	BB	See Plan	16
MA RA	Malus 'Radiant'	Radiant Crabapple	1 1/2" Cal.	BB	See Plan	15
MA CR	Malus 'Golden Raindrops'	Golden Raindrops Crabapple	2" Cal.	BB	See Plan	13
MA SS	Malus 'Spring Snow'	Spring Snow Crabapple	1 3/4" Cal.	BB	See Plan	26
PR MA	Prunus triloba'pl	Flowering Almond	1 1/2" Cal.	BB	See Plan	9
PY CA	Pyrus calleryana 'Aristocrat'	Aristocrat Pear	2" Cal.	BB	See Plan	7
SY RE	Syringa reticulata	Japanese Tree Lilac	1-1/2" Cal.	BB	See Plan	13
CONIFEROUS TREES						
JU MO	Juniperus monosperma	One Seed Juniper	6 Ht.	BB	See Plan	8
JU SC	Juniperus scopulorum	Rocky Mountain Juniper	6 Ht.	BB	See Plan	10
PI PU	Picea pungens	Colorado Spruce	6 Ht.	BB	See Plan	43
PI ED	Pinus edulis	Pinon Pine	8 Ht.	BB	See Plan	45
PI NI	Pinus nigra	Austrian Pine	6 Ht.	BB	See Plan	90
PI MU	Pinus mugo 'Tannenbaum'	Tannenbaum Mugo Pine	6 Ht.	BB	See Plan	9

Key	Botanical name	Common Name	Size	Root	Spacing	Phase 1
DECIDUOUS SHRUBS						
AM ER	Amorpha fruticosa var. angustifolia	Indigobush Amorpha	5 GAL	Container	See Plan	69
AT GA	Atriplex canescens	Four-Wing Saltbush	5 GAL	Container	See Plan	21
AR FR	Artemisia frigida	Fringed Sage	5 GAL	Container	See Plan	33
CH AL	Chrysothamnus viscosus albicaulis	Tall Blue Rabbitbrush	5 GAL	Container	See Plan	62
CH GR	Chrysothamnus viscosus graveolens	Tall Green Rabbitbrush	5 GAL	Container	See Plan	73
CO CO	Cornus stolonifera 'Royal Purple'	Royal Purple Creeper Tree	5 GAL	Container	See Plan	23
FA PA	Fallugia paradoxa	Apache Plume	5 GAL	Container	See Plan	43
FO NE	Forestiera neomexicana	New Mexico Privet	5 GAL	Container	See Plan	22
HE PA	Hesperaloe parviflora	Red False Yucca	5 GAL	Container	See Plan	28
RO AM	Kolkwitzia amabilis	Beauty Bush	5 GAL	Container	See Plan	41
OE DE	Oemleria cerasiformis	Indian Plum	5 GAL	Container	See Plan	22
PE AT	Penstemon strictiformis	Rocky Mountain Penstemon	5 GAL	Container	See Plan	78
PH OP	Physocarpus monogynus	Mountain Ninebark	5 GAL	Container	See Plan	64
PR VI	Prunus virginiana melanocarpa	Native Chokecherry	5 GAL	Container	See Plan	55
QU GA	Quercus gambelii	Gambel Oak	5 GAL	Container	See Plan	21
RH TR	Rhus trilobata	Three-Leaf Sumac	5 GAL	Container	See Plan	6
RH TY	Rhus typhina	Staghorn Sumac	5 GAL	Container	See Plan	76
SA EX	Salix exigua	Coyote Willow	5 GAL	Container	See Plan	26
SY SE	Symphoricarpos	Snowberry Dogwood	5 GAL	Container	See Plan	64
YU GL	Yucca glauca	Great Plains Yucca	5 GAL	Container	See Plan	17
GRASSES AND PERENNIALS						
CA KF	Calamagrostis acutiflora 'Karl Foerster'	Feather Reed Grass	1 GAL	Container	See Plan	104
PE AL	Pennisetum alopecuroides 'Hameln'	Dwarf Fountain Grass	1 GAL	Container	See Plan	63
PE PE	Penstemon pinifolius	Pineleaf Penstemon	1 GAL	Container	See Plan	151

IRRIGATED TURF

Kentucky Bluegrass 2 Elite Varieties

DRY LAND SEED MIX

Common Name	Scientific Name	PLS/Acre
Blue Grama	Bouteloua gracilis	0.75
Buffalograss	Buchloe dactyloides	1.00
Green Needlegrass	Nassella viridula	2.00
Sideoats Grama	Bouteloua curtipendula	1.80
Western Wheatgrass	Pascopyrum smithii	4.00
		10.15 Drilled
		20.3 Broadcast
		40.6 Small Areas

TRANSITION SEED MIX

Arkansas Valley Seed, Native Choice Low Mixture or approved equivalent

70% Ephraim Crested Wheatgrass
15% Sheep Fescue
10% Mineral Perennial Ryegrass
5% Needle Evenly Bluegrass

175-270 lbs/acre

NATIVE SEED MIX

Arkansas Valley Seed, Low Grow Mix or approved equivalent

30% Ephraim Crested Wheatgrass
25% Sheep Fescue
20% Perennial Rye
15% Blue Grama Native
10% Kentucky Bluegrass

20-25 lbs/acre

NORTH 0 25' 50' 100

SITE / LANDSCAPE PLAN

DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

BHA DESIGN, INC. • 1603 OAKRIDGE DRIVE FT. COLLINS, CO 80525 • TEL: (970) 223-7577

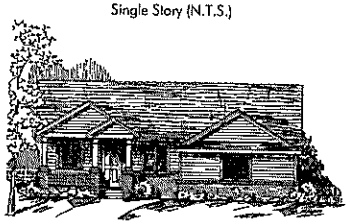
SHEE

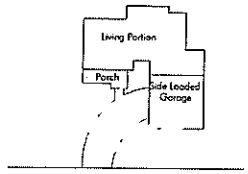
APRIL

PC ATTACHMENT 6

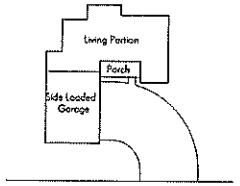
TYPICAL SINGLE FAMILY DETATCHED - STANDARD LOT - TYPE A (side loaded garage)

Single Story (N.T.S.)



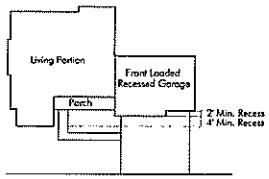


Two Story (N.T.S.)

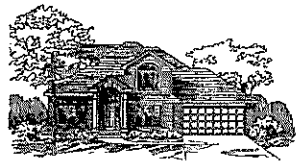


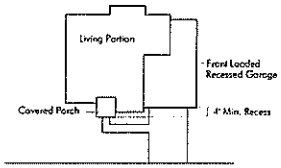
TYPICAL SINGLE FAMILY DETACHED - STANDARD LOT - TYPE B (recessed garage)

Single Story (N.T.S.)



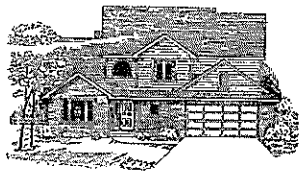
Two Story (N.T.S.)

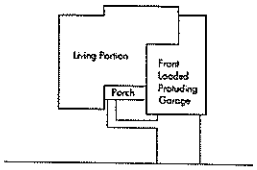




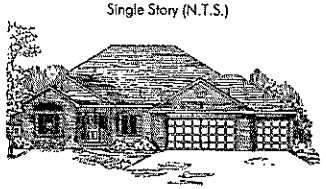
TYPICAL SINGLE FAMILY DETACHED - STANDARD LOT - TYPE C (protruding garage)

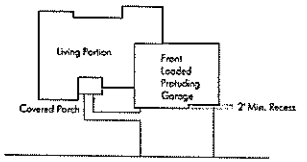
Two Story (N.T.S.)

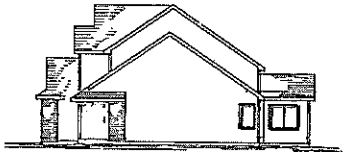




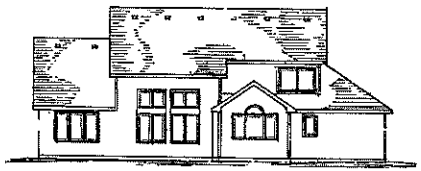
Single Story (N.T.S.)







Typical Side Elevation (N.T.S.)

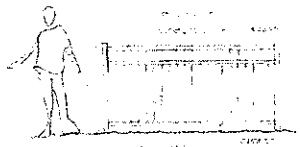


Typical Rear Elevation (N.T.S.)

Note:
These elevations are prototypical. Some variation will occur with the development of each property

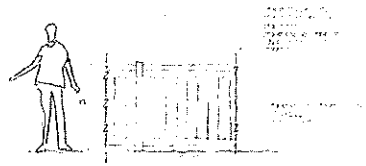
TYPICAL STEEL FENCE

scale: N.T.S.



TYPICAL CEDAR FENCE

scale: N.T.S.



ARCHITECTURAL ELEVATIONS

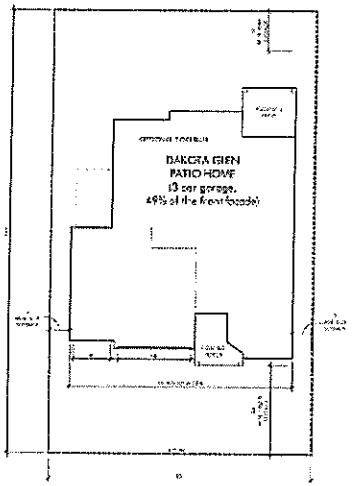
DAKOTA GLEN FINAL DEVELOPMENT PLAN

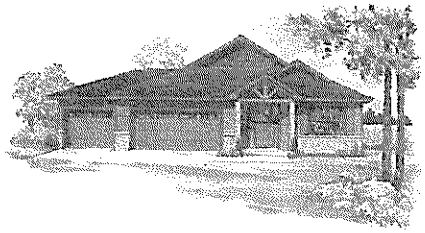
FIRST AMENDMENT

LOVELAND, COLORADO

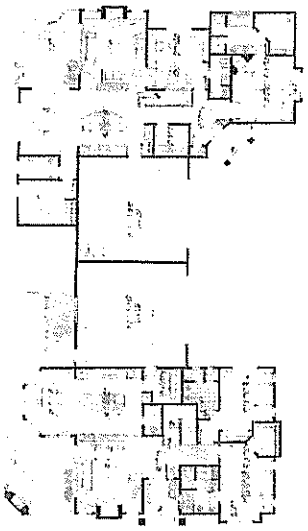
SHA DESIGN, INC. • 1603 OAKRIDGE DR

TYPICAL SINGLE FAMILY DETACHED - PATIO HOME





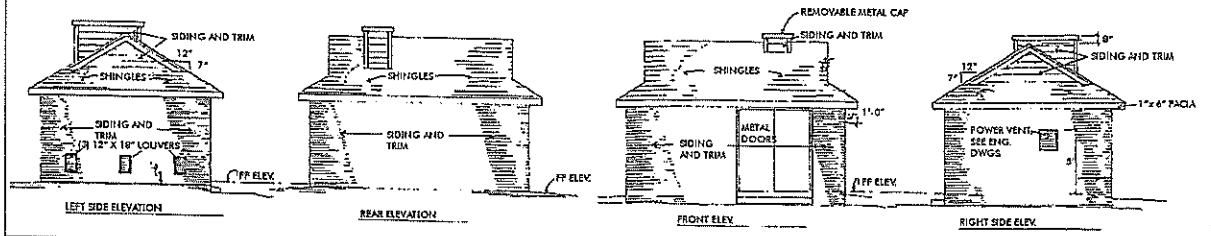
TYPICAL SINGLE FAMILY ATTACHED



PLAN

ELEVATION

TYPICAL PUMPHOUSE



Note:
These elevations are prototypical. Some variation will occur with the development of each property.

ARCHITECTURAL ELEVATIONS
DAKOTA GLEN FINAL DEVELOPMENT PLAN
DAKOTA GLEN 1 ST. SUBDIVISION
LOVELAND, COLORADO

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PLANNED UNIT DEVELOPMENT
LARIMER 2013 - 16" WEST MAIN NATURAL GAS PIPELINE REPLACEMENT
(ESTES PARK REGULATOR STATION & UNDERGROUND PIPELINE IN DAKOTA GLEN PUD)
CITY OF LOVELAND
FEBRUARY 2013

Zoning	P-98
Site Acreage	7.48 acres
Land Use	Natural gas pipeline and public utility facility
Square Footage	1. Total - 300 sq. ft.
	2. Floors - 300 sq. ft.
	3. Natural Gas Regulation - 300 sq. ft.
Building Occupancy	U-Utility
Type of Construction	1. Construction Type - Type 2A
	2. Fire Sprinkler - None
Parking Spaces	N/A. This is an unmanned utility
Landscaping	N/A - See Note 5 on Sheet 4, regarding seed mix
Open Space	N/A - The Estes Park Regulator Station is a public utility facility. The pipeline will be buried and revegetated upon completion of construction, and no impacts to open space.
FEMA Floodplain	No portion of the site is within a FEMA floodplain

Standard Site Plan Notes:

1. Unless otherwise noted all land and utilities will be unchanged or restored to their original condition.
2. Legal descriptions of all Public Service company easements are included in the legal description page.
3. Regulator stations do not yet have an address assigned by the City of Loveland.
4. Final architectural design of regulator stations will be completed after final input from the City of Loveland.
5. The construction of the valve stations or pipeline in this plan shall be completed in one phase.
6. There will be no paved parking or bicycle racks installed and no servicing of vehicles on site.
7. All trash shall be hulled away by Public Service Company employees. There will be no permanent refuse collection areas.
8. No area of the easements in this plan is within fifty feet (50') of the property that is within a 100-year floodplain, is classified by the Army Corps of Engineers as wetlands or is land classified as having severe soil limitations by the Soil Conservation Service.
9. No area of the easements in this plan is within the Airport influence area.
10. The only high wildlife value for an easement of these plans by the Colorado Division of Wildlife is all easements fall within the snow goose winter foraging range. This development will have little to no impact on this species.

DRAWING INDEX			
REVISION	SHEET NO.	DRAWING NO.	DRAWING TITLE
A	1	2300	COVER SHEET
A	2	2301	LEGAL DESCRIPTION
A	3	2302	OVERALL PLAN
A	4	2303	GRADING PLAN
A	5	2304	BUILDING PLAN & DETAILS

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XCEL PLANNED UNIT DEVELOPMENT (1 OF 5)

DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

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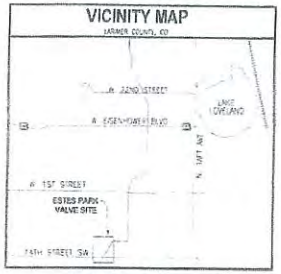
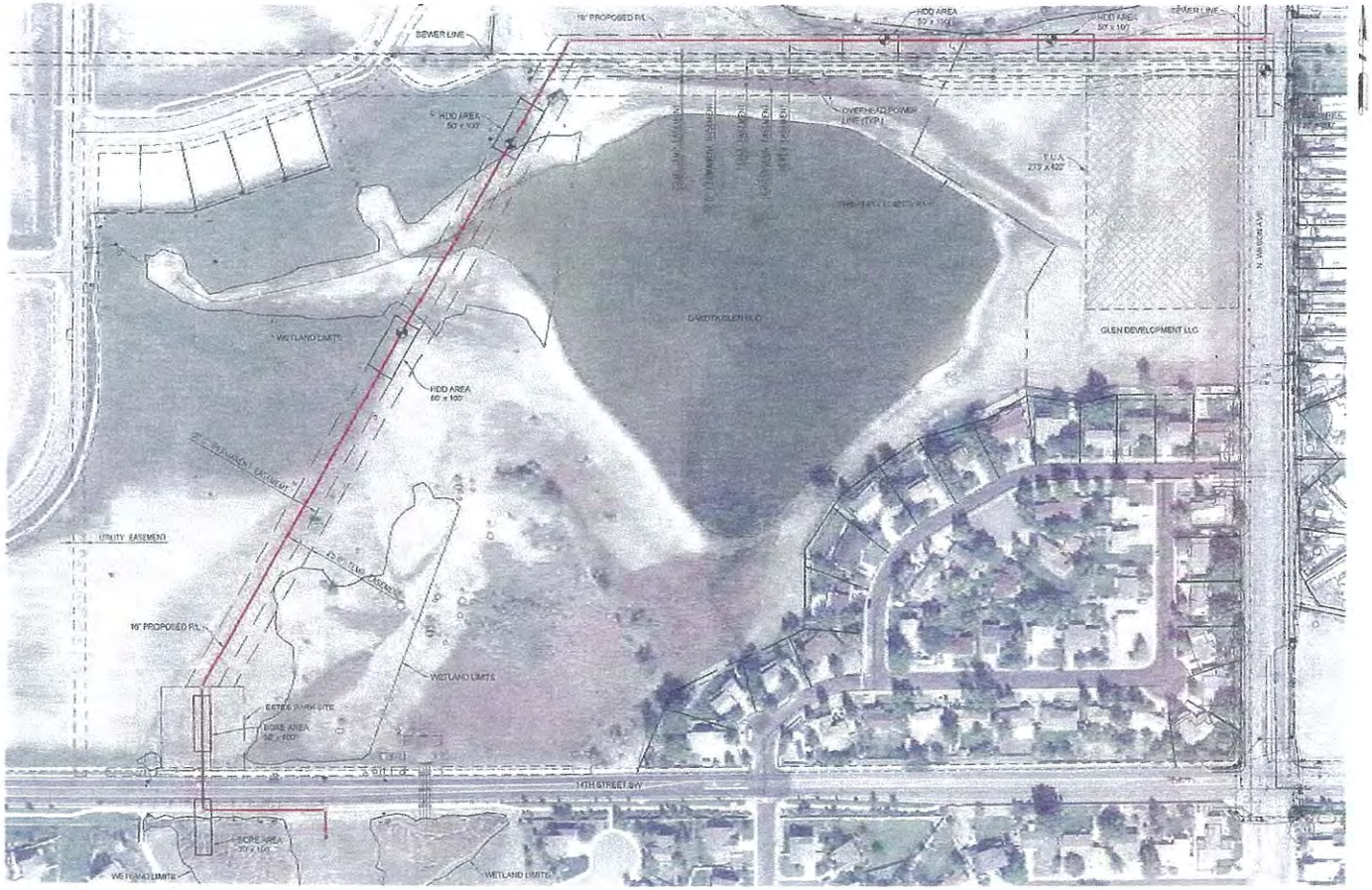


Section 21, Township 5N, Range 69W
LOVELAND, COLORADO



OVERALL PLAN VIEW
SCALE 1" = 100'

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XCEL PLANNED UNIT DEVELOPMENT (2 OF 5)

DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

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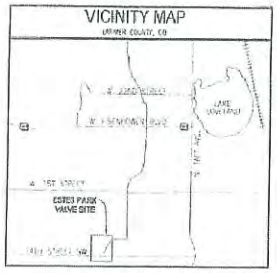

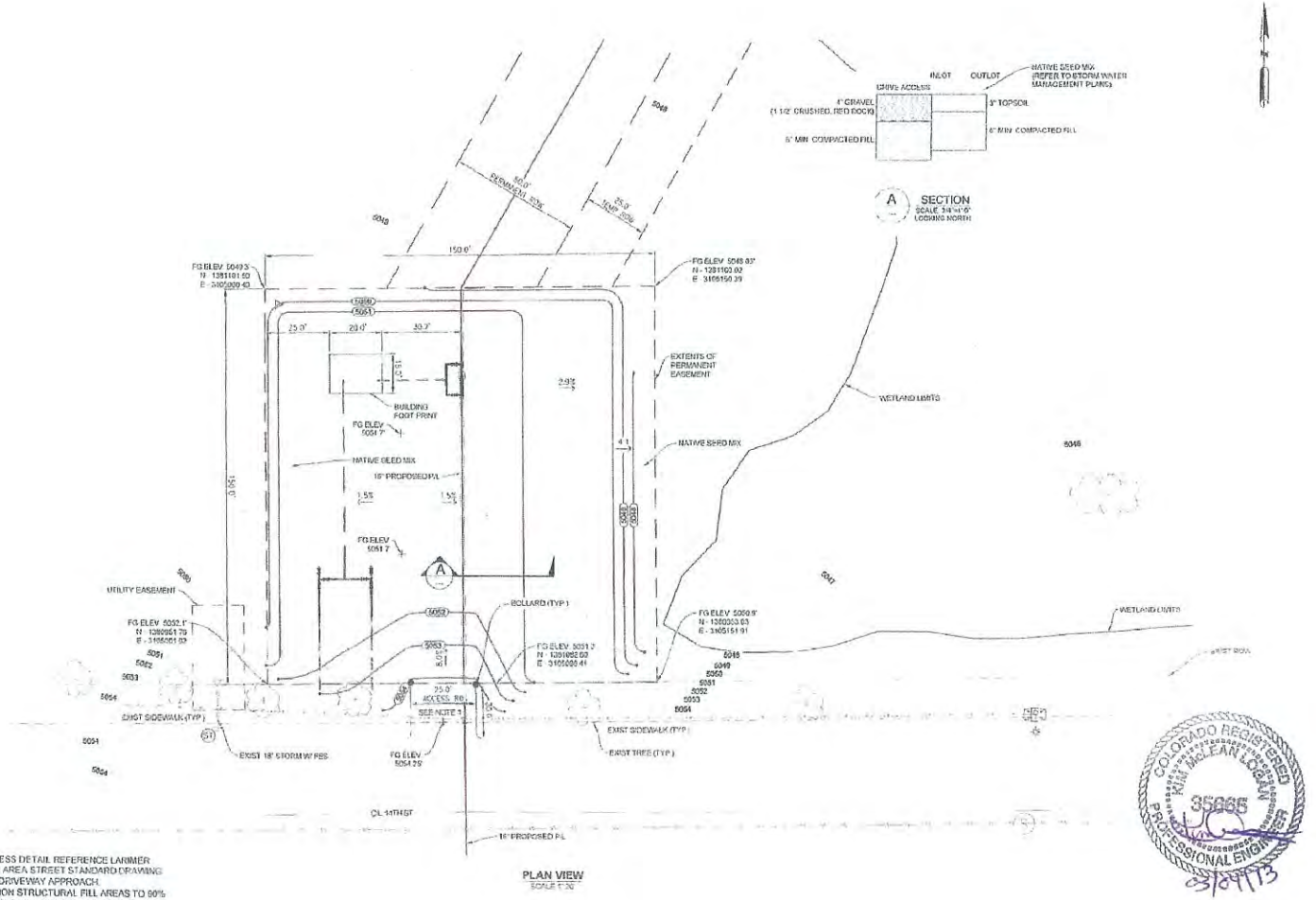

LEGEND

GRADING LEGEND

5246	
5231	
5100	

NOTES:
1. FOR DRIVE ACCESS DETAIL REFERENCE LARIMER COUNTY URBAN AREA STREET STANDARD DRAWING 703-STANDARD DRIVEWAY APPROACH.
2. COMPACT ALL NON STRUCTURAL FILL AREAS TO 90% OF THE MAXIMUM DRY DENSITY WITH STRUCTURAL FILL AREAS @ 95%.
3. REFERENCE PROJECT STORM WATER MANAGEMENT PLAN FOR ALL EROSION CONTROL MEASURES.
4. CONTRACTOR IS RESPONSIBLE WITH IDENTIFYING, LOCATING, AND POTHOLING ALL FOREIGN LINE CONFLICTS. CONTRACTOR IS REQUIRED BY STATUTE TO UTILIZE THE STATE ONE CALL SYSTEM (811) FOR UTILITY LOCATE REQUESTS.
5. A NATIVE SEED MIX THAT MEETS CITY OF LOVELAND STORM WATER STANDARDS SHALL BE SUBMITTED AND APPROVED PRIOR TO INSTALL.

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COLORADO REGISTERED KIM McLEAN LOGAN 35865 PROFESSIONAL ENGINEER 3/19/13

XCEL PLANNED UNIT DEVELOPMENT (3 OF 5)

DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

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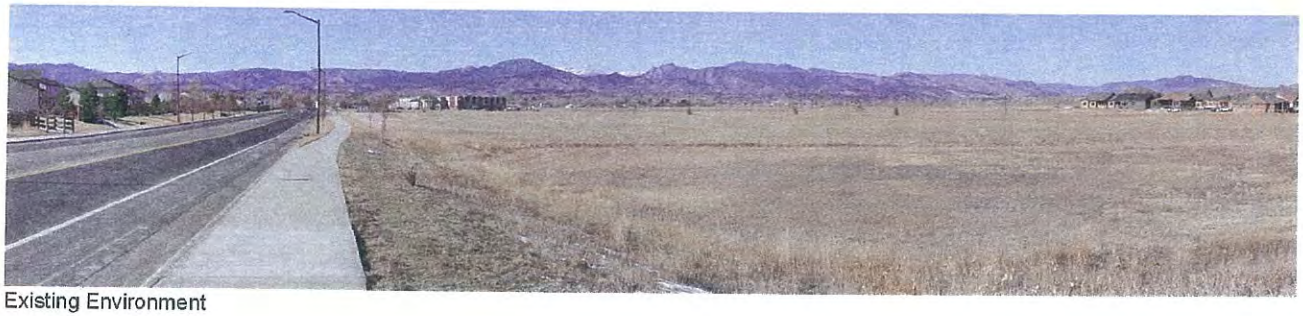

Existing Environment

Photographic Simulation

Parameter	Control House	Aboveground Pipeline	Fence	Bollard
Use	Controls the flow of gas from higher to lower pressure as the gas would move from the 46 inch transmission pipeline to smaller size service distribution pipelines	Transmission of natural gas	Screening of aboveground gas piping	Entrance Gate
Quantity	1	2	2 Installed	2
Height	+/- 12 feet Similar roof pitch to existing pump house	6 feet 6.5 feet	6 feet	3.5 feet
Length	24 feet	47 feet 11 feet	South Fence 105 feet East Fence 35 feet	n/a
Width	22 feet	18 feet 6.5 feet	Southern 32 feet Eastern 24 feet	n/a
Size	528 square feet	6.5 inch transmission piping 1 valve is 36 square feet 21.5 OFT 5 square feet total		36 inch diameter
Architectural Design	Similar architecture to existing pump house located north of the gas regulator station site	Painted steel pipe 6 feet	Similar to Extended Dakota Glen subdivision fence perimeter	n/a
Exterior Material	Walls Split face concrete block Windows/openings Glass block/metal doors Roof Metal Shingles	Painted steel	Ornamental Steel	Painted steel
Color	Walls Tan/Brown or similar to match that of existing pump house Trim Green to match that of existing pump house Roof Warm gray to match that of existing pump house	Medium light tan	Medium light tan	Medium light tan

Disclaimer: Detailed design drawings to be submitted with building permit applications. Design drawings will substantially comply with the details included on this drawing.

XCEL PLANNED UNIT DEVELOPMENT (4 OF 5)

DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

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PC ATTACHMENT 6

2013 - 16" West Main Natural Gas Pipeline Replacement Project - Dakota Glen PUD First Amendment

PROJECT AND LEGAL DESCRIPTION

Introduction

Public Service Company of Colorado (PSCo), an Xcel Energy company, is requesting a Planned Unit Development (PUD) Amendment as described in the City of Loveland Land Use Code Chapter 18.41. The Larimer 2013--16" West Main Natural Gas Pipeline Replacement Project (proposed Project) involves the construction, operation, and maintenance of a 16-inch high-pressure replacement natural gas transmission pipeline. The proposed Project encompasses Larimer, Weld, and Boulder counties and several incorporated communities and is approximately 77 miles long. An overview map showing all portions of the West Main Natural Gas Pipeline Replacement Project throughout Larimer County is included on the Project website:
<http://www.xcelenergywestmainpipeline.com/west_main/route-maps/route-maps.html>. The existing 84 year old natural gas pipelines have reached the ends of their service lives, require safety upgrades, and cannot reliably keep up with growing system demand to deliver natural gas. The proposed Project would provide high-pressure transmission of natural gas with limited distribution systems taps as needed. It would provide an important link to future system upgrades for northern Colorado Front Range communities and would ensure more reliable natural gas delivery to customers in light of growing natural gas demand.

The proposed Project includes necessary pipeline and above-ground facilities located on private property within the Dakota Glen PUD in the city of Loveland. As part of its West Main Natural Gas Pipeline Replacement Project, PSCo is proposing to construct, operate, and maintain one new regulator station, referred to as the Estes Park Regulator Station, in the Dakota Glen PUD. Regulator stations control the flow of gas from higher to lower pressures as the gas would move from the 16-inch transmission pipeline to smaller lateral and distribution pipelines that serve the local community.

The preferred pipeline route enters the Dakota Glen PUD in the city of Loveland near the intersection of 14th Street Southwest (SW) and Angora Drive, approximately 2,000 feet west of the intersection of 14th Street SW and Wilson Avenue (CR17) at the Estes Park Regulator Station (see Sheet 12). The pipeline exits the Estes Park Regulator Station and heads to the northeast through undeveloped open land within the Dakota Glen PUD. North of the cattail reservoir/detention pond, the pipeline turns due east toward Wilson Avenue leaving the PUD boundary and continues north on Wilson Avenue.

A photographic simulation of the proposed Estes Park Regulator Station is provided in Sheet 14. The appearance of the control house has been designed to be similar to architectural characteristics of the existing pumphouse on the northwest side of the cattail reservoir/detention pond within the Dakota Glen PUD. The control house and aboveground piping would be painted beige to blend with the surroundi-

[illegible] proposed Estes Park Regulator Station and pipeline within the Dakota Glen PUD boundary associated with the proposed Project. The proposed Project is an important part of PSCo's service plan to upgrade the existing natural gas transmission system along the northern Colorado Front Range with new natural gas pipelines that meet current safety, service, capacity, and reliability requirements while also meeting the increasing demand for natural gas in Larimer County, including the city of Loveland. The upgrade would involve replacing the existing 84-year-old, 8-inch natural gas transmission pipeline with a new high-pressure 16-inch pipeline to continue providing reliable, safe natural gas service.

Applicant Information

Applicant: Don Tekavec, Project Manager
Public Service Company of Colorado
1123 West 3rd Avenue
Denver, CO 80223
(303) 571-3305
don.tekavec@xcelenergy.com

Engineer: Randy Blank, PSCo Project Manager/Engineer
Public Service Company of Colorado
1901 East Horsetooth Road
Fort Collins, CO 80525
(970) 225-7847
randy.blank@xcelenergy.com

Location and Legal Description

The Estes Park Regulator Station and pipeline within the Dakota Glen PUD boundary is located in Larimer County within the municipal limits of the city of Loveland. The Project area subject to this PUD is located in the Dakota Glen Subdivision near the intersection of 14th Street SW and Angora Drive, approximately 2,000 feet west of the intersection of 14th Street SW and Wilson Avenue (CR17) and the undeveloped open land near the cattail reservoir/detention pond. PSCo has obtained a permanent easement on 0.516 acres of land for this regulator station, and 2.323 acres of permanent easement and 1.114 acres of temporary easement for the pipeline alignment within the Dakota Glen PUD.

Purpose and Need

PSCo currently operates the natural gas supply for most of Larimer County including the city of Loveland. The purpose of the proposed Project is to reliably maintain delivery of natural gas to area customers. The proposed Project is an important part of PSCo's service plan to meet growing natural gas demand in the area because the existing natural gas pipeline cannot meet load requirements at peak demand. The proposed natural gas pipeline upgrade would address safety, service reliability, and capacity concerns for the benefit of commercial and residential customers along the northern Colorado Front Range. Regulator stations are required to control the rate of gas flow and/or pressure though the station and maintain the desired pressure or flow level in the distribution system.

Project Construction Activities

The permanent ROW for operation and maintenance of the Project would be 50 feet. An additional temporary ROW needed for construction activities would be 25 feet.

Construction activities for the West Main Natural Gas Pipeline Replacement Project are proposed to begin approximately May 1, 2013, and operation of the replacement facility would begin during the fall/winter season of 2013.

In open trench areas, major activities involved in Project construction would include surveying, best management practice (BMP) installation, vegetation clearing, staging materials, pipeline trenching, pipeline installation and welding, pressure-testing, backfilling the pipeline trench, cleanup, re-grading the surface, revegetation, and revegetation monitoring. Surface disturbance would be limited to the permanent ROW and the temporary construction ROW and would include boring locations and modifications to regulator stations. Construction activities would be sequenced and likely would occur simultaneously in multiple locations. The pipeline trench would be approximately 72 inches deep with a width of approximately 24 to 36 inches. The new pipeline would sit approximately 48 inches below the final grade. Site restoration would occur according to the provisions of the Stormwater Management Plan (SWMP), which was provided to the City of Loveland on March 22, 2013. Temporary fencing would be utilized around the bore pits and trenches as needed to prevent public access and maximize safety.

Regulator station construction could run concurrently with natural gas pipeline construction. Surface disturbance associated with the Estes Park Regulator Station would be limited to the 0.516 acre permanent easement of the regulator station.

PSCo proposes to use boring techniques, as feasible, to avoid surface disturbance to wetlands, trails, and driveways. Boring techniques would involve drilling construction of the pipeline under these surface features. In wet areas, the natural gas pipeline would be weighted for stability to ensure that the pipeline remained securely in place during periods when soil might be saturated. All wetlands associated with the Dakota Glen PUD will be bored. As described in the Environmentally Sensitive Areas Report (ESAR) submitted under separate cover, the proposed Project would not affect mature stands of vegetation. A wetland delineation report was prepared for the proposed Project located within the PUD, and is provided in Attachment 2 of the ESAR. The proposed regulator station is located in an area that is higher than the surrounding wetlands primarily located to the east and would therefore not impact wetlands. The proposed pipeline crosses one wetland located along the western portion of the lake. The proposed pipeline would avoid effects to this wetland through the use of boring techniques. The locations of the boring entry/exit locations are shown in Sheet 12. As documented in the agency correspondence included in Attachment 3 of the ESAR, the U.S. Army Corps of Engineers has indicated that a wetland permit (per the Clean Water Act) would not be required. The construction BMPs and site mitigation measures would protect potential impacts to adjacent wetlands during construction and operation of the Project as described in Section IV of the ESAR. As discussed in Section IV.2 of the ESAR, BMPs would be implemented as described in Attachment 6 of the ESAR to minimize or mitigate soil erosion and to revegetate any areas disturbed during construction of the proposed Project. PSCo also would follow the Weed Management and Revegetation Plan provided in Attachment 7 of the ESAR. The Plan includes a preconstruction survey for noxious weeds and follow-up monitoring to ensure revegetation is successful.

PSCo plans to off-load and string pipeline as it is delivered along the ROW. Any stockpiling of pipeline would take place at the proposed Project ROW (including the temporary and permanent easement areas) or at existing PSCo yards. Miscellaneous materials (such as valves, fittings, and other construction materials) would be stored and delivered to the pipeline construction area from PSCo's Fort Collins and Campion Service Centers.

PSCo would install signs (pipeline markers) in the permanent 50-foot easement to identify that a natural gas pipeline is buried nearby. These markers are required by federal regulations for pipeline safety (49 CFR 192). A typical pipeline marker is shown in Attachment 2. These markers provide adequate warning and location of the natural gas pipeline to local residents and future construction contractors performing work in the area. Markers identify the product carried in the pipeline (such as natural gas), the name of the pipeline operator, the operator's 24-hour emergency contact number, and the area's one-call center number. These markers are approximately 4 feet above ground and occur approximately every 500 feet or in-line of sight, on both sides of road, water, and railroad crossings, and at all changes in direction. There would be approximately 4 pipeline markers within the Dakota Glen PUD; one at the Estes Park Regulator Station, one at the angle point near the existing pump house, one at the east end of Dakota Glen near Wilson Avenue, and one on the straight line pipeline alignment within the PUD.

Noise from heavy machinery would be of short duration during construction of the proposed natural gas pipeline. Construction would be limited daily hours between 7 a.m. and 7 p.m. per City of Loveland Municipal Code Chapter 7.32 Sound Limitations, and would occur Monday through Friday. Construction may occur on weekends and other hours outside the 7 a.m. to 7 p.m. timeframe on an as-required basis, with prior approval from the City Manager. Noise levels from equipment would be controlled through the use of standard maintenance procedures and the use of appropriate mufflers.

Construction of the natural gas pipeline and related facilities may generate a temporary increase in fugitive dust. PSCo would comply with state and Larimer County requirements for controlling dust emissions during the construction of the proposed Project. PSCo would employ BMPs for dust suppression, as described in the SWMP. During construction, water trucks would patrol work areas to control dust as necessary depending on weather and dust suppression, weed control, and soil conditioning.

Minimal odors from the proposed Project are expected, with the highest likelihood occurring during construction from vehicle exhaust, and during periods of maintenance activities when mercaptan may be noticeable. Mercaptan is a chemical injected into the natural gas product, as required by federal regulation, to produce a sulfurous odor ("rotten egg" odor) as a safety measure. It is not anticipated that maintenance activities beyond those already experienced by area residents would be required for the proposed Project.

Glare would potentially be visible from construction vehicles and equipment. Any glare experienced would be temporary in nature and would be similar to other sources of glare that exist in the environment (such as from vehicle on Wilson Avenue and residential streets, and glare from residential building materials).

PSCo has obtained a Storm Water Permit for Construction Activities from the Colorado Department of Public Health and Environment. The drainage plan for the proposed Project would consist of a SWMP and BMPs for the control of stormwater runoff during the construction period. Post-construction, the areas disturbed by trenching and boring activities for the natural gas pipeline would be recontoured to preconstruction conditions and revegetated as described in the SWMP.

PSCo adheres to the pipeline safety regulations established in the Code of Federal Regulations (CFR) at 49 CFR Part 192 by the U.S. Department of Transportation (DOT) to ensure public protection and to prevent accidents and failures. Specifically, the DOT Pipeline and Hazardous Materials Safety Administration is the federal authority for ensuring the safe, reliable, and environmentally sound operation of pipeline transmission systems under the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (PIPES Act).

Property Owners, Property, and Right-of-Way Acquisition

PSCo's land services representatives have worked with the landowner of the PUD to explain Project construction, operation, and maintenance activities and to negotiate the purchase of easements based on fair market value. The easement for the Estes Park Regulator Station would grant PSCo a permanent easement of 22,500 square feet (0.516 acres) to construct, operate, and maintain the regulator station. The permanent pipeline easements of 2.323 acres and temporary pipeline easements of 1.114 acres would grant PSCo a permanent 50-foot corridor and temporary 25-foot construction ROW to construct, operate, and maintain the natural gas pipeline within the Dakota Glen PUD. The landowner would maintain fee title to the land acquired under the easement. The land within the pipeline permanent and temporary easements granted to PSCo within the Dakota Glen PUD would be restored and revegetated and available for other uses upon completion of the construction period.

XCEL PLANNED UNIT DEVELOPMENT (5 OF 5)

DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

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APRI PC ATTACHMENT 6

Dakota Glen PUD First Amendment to the PUD Preliminary Development Plan
PRELIMINARY DEVELOPMENT PLAN NARRATIVE

Purpose of the Project

The following development standards apply to the Dakota Glen Planned Unit Development. The purpose of this Final Development Plan (FDP) is to provide for flexibility and innovative design for this very unique area of the City. The objective of the plan is to meet the growing demands of its residents by providing variety in the style, design, and layout of buildings.

Land Use

Overall Concept: Residential neighborhoods will be designed in a cohesive manner to accommodate the varied design requirements of the types of dwellings they will contain. The home types and densities will be designed to be appropriate to surrounding considerations, such as street patterns, adjacent uses, and location of project amenity areas. The development plan provides for a mix of varied housing types, including conventional single-family detached homes on standard lots, single family detached homes on patio lots, and single family attached. The gross density of the plan is 2.07 du / acre.

Land Use Categories: It is the intent of this plan to provide a mechanism by which land can be developed such that flexibility and innovative design are encouraged, in accordance with Chapter 18.41 of the Loveland Municipal Code and in compliance with other applicable land use and development regulations.

Permitted Uses

Residential Areas: Permitted uses within the residential areas include the following:

1. Residential - Conventional single family dwellings on standard lots, single-family dwellings on patio lots, and single family attached dwellings.
2. Other - Recreational facilities
3. Tracts - Permitted uses within tracts include the following:
   a. Open space
   b. Private park area (see parks and open space definition below)
   c. Trails
   d. Utilities and drainage improvements, including irrigation pumps.
4. Open Space Preservation Tracts - permitted uses include open space, trails (locations shown on the FDP plans), utilities and drainage improvements (including irrigation controllers), and recreational access to Cattail Reservoir.
5. Temporary Parking - temporary parking will be permitted on vacant lots for model home visitors.
6. Pump house - A pump house will be constructed to use cattail reservoir for raw water irrigation. Refer to sheet 10 of 10 for elevations.
7. Essential above-ground public utility and public service installations and facilities - A permanent easement of 2.84 acres for a natural gas regulator station and 16 inch natural gas pipeline within the Dakota Glen PUD (see Sheets 11 through 15).

Definitions. The following definitions apply to residential uses with this PUD:
(Refer to Loveland Municipal Code section 18 for land use definitions not provided in this PDP)

1. Single Family Detached standard lot - A one-family dwelling that is not attached to any other dwelling by any means, located on individual fee simple lots. Minimum lot size shall be 7,150 s.f. These Units will be either one or two story with three options for garage location.

2. Single Family Detached patio lot - A one-family dwelling that is not attached to any other dwelling by any means, located on individual fee simple lots. Minimum lot size shall be 6,500 s.f. These units will be one story with a three car garage located on the front of the house.

3. Single Family Attached Dwelling Unit - A one family dwelling attached to a one-family dwelling by a common vertical wall in which each unit has its own front and rear entrance and in which no unit is located over another unit. Minimum lot size shall be 3,800 s.f.

Setbacks: Staggered setbacks shall be provided so as to create a visually interesting streetscape. This will be achieved by prohibiting identical minimum front setbacks on adjacent lots that face the same street through the enforcement of varying minimum setback widths of a two feet minimum. Refer setback table this sheet for setback information, and typical lot layout on sheet 9 and 10 of 10.

Building Height: The maximum height for structures is 35 feet. Refer to the Loveland Municipal Code section 18.54 for information on calculating building height.

Neighborhood Structure: Arterial/collector streets and open space generally border neighborhoods. Neighborhoods will be designed in accordance with the development str[illegible] set forth in this development plan. Primary areas providing structure to the neighborhoods include private open space [illegible] play areas, a wide trail system, and open space areas around Cattail Reservoir.

Overall Concept: Primary access to the site will be from SW 14th Street, and County Road 21. Which are classified as a two-lane arterial and a major collector street respectively. An internal collector street and local streets will distribute traffic throughout the site. An interparcel connection is provided in the southwest part of the property.

Components

1. **Validation:** Local streets will provide access within the neighborhoods. Local streets may vary in width, according to the amount of traffic to be accommodated and the specific design requirements of each neighborhood.

2. **Pedestrians:** An overall system of pedestrian access is provided along streets and through open space areas. Meandering walks are provided along perimeter streets, and the minor collector street through the site will have detached sidewalks, while all of the local residential streets will have attached sidewalks. Proposed trails are shown throughout the sites open space.

3. **Performance Standards:** Street improvements and new streets will be constructed in accordance with the street-cross sections shown in the engineering drawings. The associated plat provides for dedication of necessary Right of Way to accommodate the arterial roadway's ultimate development.

Public Facilities

Overall Concept: Public facilities and services are readily available to the site, and will be provided for as described below

Water and Sewer: The City of Loveland will provide water and sewer service. Domestic water will be delivered by extension of existing water mains as a loop through the site. Sanitary sewer service will be provided by use of the existing 8" sewer on site in accordance with the City's master plan. The trunk sewers will be extended to maximize the benefits of gravity flow from the majority of the PUD. Details of services have been provided on the preliminary development plan.

Storm Drainage: Storm drainage shall be collected and carried on the surface through the designed street pattern. As necessary to provide capacity, catch basins and storm sewers will be installed to transport storm flows to points of discharge. Most of the storm water will be discharged into cattail reservoir. A small portion of the storm water will be discharged directly into the Mariano exchange ditch. All points of discharge will be adequately designed to minimize erosion and to protect the environmental integrity of the lake in accordance with City standards.

Electric: The City of Loveland Water and Power Department will provide service.

Gas: Public Service Company of Colorado.

Cable: Comcast.

Phone: Qwest.

Private Parks and Open Space: The development will incorporate a large open space private park area including: open turf areas, a lake, trails, boardwalks, natural areas, and recreational amenities may include any or all of the following: Clubhouse, pool, hot tub, tennis court(s), basketball court(s), trails, playground structures, sand volley ball court(s), and a sand beach. In addition to the large private park area, numerous green belts with trail systems will loop through the neighborhoods providing connection to the park for residents.

Landscape Concept: The design intent for the Dakota Glen PUD is to create a comprehensively planned community through the careful integration of the natural features of the site. The creation of a well conceived overall landscape program for the development would serve to provide for a unique identity as well as an overall sense of continuity amongst the various neighborhoods. Several design elements will be used to reinforce the image of this community. The elements include: consistent perimeter treatments, continuity of the man made site amenities (signage, fencing, play areas and other architectural site features), provision of a comprehensive landscape treatment, and architectural treatments of the various housing types.

Edge Treatment

1. *Architecture:* One of the most important aspects of the development's overall appearance, as viewed from its edge, is the appearance of the residential structures. Rear and side elevations of structures will be detailed to provide visual interest from adjoining streets. Appropriate setbacks and detached sidewalks with street trees have been provided along the site's perimeter and proper buffering will be incorporated.

2. *Landscaping:* Perimeter landscape treatment will receive careful attention due to a portion of the site's edge that fronts on arterial roadways. Arterial streets will feature landscaped areas outside of the right-of-way, tree lawns, berms, and detached sidewalks. 14th Street will have a thirty-five foot landscape buffer and County road 21 will have a twenty-six foot minimum landscape buffer. Landscape buffers will provide ample buffering from adjacent development and to create a park-like environment.

3. *Access:* Entry points are proposed from the site's abutting roadways. Each entry point will be designed as a part of the development's overall theme in terms of landscape and architectural treatment.

4. *Fencing:* The use of fencing as a part of the development's edge treatment will be minimized, and the dominant form of edge treatment for screening and buffering will be landscape. Fencing is not required in the development, however if a property owner is so inclined the following fencing options will be allowed:

   A. Single Family Detached - standard lots - will allow cedar fencing at a 48 inch maximum height to the property line (see sheet 9 of 10 for typical fence details).

   B. Single Family detached - Patio lots - will allow steel picket fence at 36 inch maximum height to the property line

   C. Single family attached will allow steel picket fencing at 36 inch maximum height in designated areas, fencing will not be allowed to the property lines (see typical floor plan sheet 10 of 10).

Streetscape: Landscaping will be designed with a comprehensive theme for the entire development. The overall concept will include the treatment of the roadways as tree-lined lanes reflective of early, established communities typical of northern Colorado. One 2-inch caliper tree shall be planted in each single family lot, with two, 2-inch caliper street trees planted on corner lots (one per street frontage). Single-family attached homes shall have two, 2-inch caliper trees per street frontage while corner lots shall have 3.

Open Space Areas: Lake edges will be enhanced with additional trees, grasses and shrubs as recommended in the Environmentally Sensitive Areas Report, (ESAR) dated June 1, 2005. The open space within the buffer will be used for passive uses only. The private neighborhood park and the multipurpose play areas are intended to provide for active and passive play. Large open irrigated turf areas will support this type of activity.

The large open space area near the lake has been designed to allow humans and wildlife to coexist in harmony. It is envisioned that the design of this area will enhance and protect the vitality and environmental quality of this beautiful area. Less than 1 acres of the wetlands will be filled in. Cedar Creek Associates has reviewed the open space plan and has confirmed that it is in compliance with the environmentally sensitive areas report.

High quality wetlands in the southeastern area of the property shall be left undisturbed in their current location, with no disturbance, removal, replacement or mitigation during construction or thereafter, except as otherwise provided for under condition 3, below. These include the wetland where Cattail Reservoir No. 1 was previously located, and wetlands along the southern shore of Cattail Reservoir No. 2. These high-quality wetlands shall also be protected with an approximate 75-foot buffer. Within this buffer, no development shall take place. Passive, non-intrusive use shall be allowed (e.g., bird-watching from a distance).

Prior to approval of the FDP, the developer may, at his discretion, submit a natural area modification plan prepared by a qualified environmental consultant. Said plan shall be subject to approval by the Current Planning Manager.

Signage will be included at the edge of high quality wetlands, to be shown on FDP. Interpretive and educational signage should be placed along the edge of high quality wetlands (approximately 5 signs). The signs should stress the need for no wildlife harassment or human intrusion into important habitat areas. Text for signage follows the recommendations in the ESAR report.

Maintenance: The landscaped areas of the development, including perimeter areas, common open space, entry features, patio home lots, and single family attached lots will be maintained by a Home Owners Association. Maintenance of landscaping within each standard home lot will be the responsibility of homeowner.

Architecture and Site Requirements

Overall Concept: These performance standards are intended to insure that each neighborhood or development area within Dakota Glen incorporates the use of unifying architectural elements to create an overall, cohesive theme. The intent of these guidelines is to provide direction to builders and designers in the planning, design, and construction of dwellings to ensure that they are compatible with the overall design intent for the PUD. These guidelines are intended to provide flexibility in terms of design style, within a coordinated architectural concept or theme for each neighborhood area as defined by common architectural elements.

Supplemental Requirements for Single Family:

One of the most important aspects to a detached large lot single family neighborhood is its streetscape and the overall appearance and feelings generated as it is viewed by surrounding residents, neighbors, and general public. Recognizing this, the following standards are required (refer to PDP sheets 9 and 10 of 10 for typical plans and elevations):

1. **Porches:** All homes must incorporate a covered front porch for homes that use the front porch to recess the garage. The narrowest dimension of which shall be six feet deep and eight feet wide.

2. **Garages:** Garages shall have front elevations that complement, rather than dominate, the architectural details of the living portion of the dwelling. The front elevation of side-load garages shall incorporate the use of windows, wall breaks, and or building material changes to more aesthetically enhance the front wall elevation. Garages that have doors for more than two vehicles must have one door recessed a minimum of two feet from the others. Garage doors, visible as part of the front building elevation, shall not comprise more than forty percent (40%) of the ground floor street facing linear building frontage on single family lots. Garage doors, visible as part of the front building elevation, shall not comprise more than fifty percent (50%) of the ground floor street facing linear building frontage on patio home lots. Corner lots are exempt from this condition.

3. **Varying Streetscape:** Single family detached lots (standard and patio) will have enough variety in building elevations and model type such that no identical front elevation is adjacent to or across a common street from one another. Significant changes to the front elevation will be determined by the architectural review committee.

4. **Architectural Review Committee:** The architectural review committee will be the reviewing authority for architectural character within the development. Architectural features such as colors, materials, roofs, windows, doorways, balconies, and changes in plane will all be reviewed under the authority of the architectural review committee.

5. **Materials:** Roofing materials, windows, building materials and finish, will all be carefully coordinated to achieve a cohesive appearance. Exterior wall materials must incorporate brick, natural or synthetic stone, or stucco. Permitted building materials will be established with the design of each neighborhood or development area, and must be consistent within the neighborhood to present an overall design.

6. **Colors:** Exterior wall colors shall be compatible with surrounding buildings, with natural (earth tone) encouraged. Primary or other bright colors are only to be used as accents.

7. **Garage Setbacks:** Garages that have more than two vehicle doors shall have one door recessed a minimum of 2 feet from the other doors.

8. **Accessory Structures:** Accessory structures on residential lots are not allowed within this development.

9. **Pump House:** The pumphouse will be developed using the same materials as much of the residential architecture. The character of the building will be that of a residential building in an effort to blend in with the development. The pump house will be allowed within the 75 foot lake buffer. See typical elevation on sheet 10 of 10.

Landform Modification

The Dakota Glen site is relatively flat with approximately 2 percent slope through out most of the site. Some landform modification will occur in order to create visual interest throughout the site, and to provide management of drainage.

Implementation Procedures: Proposed development within the Planned Unit Development will be processed in accordance with the procedures contained in Chapter 18.41 of the Loveland Municipal Code dated 3-97, Section 18.41.50, Procedures for approval of a Planned Unit Development, and shall require approval of Final Development Plans in accordance with the requirements thereof.

CONDITIONS OF PRELIMINARY APPROVAL

Current Planning Conditions

1. The PDP, "Supplemental Requirements for Single Family", notes be revised to read:
   a. Garage doors, visible as part of the front building elevation, shall not comprise more than forty percent (40%) of the ground floor street facing linear building frontage on single-family standard lots.
   b. Garage doors, visible as part of the front building elevation, shall not comprise more than fifty percent (50%) of the ground floor street facing linear building frontage on single-family patio lots.

Parks and Recreation Conditions

2. As a condition of PDP approval, if the developer wishes to conduct clean-up activities in the natural area, the management techniques described in a letter from Cedar Creek Associates dated October 4, 2005 shall be followed. These management techniques shall be carried out according to the map accompanying Cedar Creek's letter, which depicts the locations on the site where some of the techniques identified shall be applied. According to Cedar Creek's letter, three of the techniques may be applied site-wide, and one of the techniques identified in a previous letter has been removed from consideration as a site management technique at this time. If any of the above management techniques identified by Cedar Creek are implemented, an annual monitoring report shall be submitted to the Current Planning Manager and Natural Areas Manager on November 1 of each year. The monitoring report shall describe the management techniques employed, the results of those techniques, and the current status of any restoration or revegetation efforts. If clean-up activities are not pursued, the natural area shall be left in its natural state.

Engineering Conditions

3. Notwithstanding any information presented in the PDP or accompanying preliminary plat and preliminary construction plan documents (text or graphical depictions), all public improvements shall conform to the Larimer County Urban Area Street Standards adopted on October 2002, as amended, unless specific variances are requested and approved in writing.
4. The following public improvements shall be designed and constructed by the developer unless designed & constructed by others. All improvements shall be completed prior to the issuance of any building permits, unless otherwise approved pursuant to the provisions in Section 16.40 of the Loveland Municipal Code.
   a. 14th Street SW to 2-lane arterial standards adjacent to the property including detached sidewalk.
   b. CR 21 to major collector standards adjacent to the property including detached sidewalk. A cash-in-lieu payment, or other form of security acceptable to the City, for all or part of these improvements may be accepted by the City if approved by the City Engineer.
   c. Angora Drive to minor collector standards within the property.
   d. Westbound right-turn lane on 14th Street SW into Angora Drive.

Fire Prevention Conditions

5. Prior to approval of the Final Plat, the design for the emergency access roadway serving the proposed phases I and II shall be approved by the Fire Department.
6. Prior to approval of any building permits within the Property all courts shall be provided with a "Fire Lane - No Parking" signs approved by the Fire Department.

Power Conditions

7. When the property being annexed into the City of Loveland is currently located within the REA certified territory, this property is subject to a five percent (5%) surcharge on electrical energy as defined in 40-9.5-204, CRS, and the City of Loveland Municipal Code 13.12.180. This surcharge applies to any subsequent subdivisions of property annexed after January 31, 1987 within the REA certified service territory. In this case a note will be added to the final plat that reads as follows:
   a. A surcharge of 5% will be added to all bills for the sale of electric power to additional services which come into the existence after January 31, 1987, within the territory herein annexed which surcharge will expire ten years after effective date of this annexation.
8. A letter of approval from Western Area Power Authority for landscape plans proposing landscaping within a WAPA easement or under WAPA power lines must be submitted with the Final Plat and Final Construction Drawings submittal.
9. All multifamily, condominium, apartment and town home units will have meters centrally located on or near the unit's exterior building wall. Town homes will not be individually metered.

VESTING
Vesting was granted for this development plan OCTOBER 14, 2006 for a period of 3 years.

SETBACK TABLE (all numbers refer to minimum condition)

UNIT TYPE	FRONT SETBACK, EVEN # LOTS	COMMON WALL SETBACK	FRONT SETBACK, ODD # LOTS	REAR SETBACK	SIDE SETBACK**	CORNER LOT SIDE SETBACKS
SINGLE FAMILY - STANDARD LOT *	24'	N/A	26'	15'	5'	15'
SINGLE FAMILY - PATIO LOT *	27'	N/A	25'	10'	5'	15'
ATTACHED SINGLE FAMILY LOT *	15'	N/A	15'	N/A	5'	15'

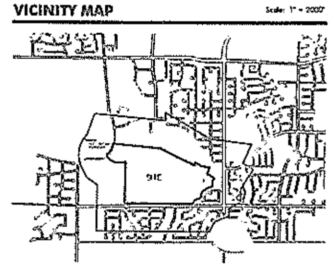
* Setbacks measured from the back of sidewalk
** The 1:3 ratio shall apply with 5 feet being the minimum.

PDP LANDUSE TABLE

LAND USE	AREA	NUMBER OF UNITS	DENSITY	PERCENTAGE OF SITE
SINGLE FAMILY - STANDARD LOT	26.45 ac.	93	1.47 du/ac. (net)	20.9%
SINGLE FAMILY - PATIO LOT	12.22 ac.	78	.53 du/ac. (net)	9.6%
SINGLE FAMILY ATTACHED	8.29 ac.	42	.29 du/ac. (net)	6.6%
OPEN SPACE	34.75 ac.	N/A	N/A	27.4%
TOTAL DEVELOPED AREA	81.84 ac.	293	2.42 du/ac. (net)	64.4%
RESERVOIR	21.6 ac.	N/A	N/A	17%
WETLANDS	5.9 ac.	N/A	N/A	4.6%
R.O.W.	14.82 ac.	N/A	N/A	11.7%
PUBLIC UTILITY EASEMENT	2.84 ac.	N/A	N/A	2.2%
TOTAL	127 ac.			100%

VICINITY MAP

Scale: 1" = 2000'



DAKOTA GLEN

Approvals

1. Approved this ____ day of ____, ____ by the Current Planning Manager of the City of Loveland, Colorado.

Current Planning Manager

2. Approved this ____ day of ____, ____ by the City Engineer of the City of Loveland, Colorado.

City Engineer

3. Approved this ____ day of ____, ____ by the City Attorney of the City of Loveland, Colorado.

City Attorney

4. Approved this ____ day of ____, ____ by the City Planning Commission of the City of Loveland, Colorado.

Chairperson

5. Approved this ____ day of ____, ____ by the City Council of the City of Loveland, Colorado.

Mayor ____ Attest ____

Ownership Certification

KNOW ALL MEN BY THESE PRESENTS THAT

____

being all the lawful record owners of the property shown on this ____ (type of plan) ____, except any existing public streets, roads, or highways, do hereby certify that that I/we accept the conditions and restrictions set forth on said plan and in the conditions of approval by the City of Loveland, dated ____, and that I/we consent to the recordation of any information pertaining thereto.

(owner)

(owner)

STATE OF COLORADO)
)
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this ____ day of ____, 2008 by ____

Witness my hand and official seal.
My commission expires ____

NOTARY PUBLIC ____ address

Developer:
Glen Development LLC
P.O. Box 118
Loveland, CO 80539
970.663.1897

SHEET INDEX

SHEET 1 PDP NARRATIVE
SHEET 2 OVERALL PLAN
SHEET 3 SITE / LANDSCAPE PLAN
SHEET 4 SITE / LANDSCAPE PLAN
SHEET 5 SITE / LANDSCAPE PLAN
SHEET 6 SITE / LANDSCAPE PLAN
SHEET 7 SITE / LANDSCAPE PLAN
SHEET 8 SITE / LANDSCAPE PLAN
SHEET 9 ARCHITECTURE
SHEET 10 ARCHITECTURE
SHEET 11 XCEL PLANNED UNIT DEVELOPMENT (1 OF 5)
SHEET 12 XCEL PLANNED UNIT DEVELOPMENT (2 OF 5)
SHEET 13 XCEL PLANNED UNIT DEVELOPMENT (3 OF 5)
SHEET 14 XCEL PLANNED UNIT DEVELOPMENT (4 OF 5)
SHEET 15 XCEL PLANNED UNIT DEVELOPMENT (5 OF 5)

PDP NARRATIVE

DAKOTA GLEN 1 ST. SUBDIVISION
LOVELAND, COLORADO

BHA DESIGN, INC. • 1603 OAKRIDGE DR

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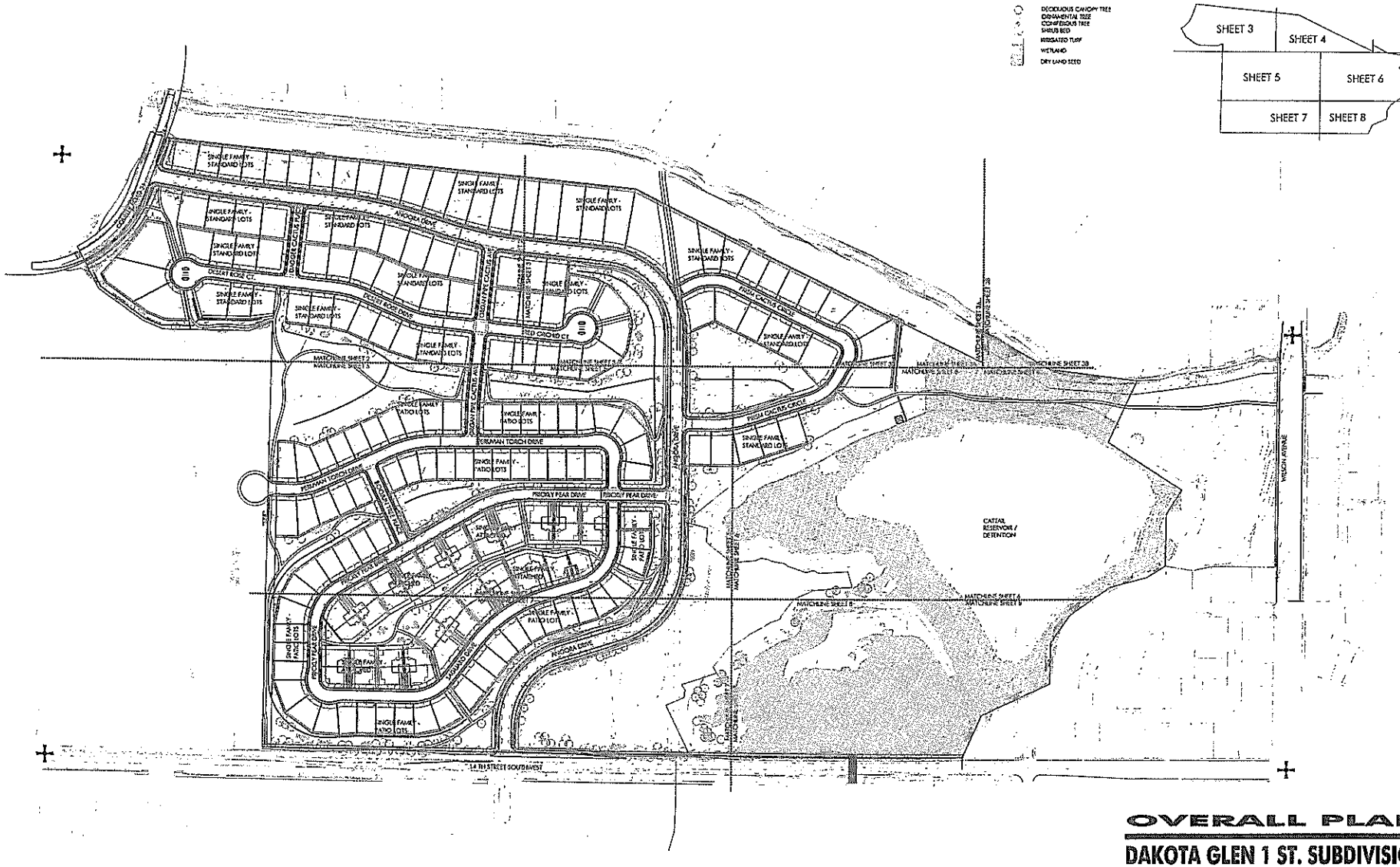
PC ATTACHMENT 6



OVERALL PLAN

DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

BHA DESIGN, INC. • 1603 OAKRIDGE DR

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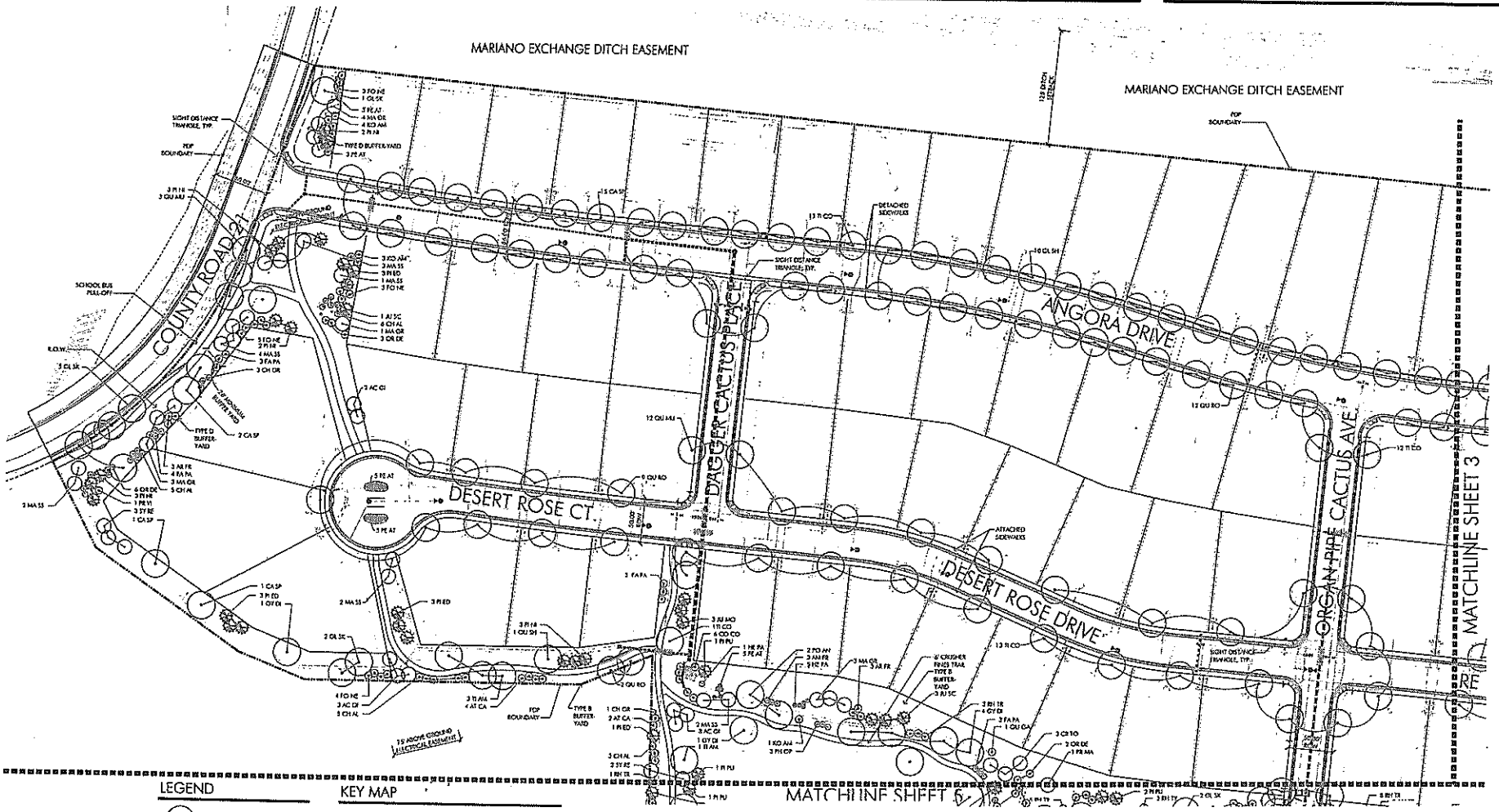

SITE / LANDSCAPE PLAN

DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

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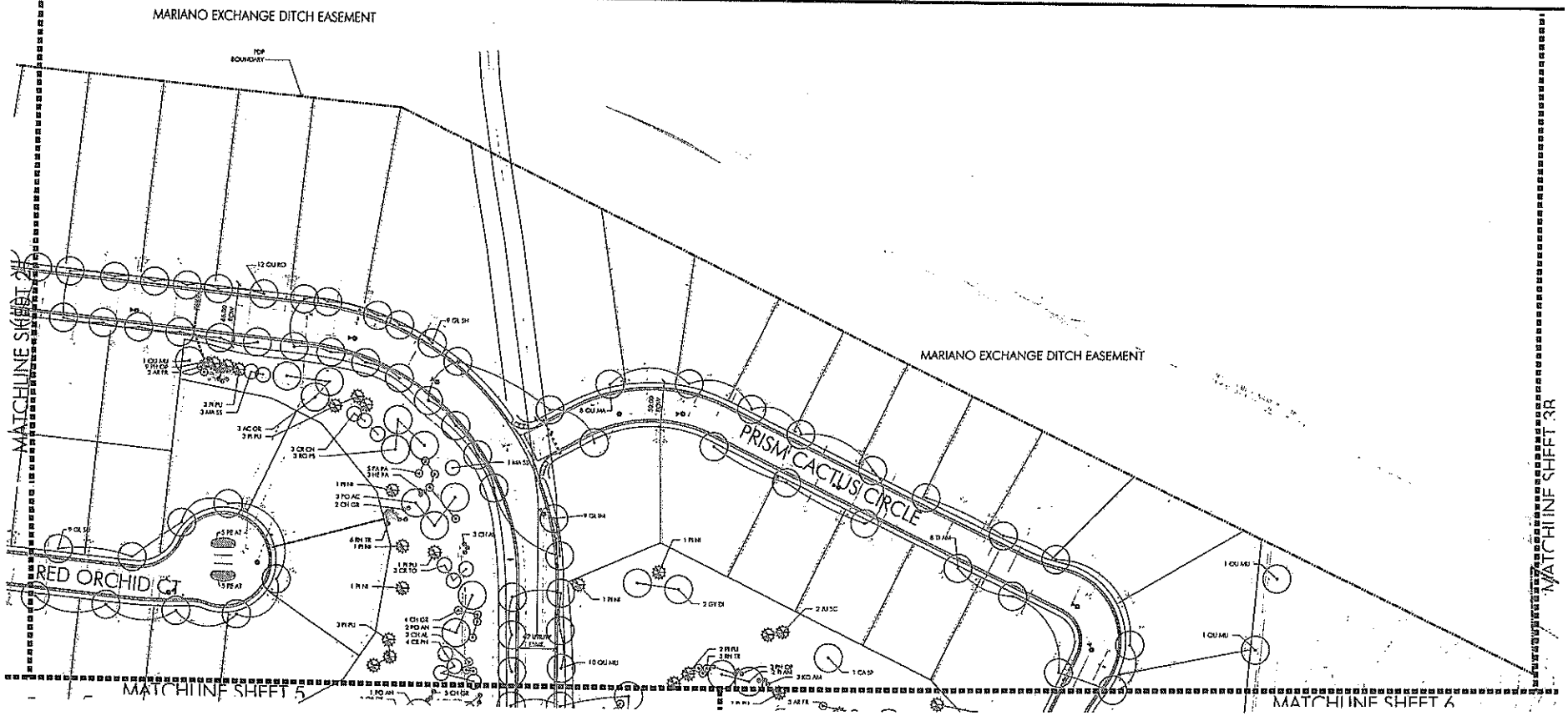
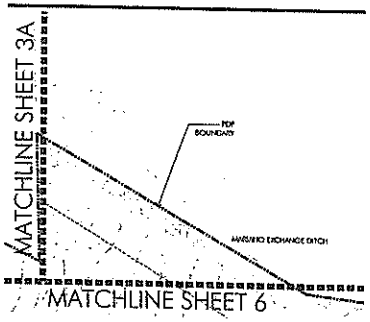
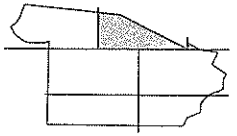
SHEET 3A



SHEET 3B



KEY MAP



LEGEND

- DECIDUOUS CANOPY TREE
- ORNAMENTAL TREE
- CONIFEROUS TREE
- SHRUB BED
- IRRIGATED TURF
- NATIVE MIX
- TRANSITION SEED
- DRY LAND SEED

NORTH 0 25' 50' 100'

SITE / LANDSCAPE PLAN

DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

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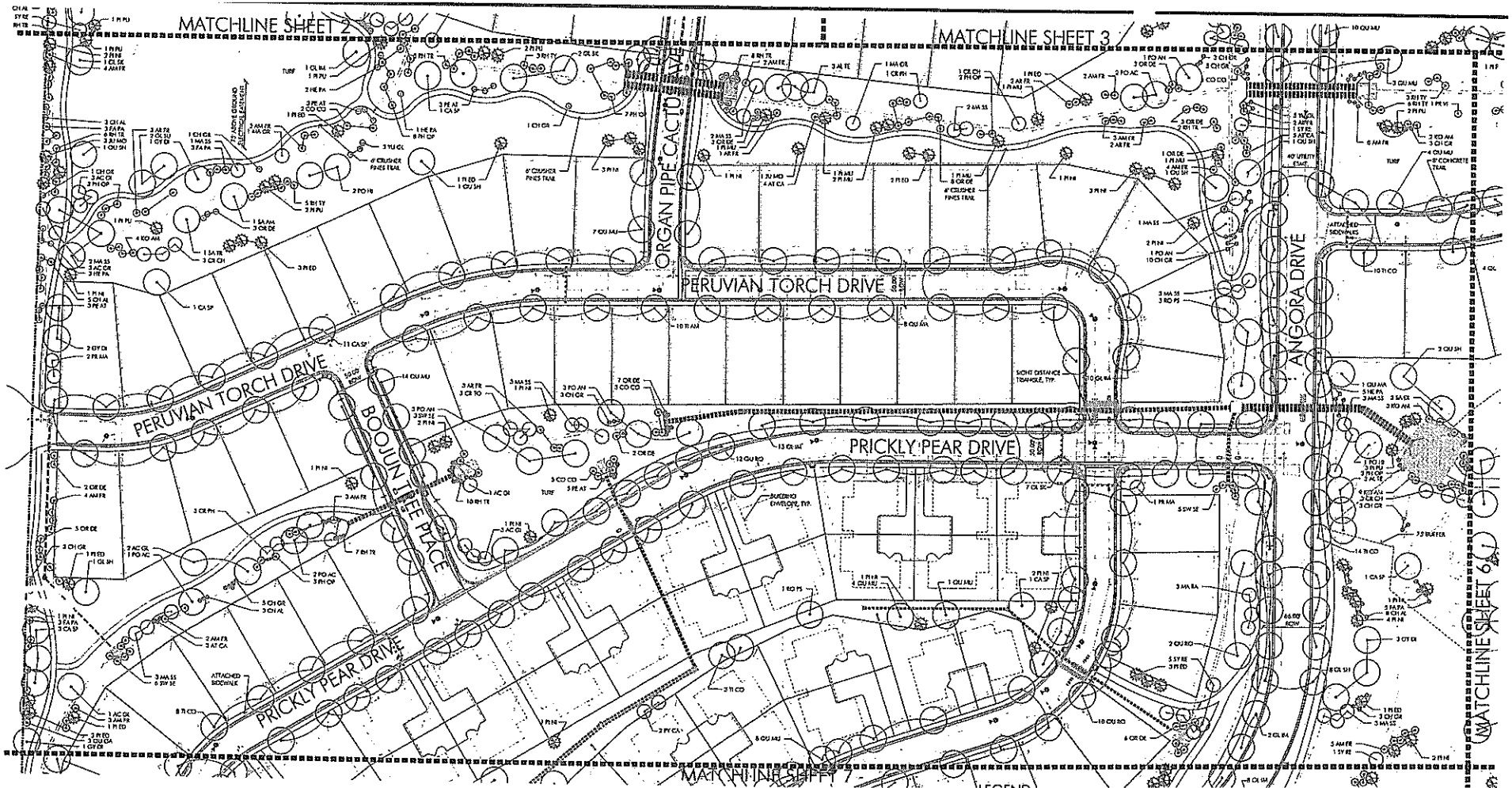
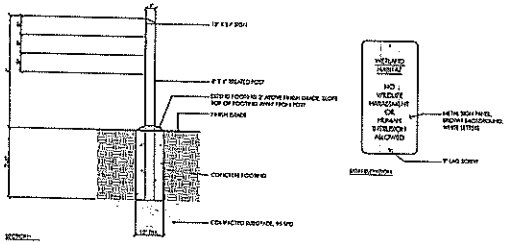
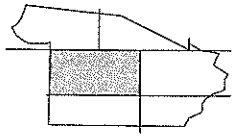




Note:

Development other than trails are prohibited within the 75 foot buffer

KEY MAP



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SITE / LANDSCAPE PLAN

DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

BHA DESIGN, INC. • 1603 OAKRIDGE D

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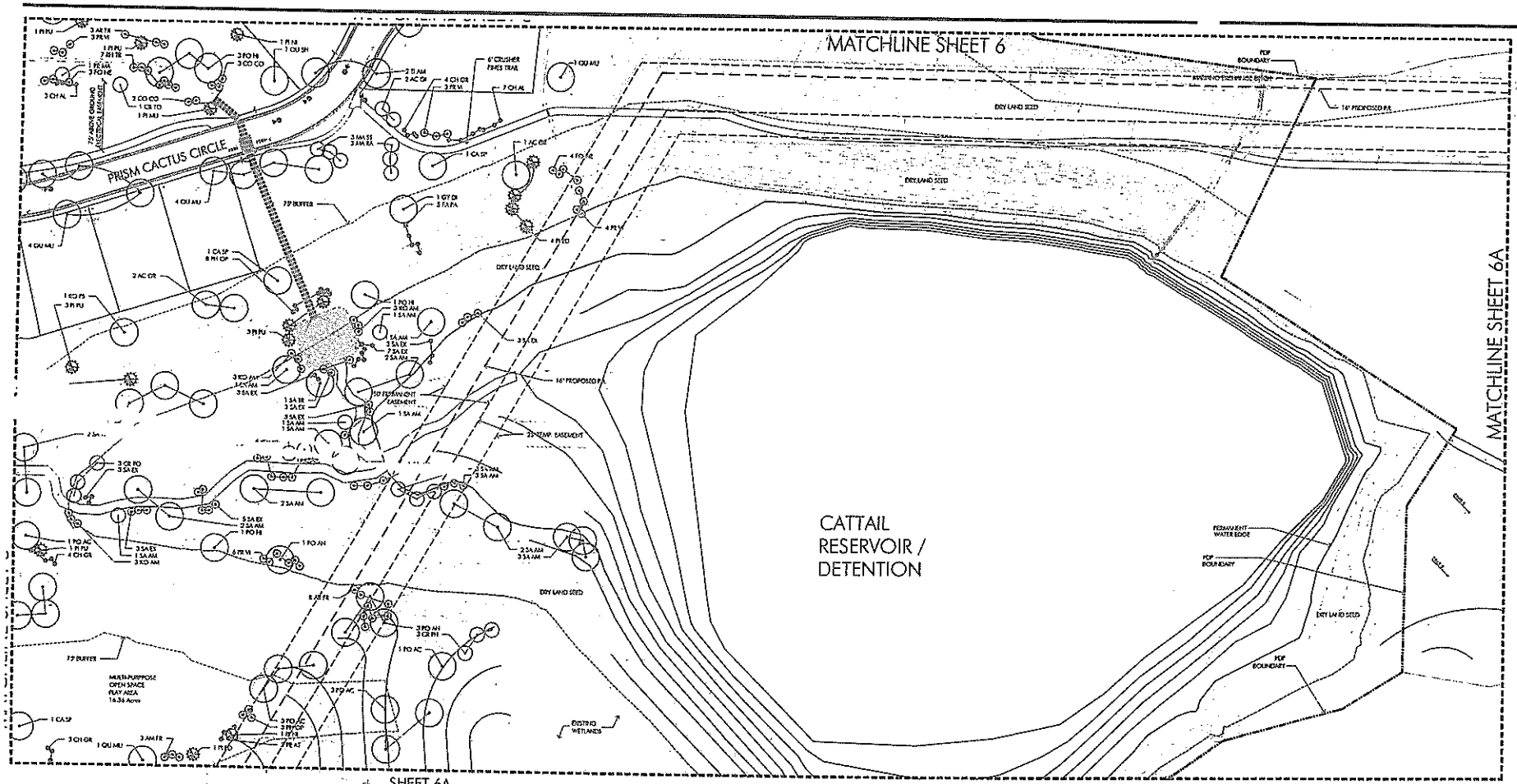
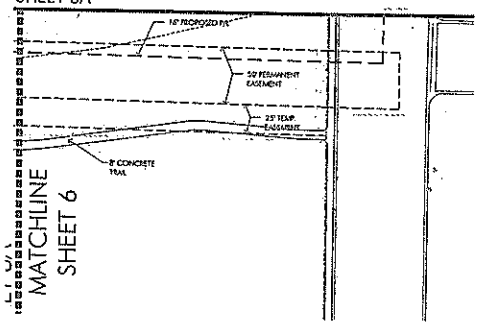
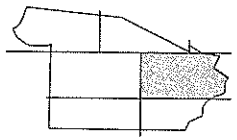
PC ATTACHMENT 6



SHEET 6A



KEY MAP



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Note:

Development other than trails are prohibited within the 75 foot buffer

NORTH 0 25' 50' 100

SITE / LANDSCAPE PLAN

DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

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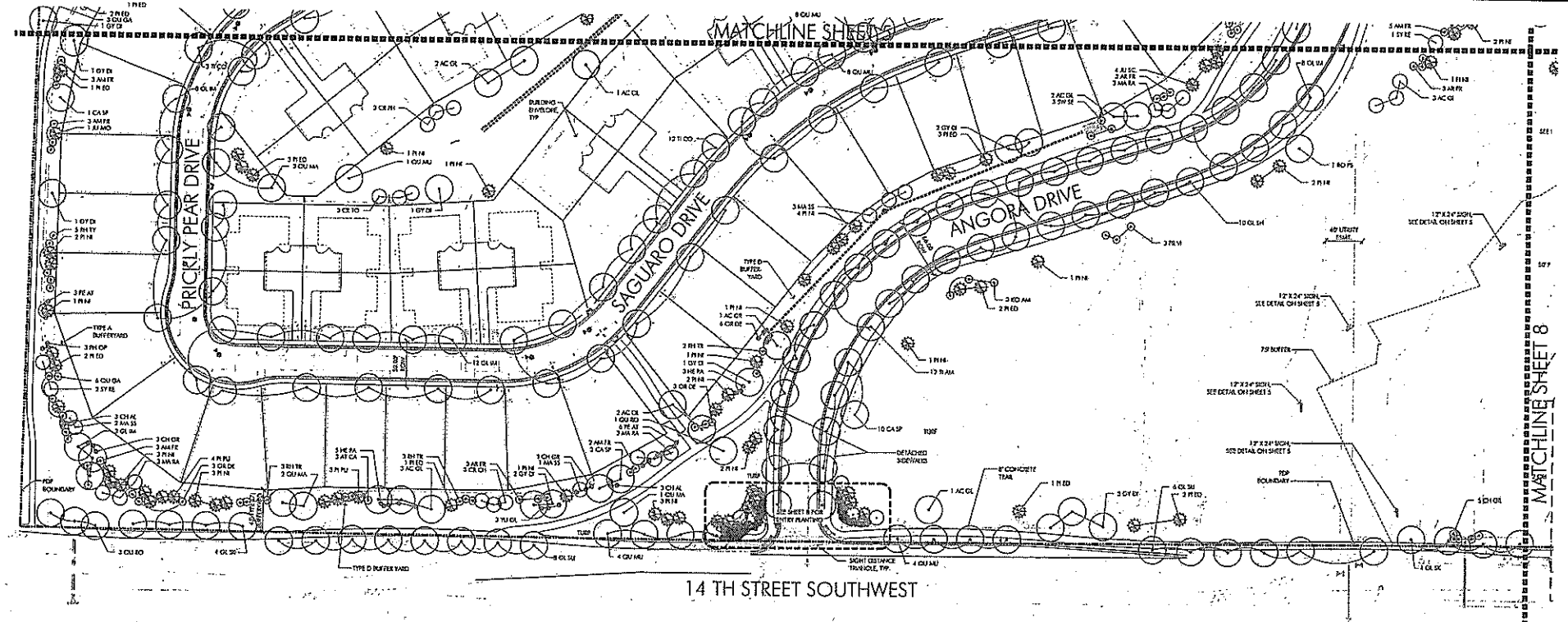
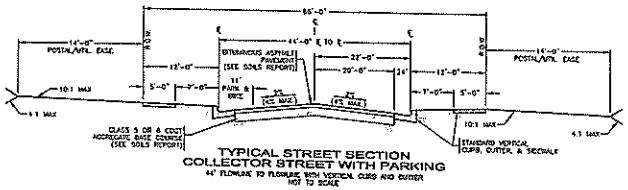
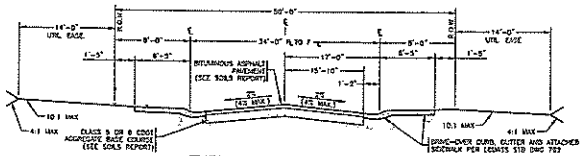
PC ATTACHMENT 6

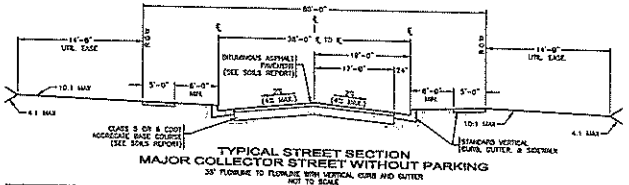


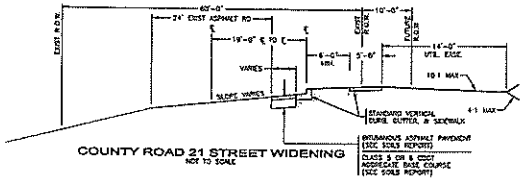
Note:

Development other than trails are prohibited within the 75 foot buffer





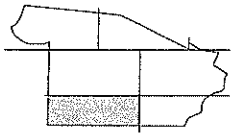




LEGEND

- DECIDUOUS CANOPY TREE
- ORNAMENTAL TREE
- CONIFEROUS TREE
- SHRUB BED
- IRRIGATED TURF
- NATIVE MIX
- TRANSITION SEED
- DRY LAND SEED

KEY MAP



NORTH 0 25' 50' 100'

SITE / LANDSCAPE PLAN

DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

SHA DESIGN, INC. • 1603 OAKRIDGE DR

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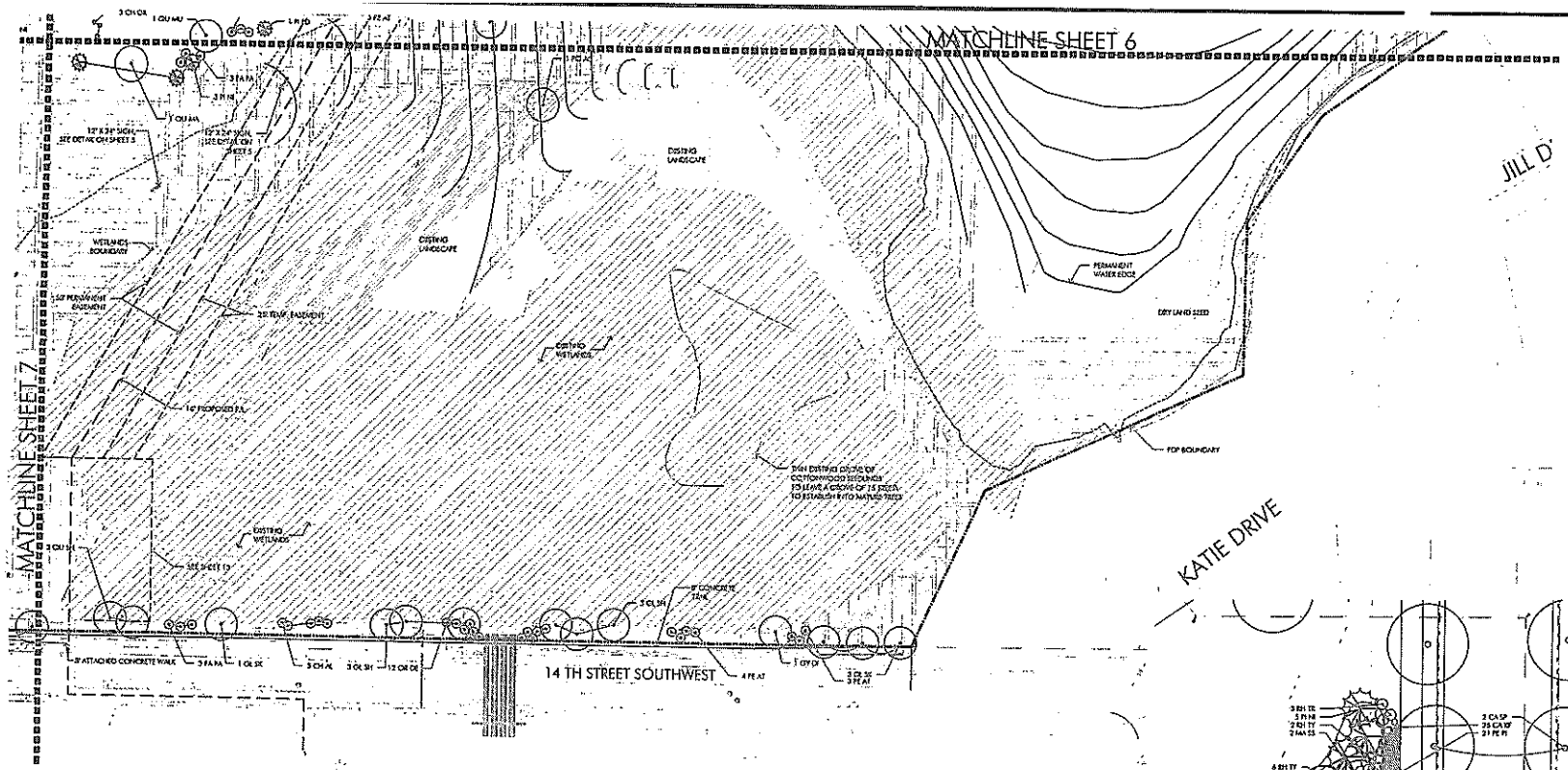
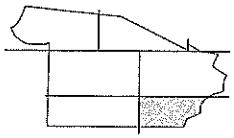
PC ATTACHMENT 6



KEY MAP



LEGEND

- DECIDUOUS CANOPY TREE
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Note:

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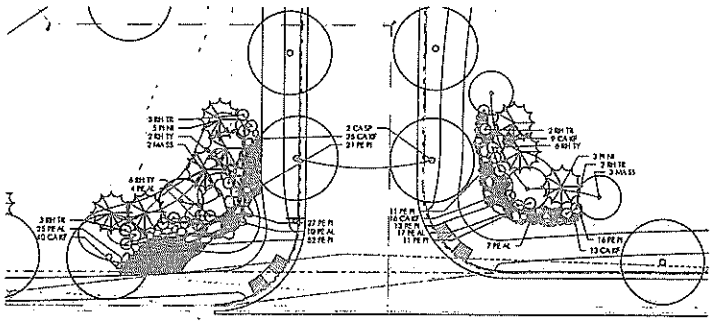


ENTRY PLANTING

SCALE: 1" = 20'

PLANT LIST

Key	Botanical name	Common Name	Size	Root	Spacing	Phase 1
DECIDUOUS CANOPY TREES						
AC GR	Acer grandidentatum	Big Tooth Maple	2" Cal.	BB	See Plan	10
AL TE	Alnus tenuifolia	Thinleaf Alder	2" Cal.	BB	See Plan	6
CA SP	Catalpa speciosa	Western Catalpa	2" Cal.	BB	See Plan	6
GL IM	Gleditsia triacanthos inermis 'Imperial'	Imperial Honeylocust	2" Cal.	BB	See Plan	53
GL SH	Gleditsia triacanthos inermis 'Shady Master'	Shady Master Honeylocust	2" Cal.	BB	See Plan	66
GL SK	Gleditsia triacanthos inermis 'Skyline'	Skyline Honeylocust	2" Cal.	BB	See Plan	45
GL SU	Gleditsia triacanthos inermis 'Sunburst'	Sunburst Honeylocust	2" Cal.	BB	See Plan	30
GY DI	Gymnocladus dioica	Kentucky Coffeetree	2" Cal.	BB	See Plan	55
PO AC	Populus acuminata	Lanceleaf Cottonwood	2" Cal.	BB	See Plan	50
PO AN	Populus angustifolia	Narrowleaf Cottonwood	2" Cal.	BB	See Plan	76
PO HI	Populus 'Highland'	'Highland' Cottonwood	2" Cal.	BB	See Plan	16
QU MA	Quercus macrocarpa	Bur Oak	2" Cal.	BB	See Plan	8
QU MU	Quercus muehlenbergii	Chinkapin Oak	2" Cal.	BB	See Plan	24
QU RO	Quercus rubra	English Oak	2" Cal.	BB	See Plan	93
QU SH	Quercus shumardii	Shumard Oak	2" Cal.	BB	See Plan	53
RO PS	Robinia pseudoacacia 'Purple Robe'	Purple Robe Locust	2" Cal.	BB	See Plan	9
SA TX	Salix alba 'TRUE'	Golden Weeping Willow	3 1/2" Cal.	BB	See Plan	9
SA AM	Salix amygdaloides	Peach Leaf Willow	3" Cal.	BB	See Plan	4
TI AM	Tilia americana 'Redmond'	Redmond Linden	2" Cal.	BB	See Plan	31
TI CO	Tilia cordata 'Greenspire'	Greenspire Linden	2" Cal.	BB	See Plan	28
DECIDUOUS ORNAMENTAL TREES						
AC GI	Acer ginnala 'Flame'	Flame Amur Maple	1-1/2" Cal.	BB	See Plan	22
CE CH	Cercis chinensis	Chinese Hortulan	1-1/2" Cal.	BB	See Plan	13
CR PH	Crataegus phaenopyrum	Washington Hawthorn	2" Cal.	BB	See Plan	14
CR TO	Crataegus 'Toba'	Toba Hawthorn	1-3/4" Cal.	BB	See Plan	18
MA BA	Malus 'Brilliant'	Brilliant Crabapple	2-1/2" Cal.	BB	See Plan	15
MA CR	Malus 'Golden Raindrops'	Golden Raindrops Crabapple	2" Cal.	BB	See Plan	13
MA SE	Malus 'Spring Snow'	Spring Snow Crabapple	1-3/4" Cal.	BB	See Plan	34
PR MA	Prunus 'Manchu'	Amur Chokecherry	2-1/2" Cal.	BB	See Plan	5
PY CA	Pyrus calleryana 'Autumn'	Autumn Pear	3" Cal.	BB	See Plan	2
SY RE	Syringa reticulata	Japanese Tree Lilac	1-1/2" Cal.	BB	See Plan	13
CONIFEROUS TREES						
JU MO	Juniperus monosperma	One Seed Juniper	6' Ht.	BB	See Plan	8
JU SC	Juniperus scopulorum	Rocky Mountain Juniper	6' Ht.	BB	See Plan	10
PI PU	Picea pungens	Colorado Spruce	6' Ht.	BB	See Plan	43
PI SY	Pinus sylvestris	Scots Pine	8' Ht.	BB	See Plan	46
PI NI	Pinus nigra	Austrian Pine	6' Ht.	BB	See Plan	80
PI MU	Pinus mugo 'Tannenbaum Mugo Pine'	Tannenbaum Mugo Pine	6' Ht.	BB	See Plan	8

Key	Botanical name	Common Name	Size	Root	Spacing	Phase 1
DECIDUOUS SHRUBS						
AM TE	Amorpha fruticosa var. angustifolia	Indigobush Amorpha	5 GAL	Container	See Plan	60
AR CA	Aronia arbutifolia	Red Viking Aronia	5 GAL	Container	See Plan	21
AR PE	Artemisia tridentata	Fringed Sage	5 GAL	Container	See Plan	41
CH AL	Chrysothamnus nauseosus albicaulis	Tall Blue Rabbitbrush	5 GAL	Container	See Plan	62
CH GR	Chrysothamnus nauseosus graveolens	Tall Green Rabbitbrush	5 GAL	Container	See Plan	72
CO CO	Cotinus coggygria 'Royal Purple'	Royal Purple Smoke Tree	5 GAL	Container	See Plan	23
FA PA	Fallugia paradoxa	Apache Plume	5 GAL	Container	See Plan	43
FO NE	Forestiera neomexicana	New Mexico Privet	5 GAL	Container	See Plan	22
HE FA	Hesperaloe parviflora	Red Yucca Yucca	5 GAL	Container	See Plan	28
KO AM	Kolkwitzia amabilis	Beauty Bush	5 GAL	Container	See Plan	41
OR DE	Oreobatus deliciosus	Rocky Mountain Ninebark	5 GAL	Container	See Plan	78
PE AT	Perovskia atriplicifolia	Russian Sage	5 GAL	Container	See Plan	64
PH OP	Physocarpus monogynus	Mallow Ninebark	5 GAL	Container	See Plan	55
PR M	Prunus virginiana melanocarpa	Native Chokecherry	5 GAL	Container	See Plan	21
QU GA	Quercus gambelii	Gambel Oak	5 GAL	Container	See Plan	6
RH TR	Rhus trilobata	Three-leaf Sumac	5 GAL	Container	See Plan	76
RH TY	Rhus typhina	Staghorn Sumac	5 GAL	Container	See Plan	26
SA DR	Salix exigua	Coyote Willow	5 GAL	Container	See Plan	44
SY RE	Symphoricarpos albus	Redwater Barberry	5 GAL	Container	See Plan	17
YU GL	Yucca glauca	Great Plains Yucca	5 GAL	Container	See Plan	8
GRASSES AND REED RUSHES						
CA KF	Calamagrostis acutiflora 'Karl Foerster'	Feather Reed Grass	1 GAL	Container	See Plan	104
PE AL	Pennisetum alopecuroides 'Hameln'	Dwarf Fountain Grass	1 GAL	Container	See Plan	63
PE PI	Panicum virgatum	Prairie Switchgrass	1 GAL	Container	See Plan	151
IRRIGATED TURF						

'Kentucky Bluegrass 3 Elite Varieties'

DRY LAND SEED MIX

Common Name	Botanical Name	PLS/Acre
Blue Grama	Bouteloua gracilis	0.75
Buffalograss	Buchloe dactyloides	1.60
Green Needlegrass	Nassella viridula	2.00
Mideast Grama	Bouteloua curtipendula	1.60
Western Wheatgrass	Pascopyrum smithii	4.00
		10.15 Drilled
		20.3 Broadcast
		40.6 Small Area

TRANSITION SEED MIX

Arkansas Valley Seed, Hatano Choice Low Maintenance or approved equivalent

20% Sylvester Crested Wheatgrass
15% Bozoi Fescue
10% Hycrest Perennial Ryegrass
5% Ranch Kimberly Bluegrass

170-220 lbs/acre

NATIVE SEED MIX

Arkansas Valley Seed, Low Grow Mix or approved equivalent

30% Sylvester Crested Wheatgrass
20% Bozoi Fescue
20% Perennial Rye
10% Canadian Fescue
10% Kimberly Bluegrass

20-25 lbs/acre

NORTH 0 25' 50' 100'

SITE / LANDSCAPE PLAN

DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

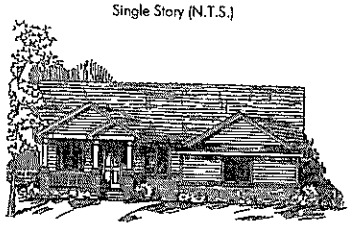
BHA DESIGN, INC. • 1603 OAKRIDGE DRIVE, SUITE 100 • FT. COLLINS, CO 80525 • TEL (970) 223-7527

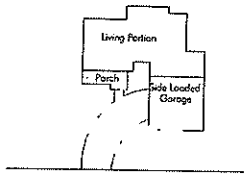
SHEET APRIL

PC ATTACHMENT 6

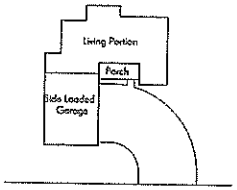
TYPICAL SINGLE FAMILY DETATCHED - STANDARD LOT - TYPE A (side loaded garage)

Single Story (N.T.S.)



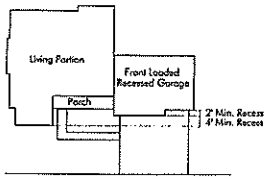


Two Story (N.T.S.)

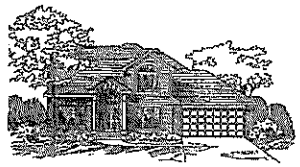


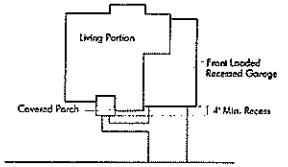
TYPICAL SINGLE FAMILY DETACHED - STANDARD LOT - TYPE B (recessed garage)

Single Story (N.T.S.)



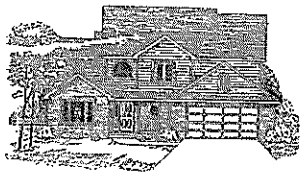
Two Story (N.T.S.)

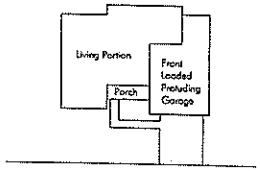




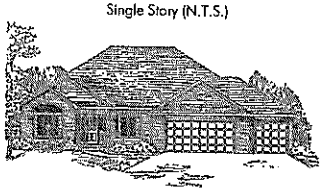
TYPICAL SINGLE FAMILY DETACHED - STANDARD LOT - TYPE C (protruding garage)

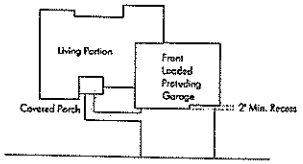
Two Story (N.T.S.)

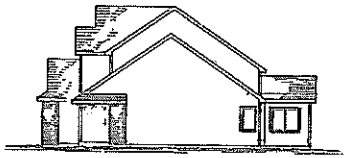




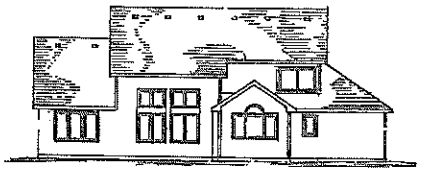
Single Story (N.T.S.)







Typical Side Elevation (N.T.S.)

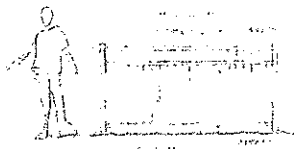


Typical Rear Elevation (N.T.S.)

Note:
These elevations are prototypical. Some variation will occur with the development of each property.

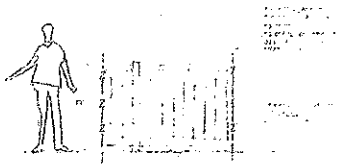
TYPICAL STEEL FENCE

scale: N.T.S.



TYPICAL CEDAR FENCE

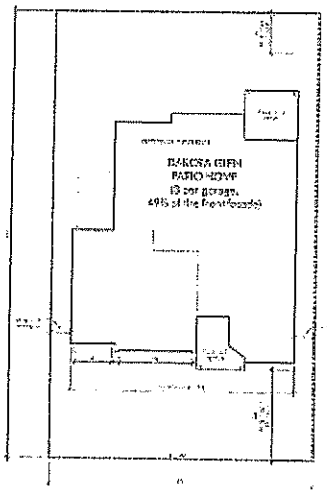
scale: N.T.S.



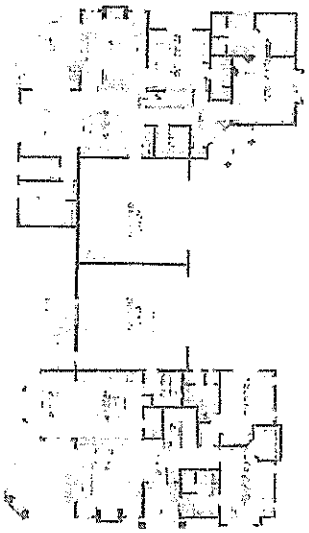
ARCHITECTURAL ELEVATIONS
DAKOTA GLEN FINAL DEVELOPMENT PLAN
FIRST AMENDMENT
LOVELAND, COLORADO

BHA DESIGN, INC. • 1603 OAKRIDGE DR

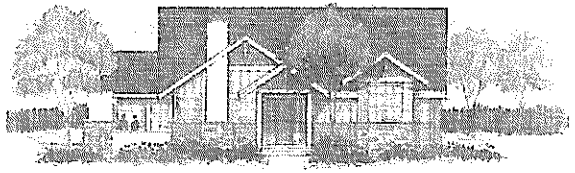
TYPICAL SINGLE FAMILY DETACHED - PATIO HOME



TYPICAL SINGLE FAMILY ATTACHED

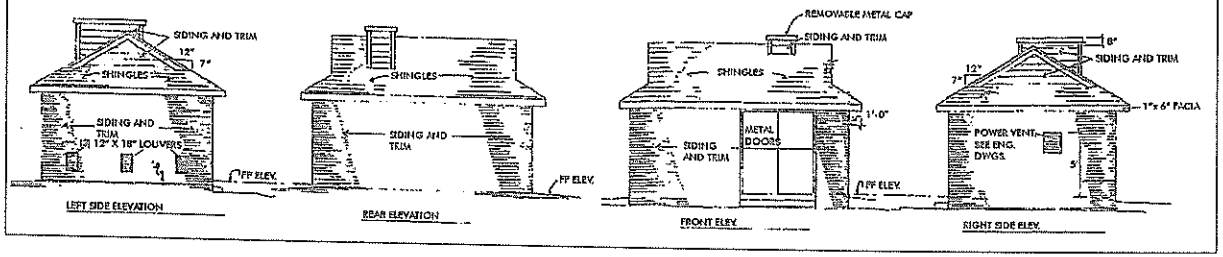


PLAN



ELEVATION

TYPICAL PUMPHOUSE



Note:
These elevations are prototypical. Some variation will occur with the development of each property

ARCHITECTURAL ELEVATIONS
DAKOTA GLEN FINAL DEVELOPMENT PLAN
DAKOTA GLEN 1 ST. SUBDIVISION
LOVELAND, COLORADO

SHA DESIGN, INC. • 1601 BASSOR

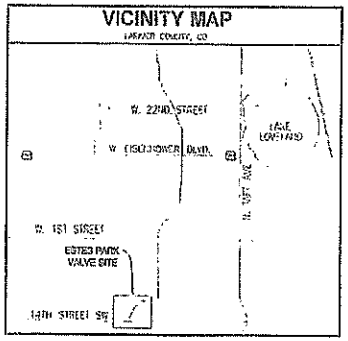
SHEET **PC ATTACHMENT 6**

PLANNED UNIT DEVELOPMENT
LARIMER 2013 - 16" WEST MAIN NATURAL GAS PIPELINE REPLACEMENT
(ESTES PARK REGULATOR STATION & UNDERGROUND PIPELINE IN DAKOTA GLEN PUD)
CITY OF LOVELAND
FEBRUARY 2013

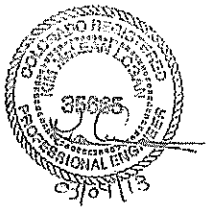
Zoning	P-69
Site Acreage	7.48 acres
Land Use	Natural gas pipeline and public utility facility
Square Footage	1. Total - 300 sq. ft 2. Floors - 300 sq. ft. 3. Natural Gas Regulation - 200 sq. ft.
Building Occupancy	U-Utility
Type of Construction	1. Construction Type - Type 2A 2. Fire Sprinkler - None
Parking Spaces	NA - This is an unmanned utility
Landscaping	NA - See Note 5 on Sheet 1, regarding seed mix
Open Space	NA - The Estes Park Regulator Station is a public utility facility. The pipeline will be buried and revegetated upon completion of construction, and no impacts to open space
FEMA Floodplain	No portion of this site is within a FEMA floodplain

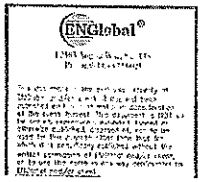
Standard Site Plan Notes:

1. Unless otherwise noted all land and utilities will be unchanged or restored to their original condition
2. Legal descriptions of all Public Service company easements are included in the legal description page
3. Regulator stations do not yet have an address assigned by the City of Loveland
4. Final architectural design of regulator stations will be completed after final input from the City of Loveland
5. The construction of the valve stations or pipeline in this plan shall be completed in one phase
6. There will be no paved parking or bicycle racks installed and no storage of vehicles on site
7. All trash shall be hauled away by Public Service Company employees. There will be no permanent refuse collection areas
8. No area of the easements in this plan is within fifty feet (50') of the riparian that is within a 100 year floodplain as classified by the Army Corps of Engineers as wetlands or is here classified as having severe soil limitations by the Soil Conservation Service
9. No area of the easements in this plan is within the Airport influence area
10. The only sign will be a sign for an easement or more plate by the Colorado Division of Wildlife to protect the habitat for the Preble's meadow jumping mouse. This development will not affect the habitat in any manner.



DRAWING INDEX			
REVISION	SHEET NO.	DRAWING NO.	DRAWING TITLE
A	1	2000	COVER SHEET
A	2	2301	LEGAL DESCRIPTION
A	3	2002	OVERALL PLAN
A	4	2300	GRADING PLAN
A	5	2001	BUILDING PLAN & DETAILS

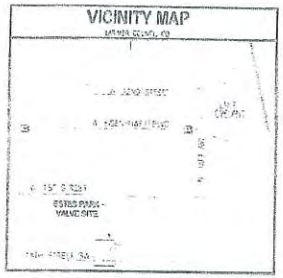




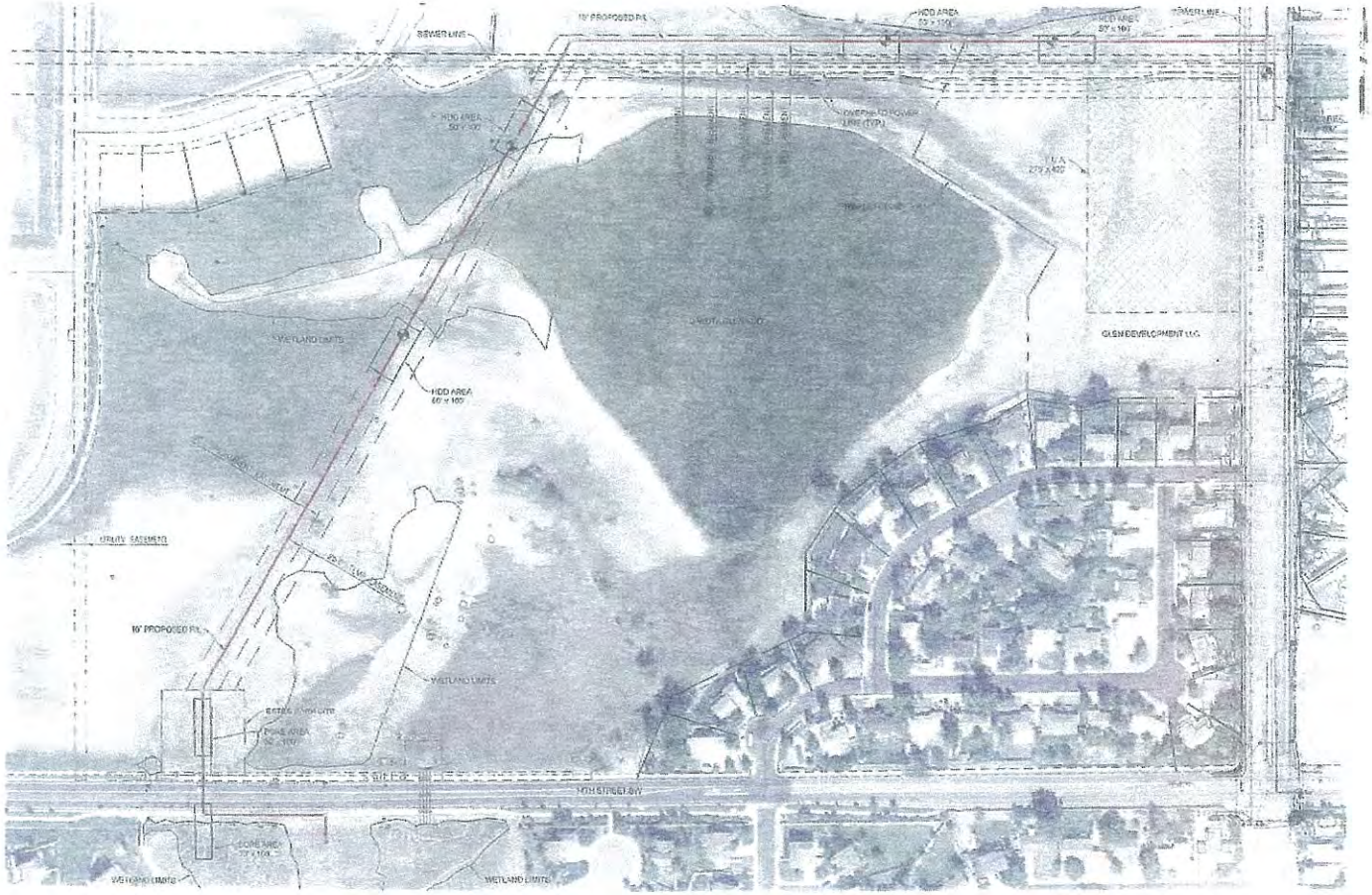
XCEL PLANNED UNIT DEVELOPMENT (1 OF 5)

DAKOTA GLEN 1 ST. SUBDIVISION
LOVELAND, COLORADO

SHEI APRI PC ATTACHMENT 6



Section 21, Township 5N, Range 69W
LOVELAND, COLORADO



OVERALL PLAN VIEW
SCALE 1" = 100'

ENGlobal®

XCEL PLANNED UNIT DEVELOPMENT (2 OF 5)

DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

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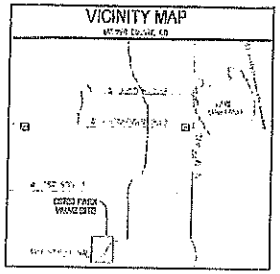
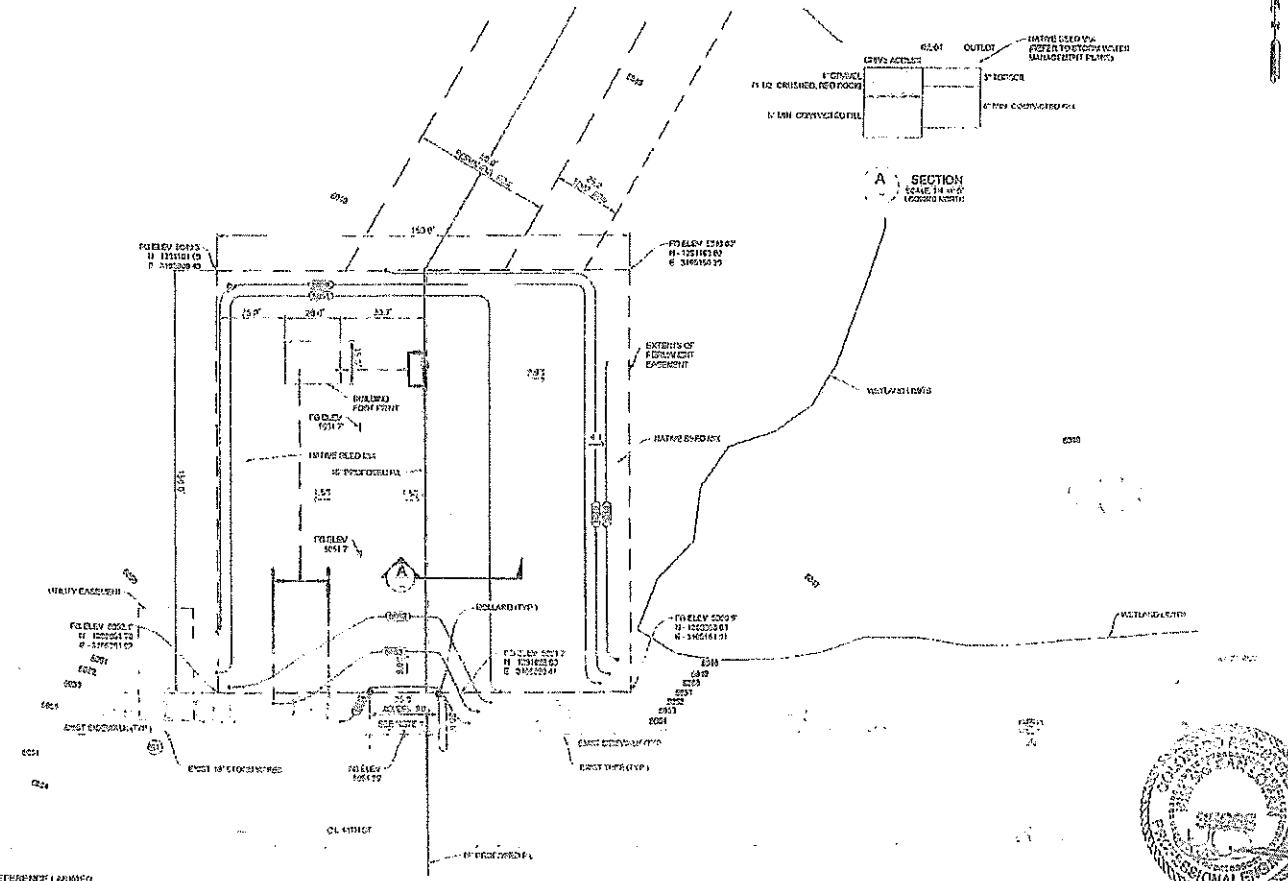
SHE APR **PC ATTACHMENT 6**



Section 21, Township 5N, Range 69W
LOVELAND, COLORADO



LEGEND

GRADING LEGEND

NOTES

1. FOR DRIVE ACCESS DETAIL REFERENCE LARIMER COUNTY URBAN AREA STREET STANDARD DRAWING 703 STANDARD DRIVEWAY APPROACH
2. COMPACT ALL NON STRUCTURAL FILL AREAS TO 90% OF THE MAXIMUM DRY DENSITY WITH STRUCTURAL FILL AREAS @ 95%
3. REFERENCE PROJECT STORM WATER MANAGEMENT PLAN FOR ALL EROSION CONTROL MEASURES
4. CONTRACTOR IS RESPONSIBLE WITH IDENTIFYING LOCATING AND POTHOLING ALL FOREIGN UTILITY CONFLICTS. CONTRACTOR IS REQUIRED BY STATUTE TO UTILIZE THE STATE ONE CALL SYSTEM (811) FOR UTILITY LOCATE REQUESTS
5. A NATIVE SEED MIX THAT MEETS CITY OF LOVELAND STORM WATER STANDARDS SHALL BE SUBMITTED AND APPROVED PRIOR TO INSTALL

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XCEL PLANNED UNIT DEVELOPMENT (3 OF 5)

DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

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Existing Environment

Photographic Simulation

Parameter	Control House	Aboveground Pipeline	Fence	Bollard
Use	Controls the flow of gas from higher to lower pressures as the gas exits from the UG high pressure piping to	Transmission of natural gas	Screening of aboveground gas piping	Entrance Gate
Quantity	1	2	Stations	2
Height	8 feet 6 inches	6 feet 6 inches	6 feet	3.5 feet
Length	12 feet	17 feet 10 feet	Station: 100 feet Perimeter: 2 feet	n/a
Width	12 feet	10 feet 10 feet	Station: 2 feet Perimeter: 2 feet	n/a
Color	Color per Xcel	Color per Xcel		Color per Xcel
Architectural Design	Screening of gas piping and equipment	Painted per Xcel	Screening of gas piping and equipment	n/a
Design Features	Roof Overhang Eave Wall Angle	Painted	Painted	Painted
Other	Base Trim Eave	Painted	Painted	Painted

Disclaimer: Detailed design drawings to be submitted with building permit applications. Design drawings will substantially comply with the details included on this drawing.

XCEL PLANNED UNIT DEVELOPMENT (4 OF 5)

DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

BHA DESIGN, INC. • 1603 OAKRIDGE DRIVE • FT. COLLINS, CO 80525 • TEL: (970) 999-9699

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PC ATTACHMENT 6

2013 - 16" West Main Natural Gas Pipeline Replacement Project - Dakota Glen PUD First Amendment

PROJECT AND LEGAL DESCRIPTION

Introduction

Public Service Company of Colorado (PSCo), an Xcel Energy company, is requesting a Planned Unit Development (PUD) Amendment as described in the City of Loveland Land Use Code Chapter 18.41. The Larimer 2013--16" West Main Natural Gas Pipeline Replacement Project (proposed Project) involves the construction, operation, and maintenance of a 16-inch high-pressure replacement natural gas transmission pipeline. The proposed Project encompasses Larimer, Weld, and Boulder counties and several incorporated communities and is approximately 77 miles long. An overview map showing all portions of the West Main Natural Gas Pipeline Replacement Project throughout Larimer County is included on the Project website: <http://www.xcelenergywestmainpipeline.com/west_main/route-maps/route-maps.html>. The existing 84 year old natural gas pipelines have reached the ends of their service lives, require safety upgrades, and cannot reliably keep up with growing system demand to deliver natural gas. The proposed Project would provide high-pressure transmission of natural gas with limited distribution systems taps as needed. It would provide an important link to future system upgrades for northern Colorado Front Range communities and would ensure more reliable natural gas delivery to customers in light of growing natural gas demand.

The proposed Project includes necessary pipeline and above-ground facilities located on private property within the Dakota Glen PUD in the city of Loveland. As part of its West Main Natural Gas Pipeline Replacement Project, PSCo is proposing to construct, operate, and maintain one new regulator station, referred to as the Estes Park Regulator Station, in the Dakota Glen PUD. Regulator stations control the flow of gas from higher to lower pressures as the gas would move from the 16-inch transmission pipeline to smaller lateral and distribution pipelines that serve the local community.

The preferred pipeline route enters the Dakota Glen PUD in the city of Loveland near the intersection of 14th Street Southwest (SW) and Angora Drive, approximately 2,000 feet west of the intersection of 14th Street SW and Wilson Avenue (CR17) at the Estes Park Regulator Station (see Sheet 12). The pipeline exits the Estes Park Regulator Station and heads to the northeast through undeveloped open land within the Dakota Glen PUD. North of the cattail reservoir/detention pond, the pipeline turns due east toward Wilson Avenue leaving the PUD boundary and continues north on Wilson Avenue.

A photographic simulation of the proposed Estes Park Regulator Station is provided in Sheet 14. The appearance of the control house has been designed to be similar to architectural characteristics of the existing pumphouse on the northwest side of the cattail reservoir/detention pond within the Dakota Glen PUD. The control house and aboveground piping would be painted beige to blend with the surroundin-

The ... proposed Estes Park Regulator Station and pipeline within the Dakota Glen PUD boundary associated with the proposed Project. The proposed Project is an important part of PSCo's service plan to upgrade the existing natural gas transmission system along the northern Colorado Front Range with new natural gas pipelines that meet current safety, service, capacity, and reliability requirements while also meeting the increasing demand for natural gas in Larimer County, including the city of Loveland. The upgrade would involve replacing the existing 84-year-old, 8-inch natural gas transmission pipeline with a new high-pressure 16-inch pipeline to continue providing reliable, safe natural gas service.

Applicant Information

Applicant: Dan Tekavec, Project Manager
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dan.tekavec@xcelenergy.com

Engineer: Randy Blank, PSCo Project Manager/Engineer
Public Service Company of Colorado
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Fort Collins, CO 80525
(970) 225-7847
randy.blank@xcelenergy.com

Location and Legal Description

The Estes Park Regulator Station and pipeline within the Dakota Glen PUD boundary is located in Larimer County within the municipal limits of the city of Loveland. The Project area subject to this PUD is located in the Dakota Glen Subdivision near the intersection of 14th Street SW and Angora Drive, approximately 2,000 feet west of the intersection of 14th Street SW and Wilson Avenue (CR17) and the undeveloped open land near the cattail reservoir/detention pond. PSCo has obtained a permanent easement on 0.516 acres of land for this regulator station, and 2.323 acres of permanent easement and 1.114 acres of temporary easement for the pipeline alignment within the Dakota Glen PUD.

Purpose and Need

PSCo currently operates the natural gas supply for most of Larimer County including the city of Loveland. The purpose of the proposed Project is to reliably maintain delivery of natural gas to area customers. The proposed Project is an important part of PSCo's service plan to meet growing natural gas demand in the area because the existing natural gas pipeline cannot meet load requirements at peak demand. The proposed natural gas pipeline upgrade would address safety, service reliability, and capacity concerns for the benefit of commercial and residential customers along the northern Colorado Front Range. Regulator stations are required to control the rate of gas flow and/or pressure though the station and maintain the desired pressure or flow level in the distribution system.

Project Construction Activities

The permanent ROW for operation and maintenance of the Project would be 50 feet. An additional temporary ROW needed for construction activities would be 25 feet.

Construction activities for the West Main Natural Gas Pipeline Replacement Project are proposed to begin approximately May 1, 2013, and operation of the replacement facility would begin during the fall/winter season of 2013.

In open trench areas, major activities involved in Project construction would include surveying, best management practice (BMP) installation, vegetation clearing, staging materials, pipeline trenching, pipeline installation and welding, pressure-testing, backfilling the pipeline trench, cleanup, re-grading the surface, revegetation, and revegetation monitoring. Surface disturbance would be limited to the permanent ROW and the temporary construction ROW and would include boring locations and modifications to regulator stations. Construction activities would be sequenced and likely would occur simultaneously in multiple locations. The pipeline trench would be approximately 72 inches deep with a width of approximately 24 to 36 inches. The new pipeline would sit approximately 48 inches below the final grade. Site restoration would occur according to the provisions of the Stormwater Management Plan (SWMP), which was provided to the City of Loveland on March 22, 2013. Temporary fencing would be utilized around the bore pits and trenches as needed to prevent public access and maximize safety.

Regulator station construction could run concurrently with natural gas pipeline construction. Surface disturbance associated with the Estes Park Regulator Station would be limited to the 0.516 acre permanent easement of the regulator station.

PSCo proposes to use boring techniques, as feasible, to avoid surface disturbance to wetlands, trails, and driveways. Boring techniques would involve drilling construction of the pipeline under these surface features. In wet areas, the natural gas pipeline would be weighted for stability to ensure that the pipeline remained securely in place during periods when soil might be saturated. All wetlands associated with the Dakota Glen PUD will be bored. As described in the Environmentally Sensitive Areas Report (ESAR) submitted under separate cover, the proposed Project would not affect mature stands of vegetation. A wetland delineation report was prepared for the proposed Project located within the PUD, and is provided in Attachment 2 of the ESAR. The proposed regulator station is located in an area that is higher than the surrounding wetlands primarily located to the east and would therefore not impact wetlands. The proposed pipeline crosses one wetland located along the western portion of the lake. The proposed pipeline would avoid effects to this wetland through the use of boring techniques. The locations of the boring entry/exit locations are shown in Sheet 12. As documented in the agency correspondence included in Attachment 3 of the ESAR, the U.S. Army Corps of Engineers has indicated that a wetland permit (per the Clean Water Act) would not be required. The construction BMPs and site mitigation measures would protect potential impacts to adjacent wetlands during construction and operation of the Project as described in Section IV of the ESAR. As discussed in Section IV.2 of the ESAR, BMPs would be implemented as described in Attachment 6 of the ESAR to minimize or mitigate soil erosion and to revegetate any areas disturbed during construction of the proposed Project. PSCo also would follow the Weed Management and Revegetation Plan provided in Attachment 7 of the ESAR. The Plan includes a preconstruction survey for noxious weeds and follow-up monitoring to ensure revegetation is successful.

PSCo plans to off-load and string pipeline as it is delivered along the ROW. Any stockpiling of pipeline would take place at the proposed Project ROW (including the temporary and permanent easement areas) or at existing PSCo yards. Miscellaneous materials (such as valves, fittings, and other construction materials) would be stored and delivered to the pipeline construction area from PSCo's Fort Collins and Compton Service Centers.

PSCo would install signs (pipeline markers) in the permanent 50-foot easement to identify that a natural gas pipeline is buried nearby. These markers are required by federal regulations for pipeline safety (49 CFR 192). A typical pipeline marker is shown in Attachment 2. These markers provide adequate warning and location of the natural gas pipeline to local residents and future construction contractors performing work in the area. Markers identify the product carried in the pipeline (such as natural gas), the name of the pipeline operator, the operator's 24-hour emergency contact number, and the area's one-call center number. These markers are approximately 4 feet above ground and occur approximately every 500 feet or in-line of sight, on both sides of road, water, and railroad crossings, and at all changes in direction. There would be approximately 4 pipeline markers within the Dakota Glen PUD; one at the Estes Park Regulator Station, one at the angle point near the existing pump house, one at the east end of Dakota Glen near Wilson Avenue, and one on the straight line pipeline alignment within the PUD.

Noise from heavy machinery would be of short duration during construction of the proposed natural gas pipeline. Construction would be limited daily hours between 7 a.m. and 7 p.m. per City of Loveland Municipal Code Chapter 7.32 Sound Limitations, and would occur Monday through Friday. Construction may occur on weekends and other hours outside the 7 a.m. to 7 p.m. timeframe on an as-required basis, with prior approval from the City Manager. Noise levels from equipment would be controlled through the use of standard maintenance procedures and the use of appropriate mufflers.

Construction of the natural gas pipeline and related facilities may generate a temporary increase in fugitive dust. PSCo would comply with state and Larimer County requirements for controlling dust emissions during the construction of the proposed Project. PSCo would employ BMPs for dust suppression, as described in the SWMP. During construction, water trucks would patrol work areas to control dust as necessary depending on weather and dust suppression, weed control, and soil conditioning.

Minimal odors from the proposed Project are expected, with the highest likelihood occurring during construction from vehicle exhaust, and during periods of maintenance activities when mercaptan may be noticeable. Mercaptan is a chemical injected into the natural gas product, as required by federal regulation, to produce a sulfurous odor ("rotten egg" odor) as a safety measure. It is not anticipated that maintenance activities beyond those already experienced by area residents would be required for the proposed Project.

Glare would potentially be visible from construction vehicles and equipment. Any glare experienced would be temporary in nature and would be similar to other sources of glare that exist in the environment (such as from vehicle on Wilson Avenue and residential streets, and glare from residential building materials).

PSCo has obtained a Storm Water Permit for Construction Activities from the Colorado Department of Public Health and Environment. The drainage plan for the proposed Project would consist of a SWMP and BMPs for the control of stormwater runoff during the construction period. Post-construction, the areas disturbed by trenching and boring activities for the natural gas pipeline would be recontoured to preconstruction conditions and revegetated as described in the SWMP.

PSCo adheres to the pipeline safety regulations established in the Code of Federal Regulations (CFR) at 49 CFR Part 192 by the U.S. Department of Transportation (DOT) to ensure public protection and to prevent accidents and failures. Specifically, the DOT Pipeline and Hazardous Materials Safety Administration is the federal authority for ensuring the safe, reliable, and environmentally sound operation of pipeline transmission systems under the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (PIPES Act).

Property Owners, Property, and Right-of-Way Acquisition

PSCo's land services representatives have worked with the landowner of the PUD to explain Project construction, operation, and maintenance activities and to negotiate the purchase of easements based on fair market value. The easement for the Estes Park Regulator Station would grant PSCo a permanent easement of 22,500 square feet (0.516 acres) to construct, operate, and maintain the regulator station. The permanent pipeline easements of 2.323 acres and temporary pipeline easements of 1.114 acres would grant PSCo a permanent 50-foot corridor and temporary 25-foot construction ROW to construct, operate, and maintain the natural gas pipeline within the Dakota Glen PUD. The landowner would maintain fee title to the land acquired under the easement. The land within the pipeline permanent and temporary easements granted to PSCo within the Dakota Glen PUD would be restored and revegetated and available for other uses upon completion of the construction period.

XCEL PLANNED UNIT DEVELOPMENT (5 OF 5)

DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

DHM DESIGN, INC. • 1403 OAKRIDGE DR

SHE... APRI... PC ATTACHMENT 6

Dakota Glen PUD First Amendment to the PUD Preliminary Development Plan
PRELIMINARY DEVELOPMENT PLAN NARRATIVE

Purpose of the Project

The following development standards apply to the Dakota Glen Planned Unit Development. The purpose of this Final Development Plan (PDP) is to provide for flexibility and innovative design for this very unique area of the City. The objective of the plan is to meet the growing demands of its residents by providing variety in the style, design, and layout of buildings.

Land Use

Overall Concept: Residential neighborhoods will be designed in a cohesive manner to accommodate the varied design requirements of the types of dwellings they will contain. The home types and densities will be designed to be appropriate to surrounding considerations, such as street patterns, adjacent uses, and location of project amenity areas. The development plan provides for a mix of varied housing types, including conventional single-family detached homes on standard lots, single family detached homes on patio lots, and single family attached. The gross density of the plan is 2.07 du / acre.

Land Use Categories: It is the intent of this plan to provide a mechanism by which land can be developed such that flexibility and innovative design are encouraged, in accordance with Chapter 18.41 of the Loveland Municipal Code and in compliance with other applicable land use and development regulations.

Permitted Uses

Residential Areas: Permitted uses within the residential areas include the following:

1. Residential - Conventional single family dwellings on standard lots, single-family dwellings on patio lots, and single family attached dwellings.
2. Other - Recreational facilities.
3. Tracts - Permitted uses within tracts include the following:
   a. Open space.
   b. Private park area (see parks and open space definition below).
   c. Trails.
   d. Utilities and drainage improvements, including irrigation pumps.
4. Open Space Preservation Tracts - permitted uses include open space, trails (locations shown on the FDP plan), utilities and drainage improvements (including irrigation controllers), and recreational access to Cattail Reservoir.
5. Temporary Parking - temporary parking will be permitted on vacant lots for model home visitors.
6. Pump house - A pump house will be constructed to use cattail reservoir for raw water irrigation. Refer to sheet 10 of 10 for elevations.
7. Essential above-ground public utility and public service installations and facilities - A permanent easement of 2.84 acres for a natural gas regulator station and 16 inch natural gas pipeline within the Dakota Glen PUD (see Sheets 11 through 15). ⚠1

Definitions: The following definitions apply to residential uses with this PUD:
(Refer to Loveland Municipal Code section 18 for land use definitions not provided in this FDP)

1. Single Family Detached-standard lot - A one-family dwelling that is not attached to any other dwelling by any means, located on individual fee simple lots. Minimum lot size shall be 7,150 s.f. These Units will be either one or two story with three options for garage location.
2. Single Family Detached-patio lot - A one-family dwelling that is not attached to any other dwelling by any means, located on individual fee simple lots. Minimum lot size shall be 6,500 s.f. These units will be one story with a three car garage located on the front of the house.
3. Single Family Attached Dwelling Unit - A one-family dwelling attached to a one-family dwelling by a common vertical wall in which each unit has its own front and rear entrance and in which no unit is located over another unit. Minimum lot size shall be 3,800 s.f.

Setbacks: Staggered setbacks shall be provided so as to create a visually interesting streetscape. This will be achieved by prohibiting identical minimum front setbacks on adjacent lots that face the same street through the enforcement of varying minimum setback widths of a two feet minimum. Refer setback table this sheet for setback information, and typical lot layout on sheet 9 and 10 of 10.

Building Height: The maximum height for structures is 35 feet. Refer to the Loveland Municipal Code section 18.54 for information on calculating building height.

Neighborhood Structure: Arterial/collector streets and open space generally border neighborhoods. Neighborhoods will be designed in accordance with the development standards set forth in this development plan. Primary areas providing structure to the neighborhoods include private open space [illegible] use play areas, a neighborhood wide trail system, and open space areas around Cattail Reservoir.

Overall Concept: Primary access to the site will be from SW 14th Street, and County Road 21. Which are classified as a two-lane arterial and a major collector street respectively. An internal collector street and local streets will distribute traffic throughout the site. An interparcel connection is provided in the southwest part of the property.

Components

1. **Vehicular:** Local streets will provide access within the neighborhoods. Local streets may vary in width, according to the amount of traffic to be accommodated and the specific design requirements of each neighborhood.
2. **Pedestrian:** An overall system of pedestrian access is provided along streets and through open space areas. Meandering walks are provided along perimeter streets, and the minor collector street through the site will have detached sidewalks, while all of the local residential streets will have attached sidewalks. Proposed trails are shown throughout the sites open space.
3. **Performance Standards:** Street improvements and new streets will be constructed in accordance with the street-cross sections shown in the engineering drawings. The associated plat provides for dedication of necessary Right of Way to accommodate the arterial roadway's ultimate development.

Public Facilities

Overall Concept: Public facilities and services are readily available to the site, and will be provided for as described below.

Water and Sewer: The City of Loveland will provide water and sewer service. Domestic water will be delivered by extension of existing water mains as a loop through the site. Sanitary sewer service will be provided by use of the existing 8" sewer on site in accordance with the City's master plan. The trunk sewers will be extended to maximize the benefits of gravity flow from the majority of the PUD. Details of services have been provided on the preliminary development plan.

Storm Drainage: Storm drainage shall be collected and carried on the surface through the designed street pattern. As necessary to provide capacity, catch basins and storm sewers will be installed to transport storm flows to points of discharge. Most of the storm water will be discharged into cattail reservoir. A small portion of the storm water will be discharged directly into the Mariana exchange ditch. All points of discharge will be adequately designed to minimize erosion and to protect the environmental integrity of the lake in accordance with City standards.

Electric: The City of Loveland Water and Power Department will provide service.

Gas: Public Service Company of Colorado.

Cable: Comcast.

Phone: Qwest.

Private Parks and Open Space: The development will incorporate a large open space private park area including: open turf areas, a lake, trails, boardwalks, natural areas, and recreational amenities may include any or all of the following: Clubhouse, pool, hot tub, tennis court(s), basketball court(s), trails, playground structures, sand volley ball court(s), and a sand beach. In addition to the large private park area, numerous green belts with trail systems will loop through the neighborhoods providing connection to the park for residents.

Landscape Concept: The design intent for the Dakota Glen PUD is to create a comprehensively planned community through the careful integration of the natural features of the site. The creation of a well conceived overall landscape program for the development would serve to provide for a unique identity as well as an overall sense of continuity amongst the various neighborhoods. Several design elements will be used to reinforce the image of this community. The elements include: consistent perimeter treatments, continuity of the man made site amenities (signage, fencing, play areas and other architectural site features), provision of a comprehensive landscape treatment, and architectural treatments of the various housing types.

Edge Treatment

1. **Architecture:** One of the most important aspects of the development's overall appearance, as viewed from its edge, is the appearance of the residential structures. Rear and side elevations of structures will be detailed to provide visual interest from adjoining streets. Appropriate setbacks and detached sidewalks with street trees have been provided along the site's perimeter and proper buffering will be incorporated.
2. **Landscaping:** Perimeter landscape treatment will receive careful attention due to a portion of the site's edge that faces an arterial roadway. Arterial streets will feature landscaped areas outside of the right-of-way, tree lawns, berms, and detached sidewalks. 14th Street will have a thirty-five foot landscape buffer and County road 21 will have a twenty-six foot minimum landscape buffer. Landscape buffers will provide ample buffering from adjacent development and to create a park-like environment.
3. **Access:** Entry points are proposed from the site's abutting roadways. Each entry point will be designed as a part of the development's overall theme in terms of landscape and architectural treatment.
4. **Fencing:** The use of fencing as a part of the development's edge treatment will be minimized, and the dominant form of edge treatment for screening and buffering will be landscape. Fencing is not required in this development, however if a property owner is so inclined the following fencing options will be allowed:

   A. Single Family Detached - standard lot - will allow cedar fencing at a 48 inch maximum height to the property line (see sheet 9 of 10 for typical fence details).

   B. Single Family detached - Patio lots - will allow steel picket fence at 36 inch maximum height to the property line

   C. Single family attached will allow steel picket fencing at 36 inch maximum height in designated areas, fencing will not be allowed to the property lines (see typical floor plan sheet 10 of 10).

Streetscape: Landscaping will be designed with a comprehensive theme for the entire development. The overall concept will include the treatment of the roadways as tree-lined lanes reflective of early, established communities typical of northern Colorado. One 2-inch caliper tree shall be planted in each single-family lot, with two, 2-inch caliper street trees planted on corner lots (one per street frontage). Single-family attached homes shall have two, 2-inch caliper trees per street frontage while corner lots shall have 3.

Open Space Areas: Lake edges will be enhanced with additional trees, grasses and shrubs as recommended in the Environmentally Sensitive Areas Report, (ESAR) dated June 1, 2006. The open space within the buffer will be used for passive uses only. The private neighborhood park and the multipurpose play areas are intended to provide for active and passive play. Large open irrigated turf areas will support this type of activity.

The large open space area near the lake has been designed to allow humans and wildlife to coexist in harmony. It is envisioned that the design of this area will enhance and protect the vitality and environmental quality of this beautiful area. Less than 1 acres of the wetlands will be filled in. Cedar Creek Associates has reviewed the open space plan and has confirmed that it is in compliance with the environmentally sensitive areas report.

High quality wetlands in the southeastern area of the property shall be left undisturbed in their current location, with no disturbance, removal, replacement or mitigation during construction or thereafter, except as otherwise provided for under condition 3, below. These include the wetland where Cattail Reservoir No. 1 was previously located, and wetlands along the southern shore of Cattail Reservoir No. 2. These high-quality wetlands shall also be protected with an approximate 75-foot buffer. Within this buffer, no development shall take place. Passive, non-intrusive use shall be allowed (e.g., bird-watching from a distance).

Prior to approval of the FDP, the developer may, at his discretion, submit a natural area modification plan prepared by a qualified environmental consultant. Said plan shall be subject to approval by the Current Planning Manager.

Signage will be included at the edge of high quality wetlands, to be shown on FDP. Interpretive and educational signage should be placed along the edge of high quality wetlands (approximately 5 signs). The signs should stress the need for no wildlife harassment or human intrusion into important habitat areas. Text for signage follows the recommendations in the ESAR report.

Maintenance: The landscaped areas of the development, including perimeter areas, common open space, entry features, patio home lots, and single family attached lots will be maintained by a Home Owners Association. Maintenance of landscaping within each standard home lot will be the responsibility of homeowner.

Architecture and Site Requirements

Overall Concept: These performance standards are intended to insure that each neighborhood or development area within Dakota Glen incorporates the use of unifying architectural elements to create an overall, cohesive theme. The intent of these guidelines is to provide direction to builders and designers in the planning, design, and construction of dwellings to ensure that they are compatible with the overall design intent for the PUD. These guidelines are intended to provide flexibility in terms of design style, within a coordinated architectural concept or theme for each neighborhood area as defined by common architectural elements.

Supplemental Requirements for Single Family:

One of the most important aspects to a detached large lot single family neighborhood is its streetscape and the over all appearance and feelings generated as it is viewed by surrounding residents, neighbors, and general public. Recognizing this, the following standards are required (refer to PDP sheets 9 and 10 of 10 for typical plans and elevations):

1. **Porches:** All homes must incorporate a covered front porch for homes that use the front porch to recess the garage. The narrowest dimension of which shall be six feet deep and eight feet wide.
2. **Garages:** Garages shall have front elevations that compliment, rather than dominate, the architectural details of the living portion of the dwelling. The front elevation of side-load garages shall incorporate the use of windows, wall breaks, and or building material changes to more aesthetically enhance the front wall elevation. Garages that have doors for more than two vehicles must have one door recessed a minimum of two feet from the others. Garage doors, visible as part of the front building elevation, shall not comprise more than forty percent (40%) of the ground floor street facing linear building frontage on single family lots. Garage doors, visible as part of the front building elevation, shall not comprise more than fifty percent (50%) of the ground floor street facing linear building frontage on patio home lots. Corner lots are exempt from this condition.
3. **Varying Streetscape:** Single family detached lots (standard and patio) will have enough variety in building elevations and model type such that no identical front elevation is adjacent to or across a common street from one another. Significant changes to the front elevation will be determined by the architectural review committee.
4. **Architectural Review Committee:** The architectural review committee will be the reviewing authority for architectural character within the development. Architectural features such as colors, materials, roofs, windows, doorways, balconies, and changes in plane will all be reviewed under the authority of the architectural review committee.
5. **Materials:** Roofing materials, windows, building materials and finish, will all be carefully coordinated to achieve a cohesive appearance. Exterior wall materials must incorporate brick, natural or synthetic stone, or stucco. Permitted building materials will be established with the design of each neighborhood or development area, and must be consistent within the neighborhood to present an overall design.
6. **Colors**: Exterior wall colors shall be compatible with surrounding buildings, with natural (earth tones) encouraged. Primary or other bright colors are only to be used as accents.
7. **Garage Setbacks:** Garages that have more than two vehicle doors shall have one door recessed a minimum of 2 feet from the other doors.
8. **Accessory Structures:** Accessory structures on residential lots are not allowed within this development .
9. **Pump House:** The pumphouse will be developed using the same materials as much of the residential architecture. The character of the building will be that of a residential building in an effort to blend in with the development. The pump house will be allowed within the 75 foot lake buffer. See typical elevation on sheet 10 of 10.

Landform Modification

The Dakota Glen site is relatively flat with approximately 2 percent slope through out most of the site. Some landform modification will occur in order to create visual interest throughout the site, and to provide management of drainage.

Implementation Procedures: Proposed development within the Planned Unit Development will be processed in accordance with the procedures contained in Chapter 18.41 of the Loveland Municipal Code dated 3-97, Section 18.41.50, Procedures for approval of a Planned Unit Development, and shall require approval of Final Development Plans in accordance with the requirements thereof.

CONDITIONS OF PRELIMINARY APPROVAL

Current Planning Conditions

1. The PDP, "Supplemental Requirements for Single Family", notes be revised to read:
   a. Garage doors, visible as part of the front building elevation, shall not comprise more than forty percent (40%) pf the ground floor street facing linear building frontage on single-family standard lots.
   b. Garage doors, visible as part of the front building elevation, shall not comprise more than fifty percent (50%) pf the ground floor street facing linear building frontage on single-family patio lots.

Parks and Recreation Conditions

2. As a condition of FDP approval, if the developer wishes to conduct clean-up activities in the natural area, the management techniques described in a letter from Cedar Creek Associates dated October 4, 2006 shall be followed. These management techniques shall be carried out according to the map accompanying Cedar Creek's letter, which depicts the locations on the site where seven of the techniques identified shall be applied. According to Cedar Creek's letter, three of the techniques may be applied site-wide, and one of the techniques identified in a previous letter has been removed from consideration as a site management technique at this time. If any of the eleven management techniques identified by Cedar Creek are implemented, an annual monitoring report shall be submitted to the Current Planning Manager and Natural Areas Manager on November 1 of each year. The monitoring report shall describe the management techniques employed, the results of those techniques, and the current status of any restoration or revegetation efforts. If clean-up activities are not pursued, the natural area shall be left in its natural state.

Engineering Conditions

3. Notwithstanding any information presented in the PDP or accompanying preliminary plat and preliminary construction plan documents (text or graphical depictions), all public improvements shall conform to the Larimer County Urban Area Street Standards adopted on October 2002, as amended, unless specific variances are requested and approved in writing.
4. The following public improvements shall be designed and constructed by the developer unless designed & constructed by others. All improvements shall be completed prior to the issuance of any building permits, unless otherwise approved pursuant to the provisions in Section 16.40 of the Loveland Municipal Code.
   a. 14th Street SW to 2-lane arterial standards adjacent to the property including detached sidewalk.
   b. CR 21 to major collector standards adjacent to the property including detached sidewalk. A cash-in-lieu payment, or other form of security acceptable to the City, for all or part of these improvements may be accepted by the City if approved by the City Engineer.
   c. Angora Drive to minor collector standards within the property.
   d. Westbound right-turn lane on 14th Street SW into Angora Drive.

Fire Prevention Conditions

5. Prior to approval of the Final Plat, the design for the emergency access roadway serving the proposed phases I and II shall be approved by the Fire Department.
6. Prior to approval of any building permits within the Property all courts shall be provided with a "Fire Lane - No Parking" signs approved by the Fire Department.

Power Conditions

7. When the property being annexed into the City of Loveland is currently located within the REA certified territory, this property is subject to a five percent (5%) surcharge on electrical energy as defined in 40-915-204, CRS, and the City of Loveland Municipal Code 13.12.180. This surcharge applies to any subsequent subdivisions of property annexed after January 31, 1987 within the REA certified service territory. In this case a note will be added to the final plat that reads as follows:
   a. A surcharge of 5% will be added to all bills for the sale of electric power to additional services which came into the existence after January 31, 1987, within the territory herein annexed which surcharge will expire ten years after effective date of this annexation.
8. A letter of approval from Western Area Power Authority for landscape plans proposing landscaping within a WAPA easement or under WAPA power lines must be submitted with the Final Plat and Final Construction Drawings submittal.
9. All multi-family, condominium, apartment and town home units will have meters centrally located on or near the unit's exterior building wall. Town homes will not be individually metered.

VESTING

Vesting was granted for this development plan OCTOBER 14, 2006 for a period of 3 years.

SETBACK TABLE (all numbers refer to minimum condition)

UNIT TYPE	FRONT SETBACK, EVEN # LOTS	COMMON WALL SETBACK	FRONT SETBACK, ODD # LOTS	REAR SETBACK	SIDE SETBACK**	CORNER LOT SIDE SETBACKS
SINGLE FAMILY - STANDARD LOT *	24'	N/A	28'	15'	5'	15'
SINGLE FAMILY-PATIO LOT *	22'	N/A	25'	10'	5'	15'
ATTACHED SINGLE FAMILY LOT *	15'	N/A	15'	N/A	5'	15'

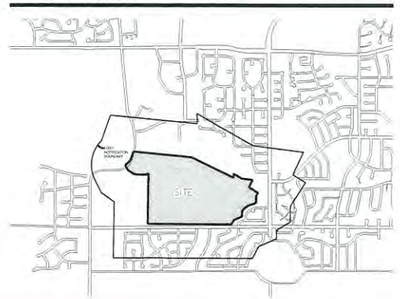
* Setbacks measured from the back of sidewalk
** The 1:3 ratio shall apply with 5 feet being the minimum.

PDP LANDUSE TABLE

LAND USE	AREA	NUMBER OF UNITS	DENSITY	PERCENTAGE OF SITE
SINGLE FAMILY - STANDARD LOT	26.48 ac.	93	1.09 du/ac. (net)	20.9%
SINGLE FAMILY - PATIO LOT	12.22 ac.	70	.83 du/ac. (net)	9.6%
SINGLE FAMILY ATTACHED	8.39 ac.	42	.50 du/ac. (net)	6.6%
OPEN SPACE	34.75 ac.	N/A	N/A	27.4%
TOTAL DEVELOPED AREA	*81.84 ac.*	*205*	*2.42 du/ac. (net)*	*64.4%*
RESERVOIR	21.6 ac.	N/A	N/A	17%
WETLANDS	5.9 ac.	N/A	N/A	4.6%
R.O.W.	14.82 ac.	N/A	N/A	11.7%
PUBLIC UTILITY EASEMENT	2.84 ac.	N/A	N/A	2.2%
TOTAL	*127 ac.*			*100%*

VICINITY MAP

Scale: 1" = 2000'



DAKOTA GLEN

Approvals

1. Approved this _____ day of _____, year _____ by the Current Planning Manager of the City of Loveland, Colorado.

_____
Current Planning Manager

2. Approved this _____ day of _____, year _____ by the City Engineer of the City of Loveland, Colorado.

_____
City Engineer

3. Approved this _____ day of _____, year _____ by the City Attorney of the City of Loveland, Colorado.

_____
City Attorney

4. Approved this _____ day of _____, year _____ by the City Planning Commission of the City of Loveland, Colorado.

_____
Chairperson

5. Approved this _____ day of _____, year _____ by the City Council of the City of Loveland, Colorado.

_____ _____
Mayor Attest

Ownership Certification

KNOW ALL MEN BY THESE PRESENTS THAT:

_____

being all the lawful record owners of the property shown on this _____(type of plan) _____, except any existing public streets, roads, or highways, do hereby certify that that I/we accept the conditions and restrictions set forth on said plan and in the conditions of approval by the City of Loveland, dated _____, and that I/we consent to the recordation of any information pertaining thereto.

_____
(owner)

STATE OF COLORADO)
)
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this _____day of _____, 2008 by _____

Witness my hand and official seal.
My commission expires
_____NOTARY PUBLIC
_____address

Developer:
Glen Development LLC
P.O. Box 118
Loveland, CO 80539
970.663.1897

SHEET INDEX

SHEET 1	PDP NARRATIVE
SHEET 2	OVERALL PLAN
SHEET 3	SITE / LANDSCAPE PLAN
SHEET 4	SITE / LANDSCAPE PLAN
SHEET 5	SITE / LANDSCAPE PLAN
SHEET 6	SITE / LANDSCAPE PLAN
SHEET 7	SITE / LANDSCAPE PLAN
SHEET 8	SITE / LANDSCAPE PLAN
SHEET 9	ARCHITECTURE
SHEET 10	ARCHITECTURE
SHEET 11	XCEL PLANNED UNIT DEVELOPMENT (1 OF 5)
SHEET 12	XCEL PLANNED UNIT DEVELOPMENT (2 OF 5)
SHEET 13	XCEL PLANNED UNIT DEVELOPMENT (3 OF 5)
SHEET 14	XCEL PLANNED UNIT DEVELOPMENT (4 OF 5)
SHEET 15	XCEL PLANNED UNIT DEVELOPMENT (5 OF 5)

PDP NARRATIVE

DAKOTA GLEN 1 ST. SUBDIVISION
LOVELAND, COLORADO

BHA DESIGN, INC. • 1603 OAKRIDGE DR

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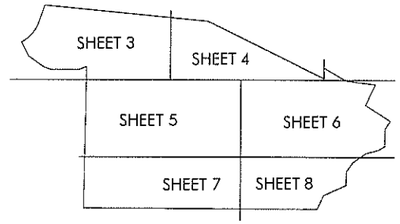
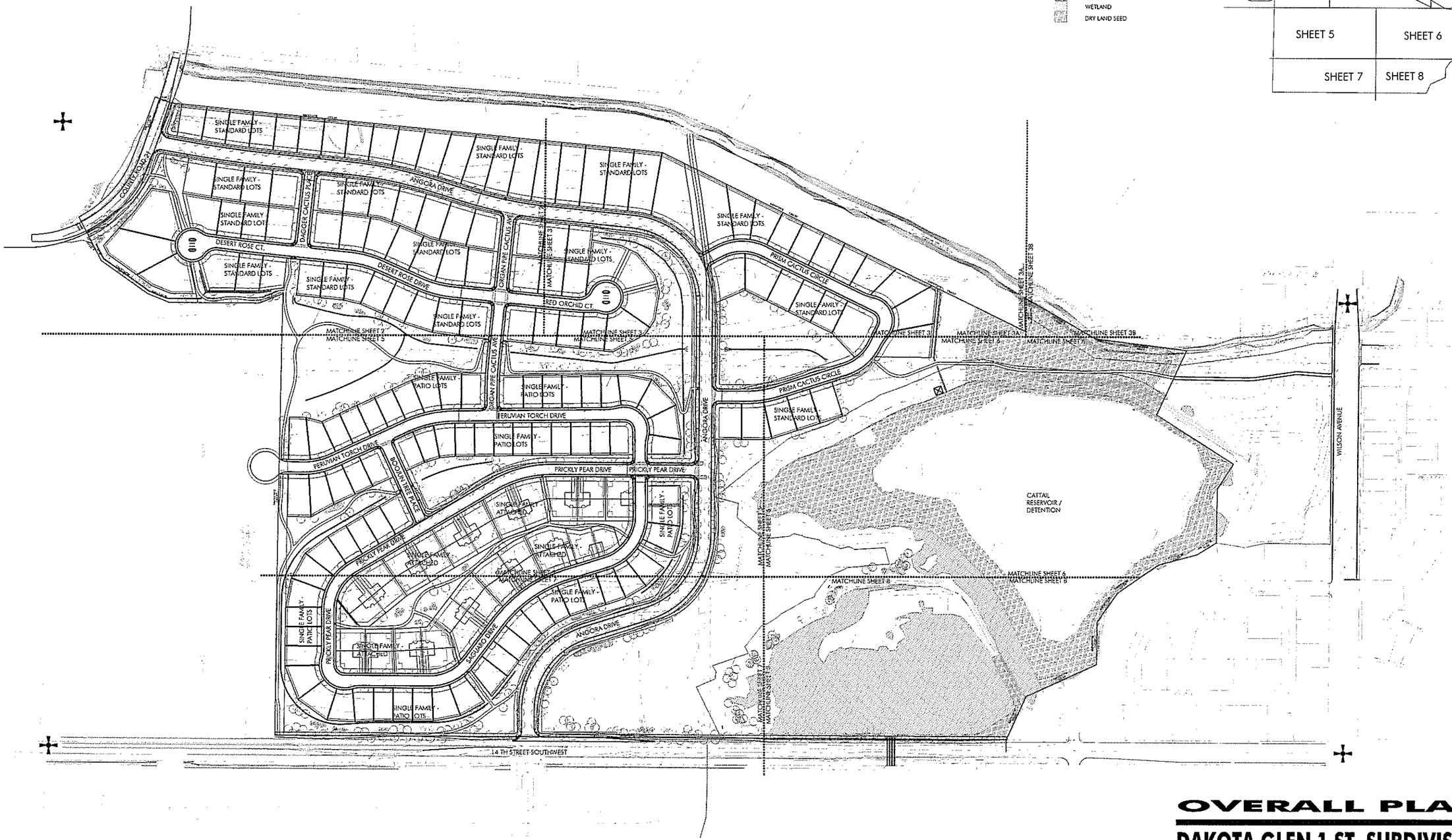
PC ATTACHMENT 6

LEGEND

DECIDUOUS CANOPY TREE
ORNAMENTAL TREE
CONIFEROUS TREE
SHRUB BED
IRRIGATED TURF
WETLAND
DRY LAND SEED

VICINITY MAP





0 75' 150' 300'

OVERALL PLAN

DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

BHA DESIGN, INC. • 1603 OAKRIDGE DR

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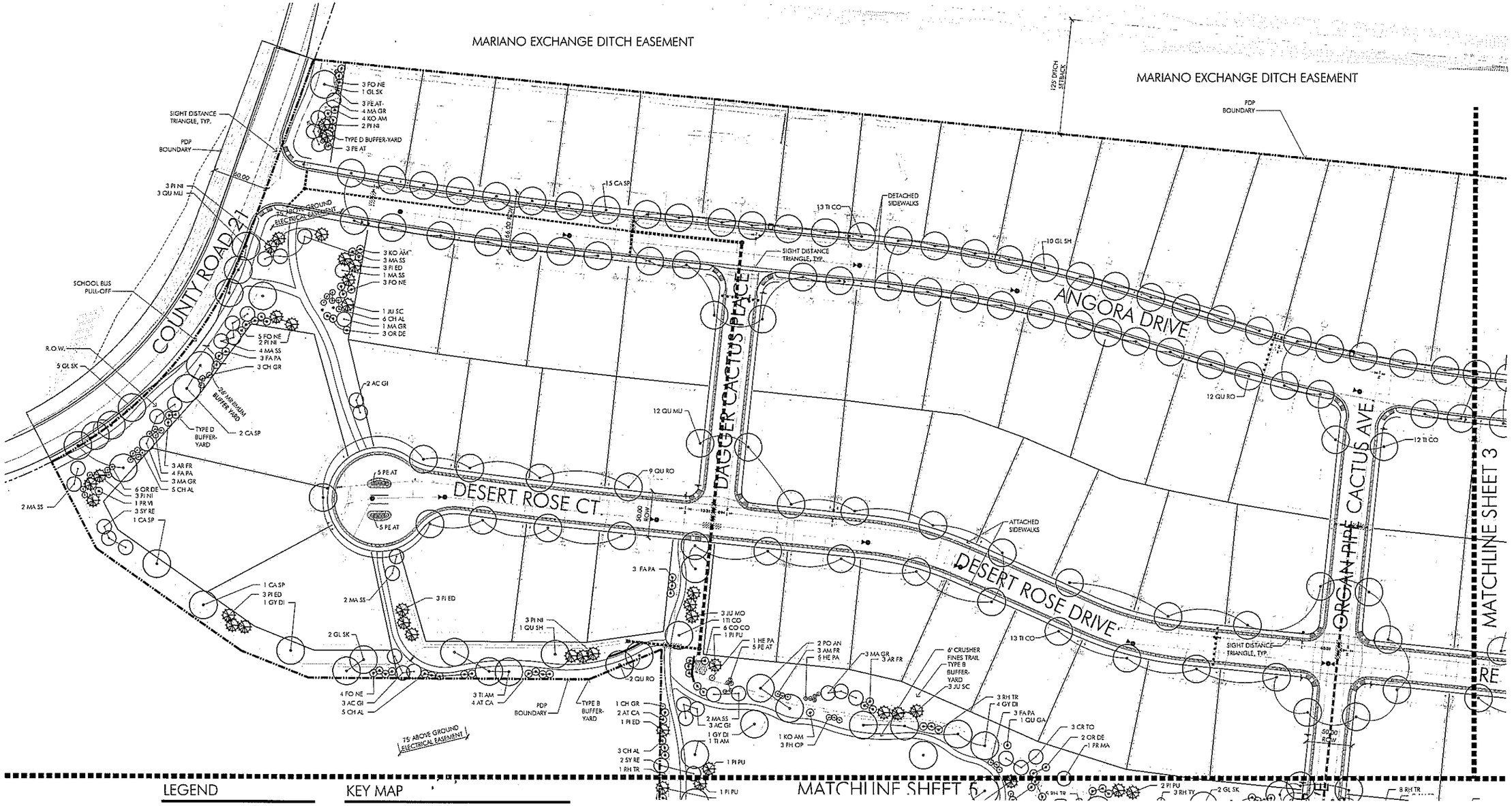
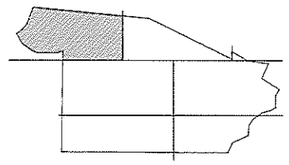
PC ATTACHMENT 6



LEGEND

- DECIDUOUS CANOPY TREE
- ORNAMENTAL TREE
- CONIFEROUS TREE
- SHRUB BED
- IRRIGATED TURF
- NATIVE MIX
- TRANSITION SEED
- DRY LAND SEED

KEY MAP



NORTH 0 25' 50' 100'

SITE / LANDSCAPE PLAN

DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

BHA DESIGN, INC. • 1603 OAKRIDGE DR

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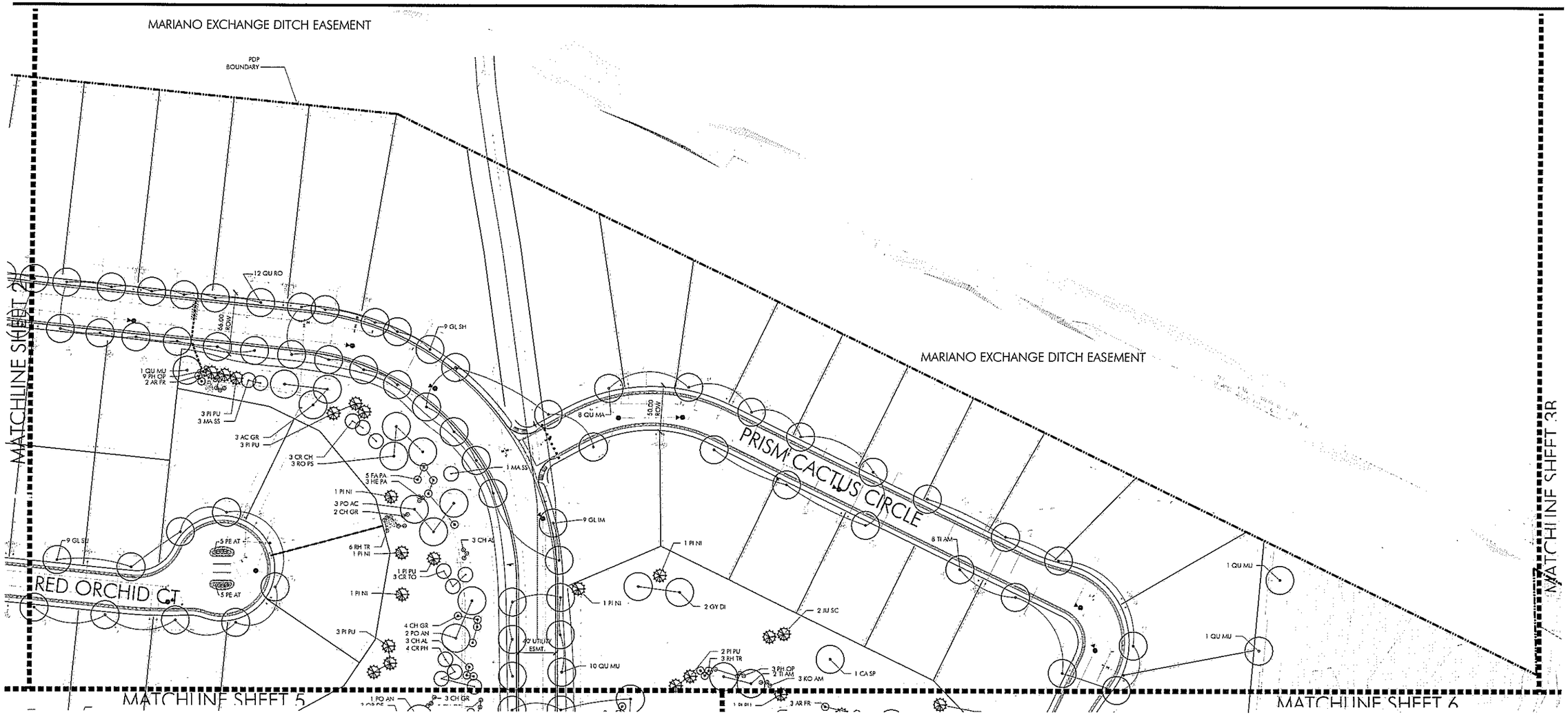
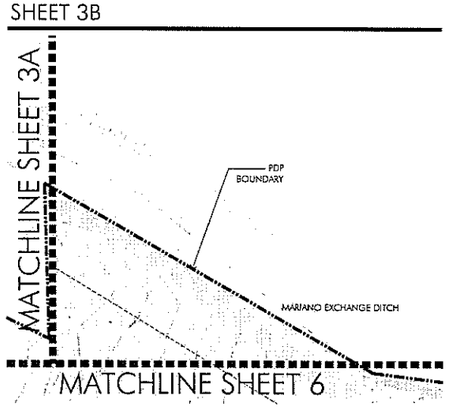
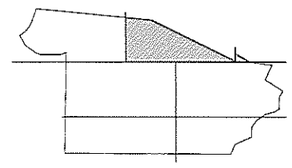
SHEET 3A



SHEET 3B



KEY MAP



LEGEND

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- TRANSITION SEED
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NORTH 0 25' 50' 100'

SITE / LANDSCAPE PLAN

DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

BHA DESIGN, INC. • 1603 OAKRIDGE DRIVE • FT. COLLINS, CO 80525 • TEL: (970) 223-2427

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APRI

PC ATTACHMENT 6

MATCHLINE SHEET 2

MATCHLINE SHEET 3

MATCHLINE SHEET 6

MATCHLINE SHEET 7

ORGAN PIPE CACTUS PLACE

PERUVIAN TORCH DRIVE

PRICKLY PEAR DRIVE

BOOJUM TREE PLACE

ANGORA DRIVE

50.00' ROW

66.00' ROW

75' ABOVE GROUND ELECTRICAL EASEMENT

40' UTILITY ESMT.

6' CRUSHER FINES TRAIL

8' CONCRETE TRAIL

ATTACHED SIDEWALKS

ATTACHED SIDEWALK

TURF

SIGHT DISTANCE TRIANGLE, TYP

BUILDING ENVELOPE, TYP.

75' BUFFER

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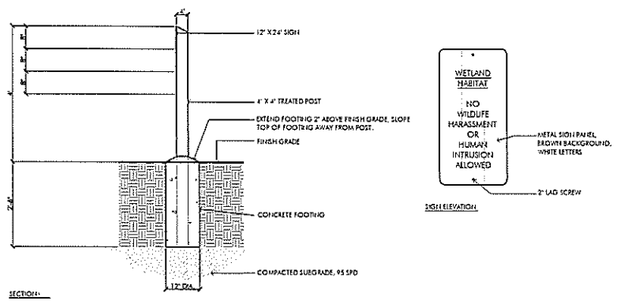
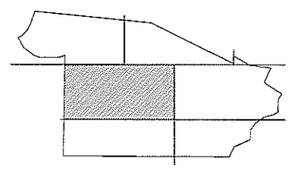
WETLAND SIGN



Note:

Development other than trails are prohibited within the 75 foot buffer

KEY MAP



LEGEND

- DECIDUOUS CANOPY TREE
- ORNAMENTAL TREE
- CONIFEROUS TREE
- SHRUB BED
- IRRIGATED TURF
- NATIVE MIX
- TRANSITION SEED
- DRY LAND SEED

NORTH 0 25' 50' 100'

SITE / LANDSCAPE PLAN

DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

BHA DESIGN, INC. • 1603 OAKRIDGE D

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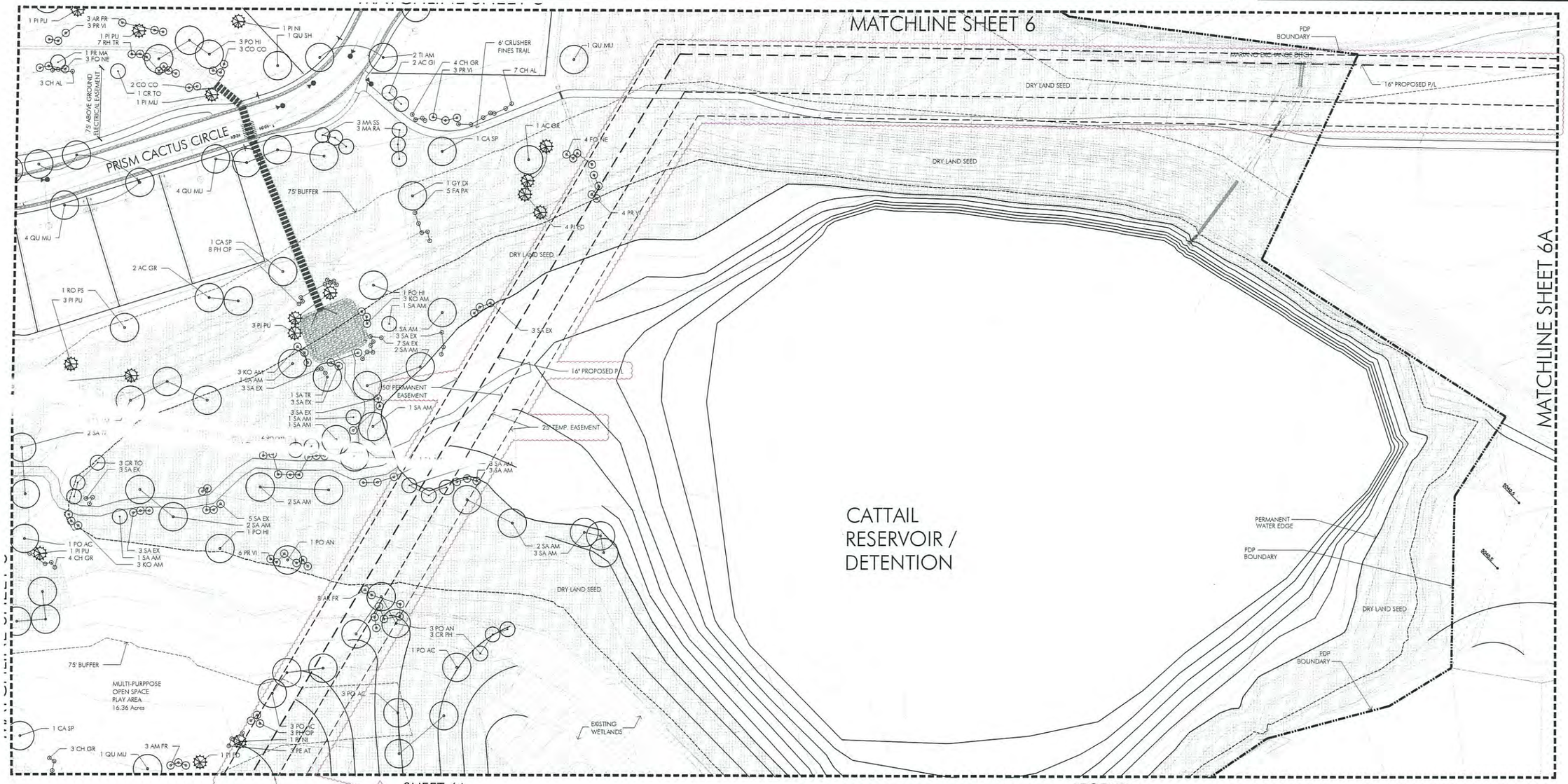
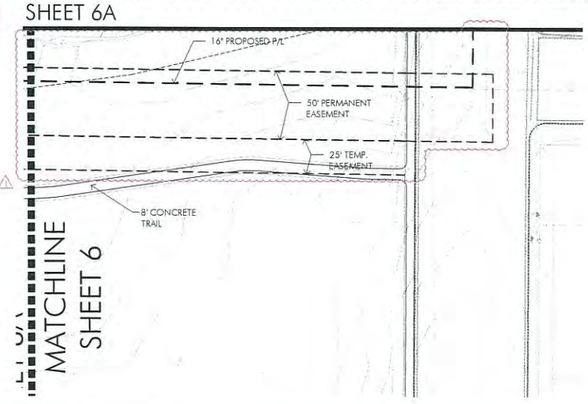
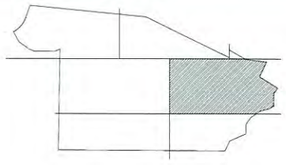


SHEET 6A



KEY MAP



LEGEND

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Note:

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NORTH 0 25' 50' 100'

SITE / LANDSCAPE PLAN

DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

BHA DESIGN, INC. • 1603 OAKRIDGE DRI

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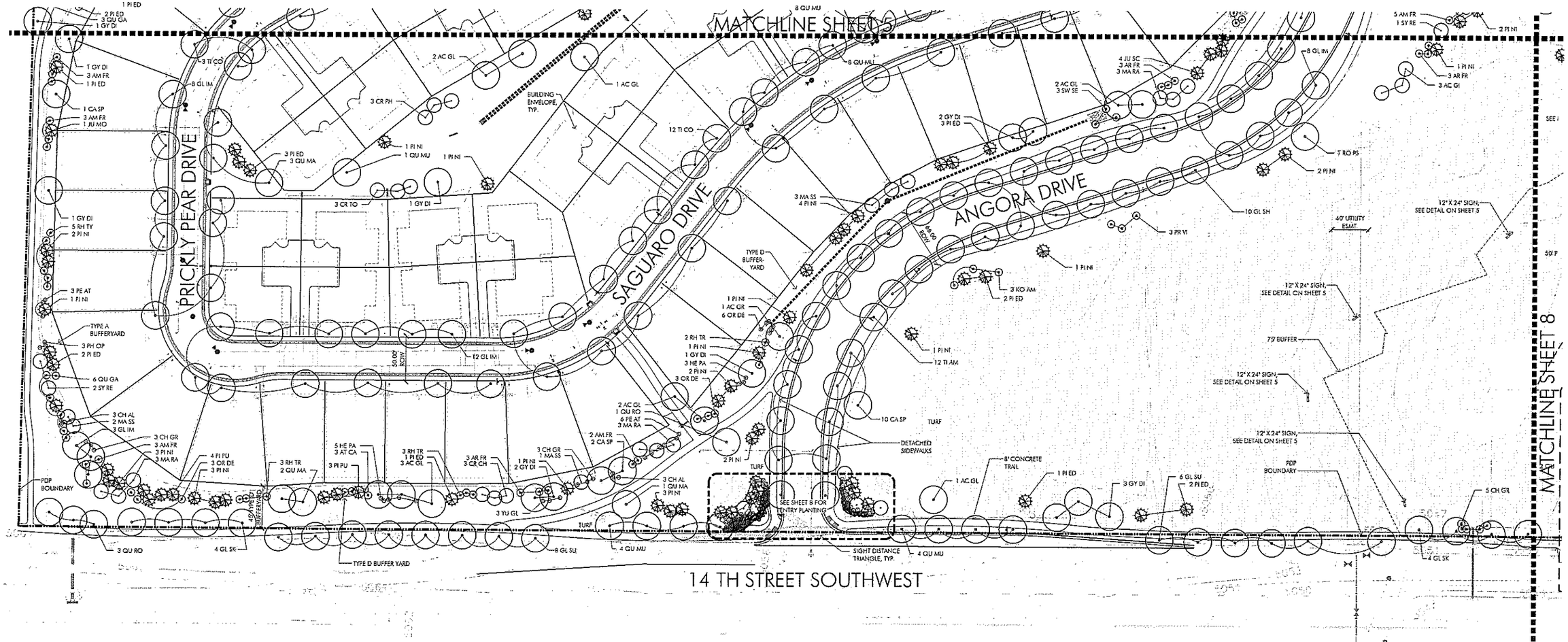

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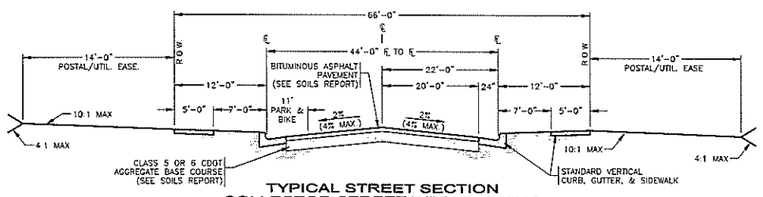
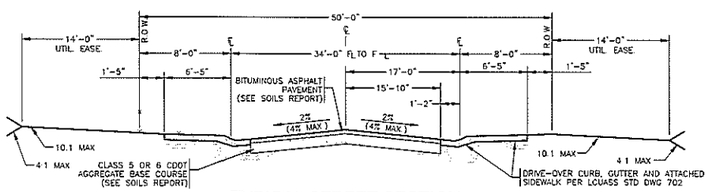
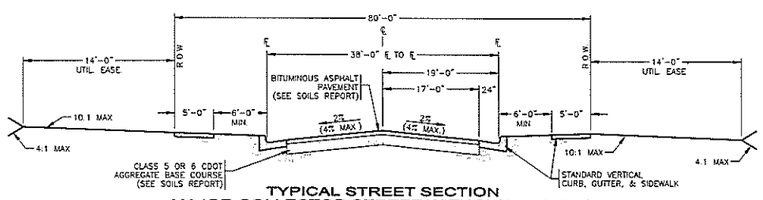


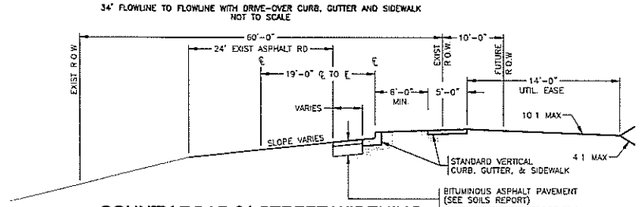
TYPICAL STREET SECTION
COLLECTOR STREET WITH PARKING
44' FLOWLINE TO FLOWLINE WITH VERTICAL CURB AND GUTTER
NOT TO SCALE



TYPICAL STREET SECTION
RESIDENTIAL LOCAL STREETS
34' FLOWLINE TO FLOWLINE WITH DRIVE-OVER CURB, GUTTER AND SIDEWALK
NOT TO SCALE



TYPICAL STREET SECTION
MAJOR COLLECTOR STREET WITHOUT PARKING
38' FLOWLINE TO FLOWLINE WITH VERTICAL CURB AND GUTTER
NOT TO SCALE



COUNTY ROAD 21 STREET WIDENING
NOT TO SCALE

LEGEND

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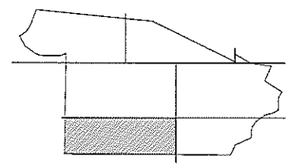
- TRANSITION SEED
- DRY LAND SEED

KEY MAP



NORTH 0 25' 50' 100'

SITE / LANDSCAPE PLAN

DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

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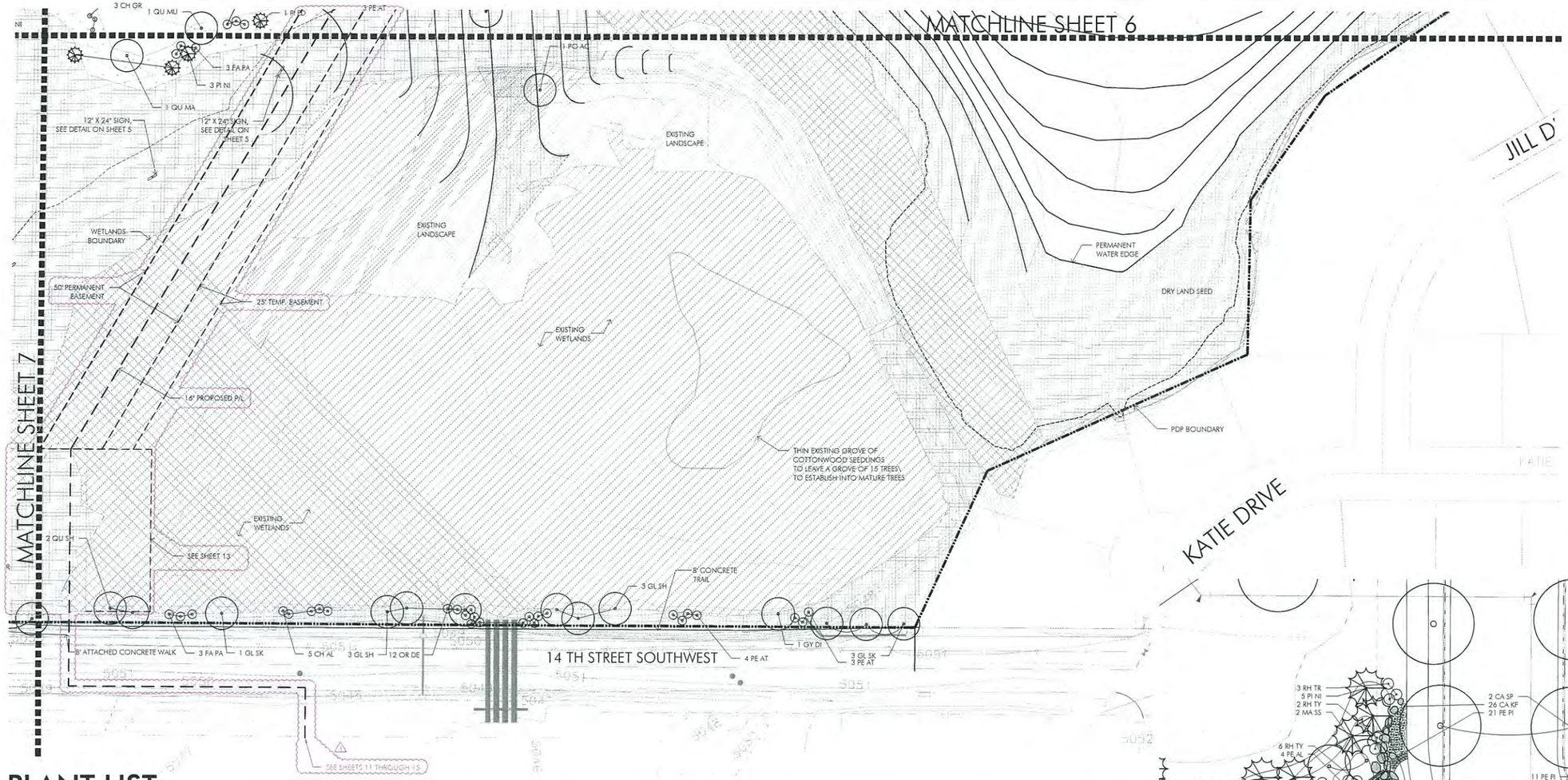
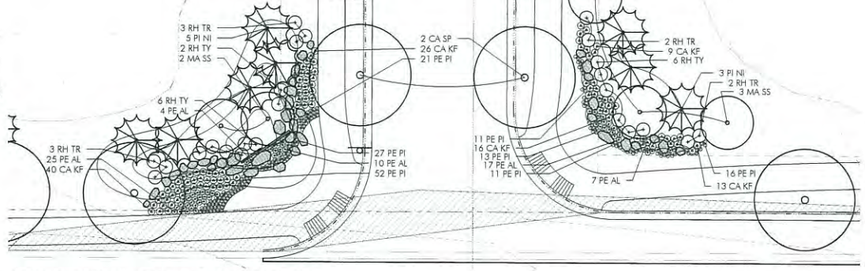
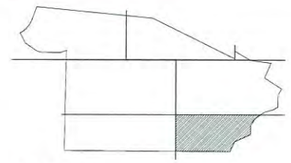




KEY MAP



LEGEND

- DECIDUOUS CANOPY TREE
- ORNAMENTAL TREE
- CONIFEROUS TREE
- SHRUB BED
- IRRIGATED TURF
- NATIVE MIX
- TRANSITION SEED
- DRY LAND SEED

Note:

Development other than trails are prohibited within the 75 foot buffer

PLANT LIST

Key	Botanical name	Common Name	Size	Root	Spacing	Phase 1
DECIDUOUS CANOPY TREES						
AC GR	Acer grandidentatum	Big Tooth Maple	2" Cal.	BB	See Plan	10
AL TE	Alnus tenuifolia	Thinleaf Alder	2" Cal.	BB	See Plan	6
CA SP	Catalpa speciosa	Western Catalpa	2" Cal.	BB	See Plan	53
GL IM	Gleditsia tricanthos inermis 'Imperial'	Imperial Honeylocust	2" Cal.	BB	See Plan	66
GL SH	Gleditsia triacanthos inermis 'Shade Master'	Shade Master Honeylocust	2" Cal.	BB	See Plan	44
GL SK	Gleditsia triacanthos inermis 'Skyline'	Skyline Honeylocust	2" Cal.	BB	See Plan	30
GL SU	Gleditsia triacanthos inermis 'Sunburst'	Sunburst Honeylocust	2" Cal.	BB	See Plan	25
GY DI	Gymnocladus dioica	Kentucky Coffeetree	2" Cal.	BB	See Plan	30
PO AC	Populus acuminate	Lanceleaf Cottonwood	2" Cal.	BB	See Plan	16
PO AN	Populus angustifolia	Narrowleaf Cottonwood	2" Cal.	BB	See Plan	16
PO HI	Populus 'Highland'	Highland Cottonwood	2" Cal.	BB	See Plan	8
QU MA	Quercus macrocarpa	Burr Oak	2" Cal.	BB	See Plan	24
QU MU	Quercus MuehlenbergII	Chinkapin Oak	2" Cal.	BB	See Plan	93
QU RO	Quercus robur	English Oak	2" Cal.	BB	See Plan	53
QU SH	Quercus shumardii	Shumard Oak	2" Cal.	BB	See Plan	9
RO PS	Robina pseudoacacia 'Purple Robe'	Purple Robe Locust	2" Cal.	BB	See Plan	9
SA TR	Salix alba 'Tristis'	Golden Weeping Willow	2-1/2" Cal.	BB	See Plan	4
SA AM	Salix amygdaloides	Peach Leaf Willow	2" Cal.	BB	See Plan	31
TI AM	Tilia americana 'Redmond'	Redmond Linden	2" Cal.	BB	See Plan	38
TI CO	Tilia cordata 'Greenspire'	Greenspire Linden	2" Cal.	BB	See Plan	88
DECIDUOUS ORNAMENTAL TREES						
AC GI	Acer ginnala 'Flame'	Flame Amur Maple	1-1/2" Cal.	BB	See Plan	32
CR CH	Crataegus chinensis	Chinese Hawthorn	1-1/2" Cal.	BB	See Plan	13
CR PH	Crataegus phaenopyrum	Washington Hawthorn	2" Cal.	BB	See Plan	14
CR TO	Crataegus 'Toba'	Toba Hawthorn	1-3/4" Cal.	BB	See Plan	16
MA RA	Malus 'Radiant'	Radiant Crabapple	2-1/2" Cal.	BB	See Plan	15
MA GR	Malus 'Golden Raindrops'	Golden Raindrops Crabapple	2" Cal.	BB	See Plan	13
MA SS	Malus 'Spring Snow'	Spring Snow Crabapple	1-3/4" Cal.	BB	See Plan	56
PR MA	Prunus Maackii	Amur Chokecherry	2-1/2" Cal.	BB	See Plan	5
PY CA	Pyrus calleryana 'Aristocrat	Aristocrat Pear	2" Cal.	BB	See Plan	2
SY RE	Syringa reticulata	Japanese Tree Lilac	1-1/2" Cal.	BB	See Plan	13
CONIFEROUS TREES						
JU MO	Juniperous monosperma	One Seed Juniper	6' Ht.	BB	See Plan	8
JU SC	Juniperous scopulorum	Rocky Mountain Juniper	6' Ht.	BB	See Plan	10
PI PU	Picea pungens	Colorado Spruce	6' Ht.	BB	See Plan	43
PI ED	Pinus edulis	Pinon Pine	8' Ht.	BB	See Plan	46
PI NI	Pinus nigra	Austrian Pine	6' Ht.	BB	See Plan	90
PI MU	Pinus mugo 'Tannebaum'	Tannenbaum Mugo Pine	6' Ht.	BB	See Plan	8

DECIDUOUS SHRUBS						
AM FR	Amorpha fruticosa var. angustifolia	Indigobush Amorpha	5 GAL	Container	See Plan	60
AT CA	Atriplex canescens	Four-Wing Saltbush	5 GAL	Container	See Plan	21
AR FR	Artemisia frigida	Fringed Sage	5 GAL	Container	See Plan	41
CH AL	Chrysothamnus nauseosus albicaulis	Tall Blue Rabbitbrush	5 GAL	Container	See Plan	62
CH GR	Chrysothamnus nauseosus graveolens	Tall Green Rabbitbrush	5 GAL	Container	See Plan	73
CO CO	Cotinus coggygria 'Royal Purple'	Royal Purple Smoke Tree	5 GAL	Container	See Plan	22
FA PA	Fallugia paradoxa	Apache Plume	5 GAL	Container	See Plan	43
FO NE	Forestieria neomexicana	New Mexico Privet	5 GAL	Container	See Plan	22
HE PA	Hesperaloe parviflora	Red False Yucca	5 GAL	Container	See Plan	28
KO AM	Kolkwitzia amabilis	Beauty Bush	5 GAL	Container	See Plan	41
OR DE	Oreobatus deliciosus	Boulder Raspberry	5 GAL	Container	See Plan	78
PE AT	Perovskia atriplicifolia	Russian Sage	5 GAL	Container	See Plan	64
PH OP	Physocarpus monogynus	Native Ninebark	5 GAL	Container	See Plan	56
PR VI	Prunus virginiana melanocarpa	Native Chokecherry	5 GAL	Container	See Plan	21
QU GA	Quercus gambelii	Gambel Oak	5 GAL	Container	See Plan	6
RH TR	Rhus trilobata	Three-Leaf Sumac	5 GAL	Container	See Plan	76
RH TY	Rhus typhina	Staghorn Sumac	5 GAL	Container	See Plan	36
SA EX	Salix exigua	Coyote Willow	5 GAL	Container	See Plan	44
SW SE	Swida stolonifera	Redosier Dogwood	5 GAL	Container	See Plan	17
YU GL	Yucca glauca	Great Plains Yucca	5 GAL	Container	See Plan	8
GRASSES AND PERENNIALS						
CA KF	Calamagrostis acutiflora 'Karl Foerster'	Feather Reed Grass	1 GAL	Container	See Plan	104
PE AL	Pennisetum alopecuroides 'Hameln'	Dwarf Fountain Grass	1 GAL	Container	See Plan	63
PE PI	Penstemon pinifolius	Pineleaf Penstemon	1 GAL	Container	See Plan	151

IRRIGATED TURF

Kentucky Bluegrass 3 Elite Varieties

DRY LAND SEED MIX

Common Name	Scientific Name	PLS/Acre
Blue Grama	Bouteloua gracilis	0.75
Buffalograss	Buchloe dactyloides	1.60
Green Needlegrass	Nassella viridula	2.00
Sideoats Grama	Bouteloua curtipendula	1.80
Western Wheatgrass	Pascopyrum smithii	4.00
		10.15 Drilled
		20.3 Broadcast
		40.6 Small Areas

TRANSITION SEED MIX

Arkansas Valley Seed: Natures Choice Lawn Mixture or approved equivalent

70% Ephraim Crested Wheatgrass
15% Sheeps Fescue
10% Vibrant Perennial Ryegrass
5% Ronde Kentucky Bluegrass

175-220 lbs/acre

NATIVE SEED MIX

Arkansas Valley Seed: Low Grow Mix or approved equivalent

30% Ephraim Crested Wheatgrass
25% Sheep Fescue
20% Perennial Rye
15% Chewings Fescue
10% Kentucky Bluegrass

20-25 lbs/acre

ENTRY PLANTING

SCALE: 1" = 20'

NORTH 0 25' 50' 100'

SITE / LANDSCAPE PLAN

DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

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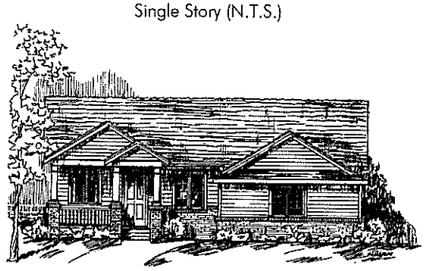
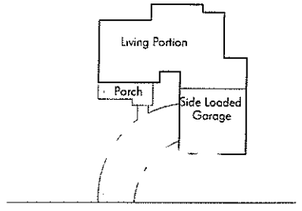
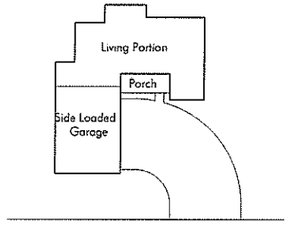
TYPICAL SINGLE FAMILY DETATCHED - STANDARD LOT - TYPE A (side loaded garage)

Single Story (N.T.S.)



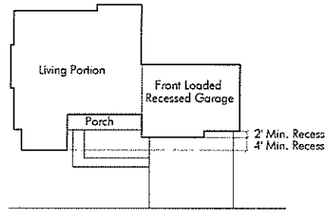


Two Story (N.T.S.)

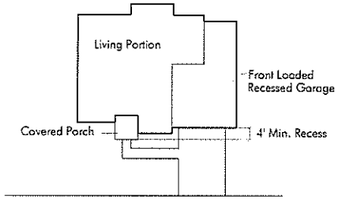


TYPICAL SINGLE FAMILY DETACHED - STANDARD LOT - TYPE B (recessed garage)

Single Story (N.T.S.)

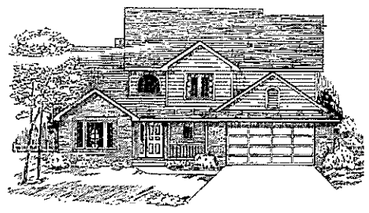


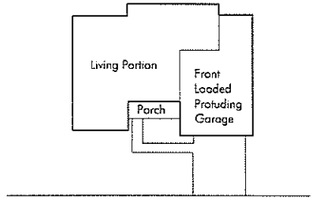
Two Story (N.T.S.)



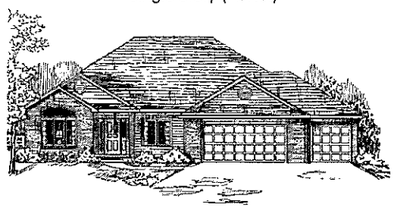
TYPICAL SINGLE FAMILY DETACHED - STANDARD LOT - TYPE C (protruding garage)

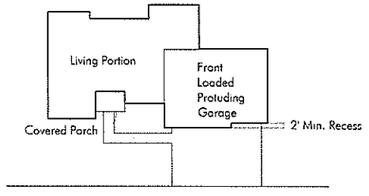
Two Story (N.T.S.)

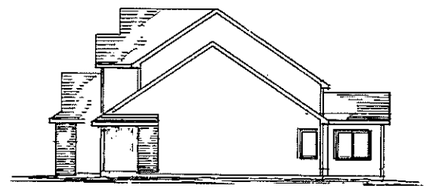




Single Story (N.T.S.)







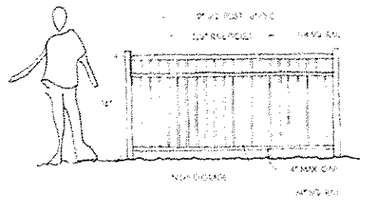
Typical Side Elevation (N.T.S.)

Typical Rear Elevation (N.T.S.)

Note:
These elevations are prototypical. Some variation will occur with the development of each property

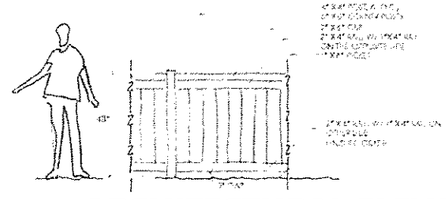
TYPICAL STEEL FENCE

scale: N.T.S.



TYPICAL CEDAR FENCE

scale: N.T.S.



ARCHITECTURAL ELEVATIONS
DAKOTA GLEN FINAL DEVELOPMENT PLAN
FIRST AMENDMENT
LOVELAND, COLORADO

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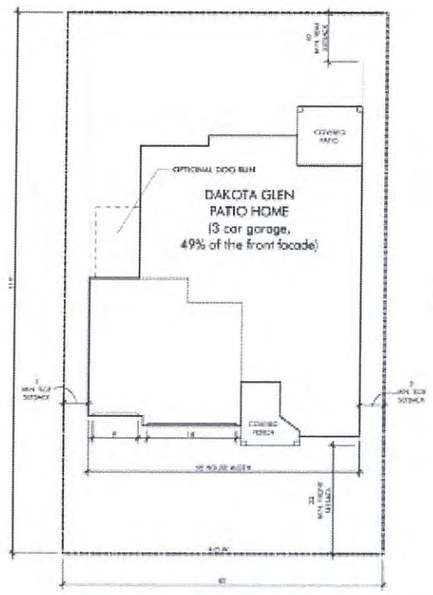
TYPICAL SINGLE FAMILY DETACHED - PATIO HOME

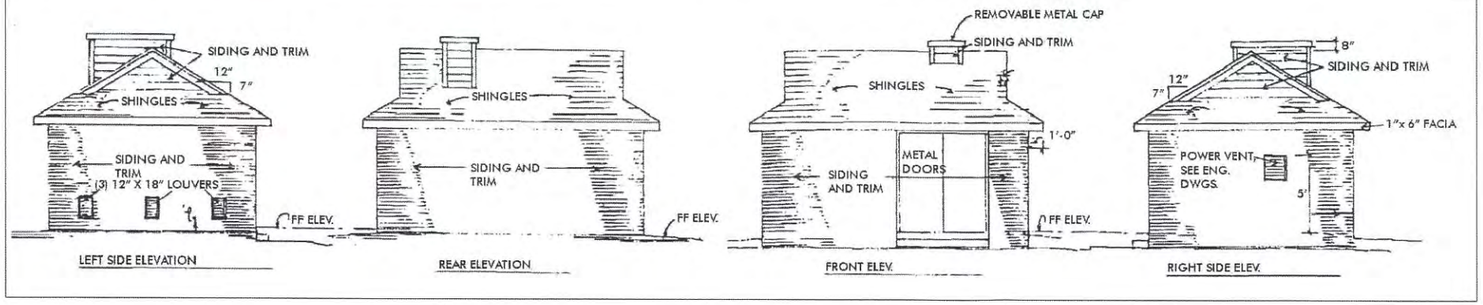


TYPICAL SINGLE FAMILY ATTACHED

PLAN

ELEVATION

TYPICAL PUMPHOUSE



Note:
These elevations are prototypical. Some variation will occur with the development of each property.

ARCHITECTURAL ELEVATIONS
DAKOTA GLEN FINAL DEVELOPMENT PLAN
DAKOTA GLEN 1 ST. SUBDIVISION
LOVELAND, COLORADO

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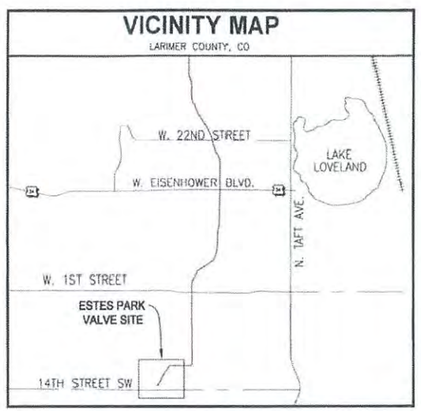
PLANNED UNIT DEVELOPMENT
LARIMER 2013 - 16" WEST MAIN NATURAL GAS PIPELINE REPLACEMENT
(ESTES PARK REGULATOR STATION & UNDERGROUND PIPELINE IN DAKOTA GLEN PUD)
CITY OF LOVELAND
FEBRUARY 2013

Zoning	P-98
Site Acreage	7.48 acres
Land Use	Natural gas pipeline and public utility facility
Square Footage	1. Total - 300 sq. ft.
	2. Floors - 300 sq. ft.
	3. Natural Gas Regulation - 300 sq. ft.
Building Occupancy	U-Utility
Type of Construction	1. Construction Type - Type 2A
	2. Fire Sprinkler - None
Parking Spaces	N/A - This is an unmanned utility
Landscaping	N/A - See Note 5 on Sheet 4, regarding seed mix
Open Space	N/A - The Estes Park Regulator Station is a public utility facility. The pipeline will be buried and revegetated upon completion of construction, and no impacts to open space.
FEMA Floodplain	No portion of the site is within a FEMA floodplain

Standard Site Plan Notes:

1. Unless otherwise noted all land and utilities will be unchanged or restored to their original condition.
2. Legal descriptions of all Public Service company easements are included in the legal description page.
3. Regulator stations do not yet have an address assigned by the City of Loveland.
4. Final architectural design of regulator stations will be completed after final input from the City of Loveland.
5. The construction of the valve stations or pipeline in this plan shall be completed in one phase.
6. There will be no paved parking or bicycle racks installed and no servicing of vehicles on site.
7. All trash shall be hulled away by Public Service Company employees. There will be no permanent refuse collection areas.
8. No area of the easements in this plan is within fifty feet (50') of the property that is within a 100-year floodplain, is classified by the Army Corps of Engineers as wetlands or is land classified as having severe soil limitations by the Soil Conservation Service.
9. No area of the easements in this plan is within the Airport Influence area.
10. The only high wildlife value for an easement of these plans by the Colorado Division of Wildlife is all easements fall within the snow goose winter foraging range. This development will have little to no impact on this species.



DRAWING INDEX			
REVISION	SHEET NO.	DRAWING NO.	DRAWING TITLE
A	1	2300	COVER SHEET
A	2	2301	LEGAL DESCRIPTION
A	3	2302	OVERALL PLAN
A	4	2303	GRADING PLAN
A	5	2304	BUILDING PLAN & DETAILS

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Broomfield, CO 80021

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XCEL PLANNED UNIT DEVELOPMENT (1 OF 5)

DAKOTA GLEN 1 ST. SUBDIVISION
LOVELAND, COLORADO

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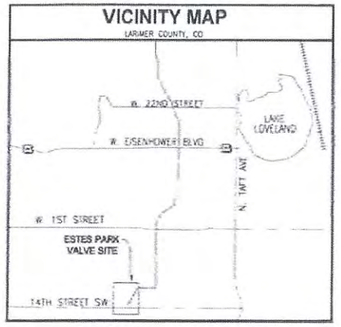
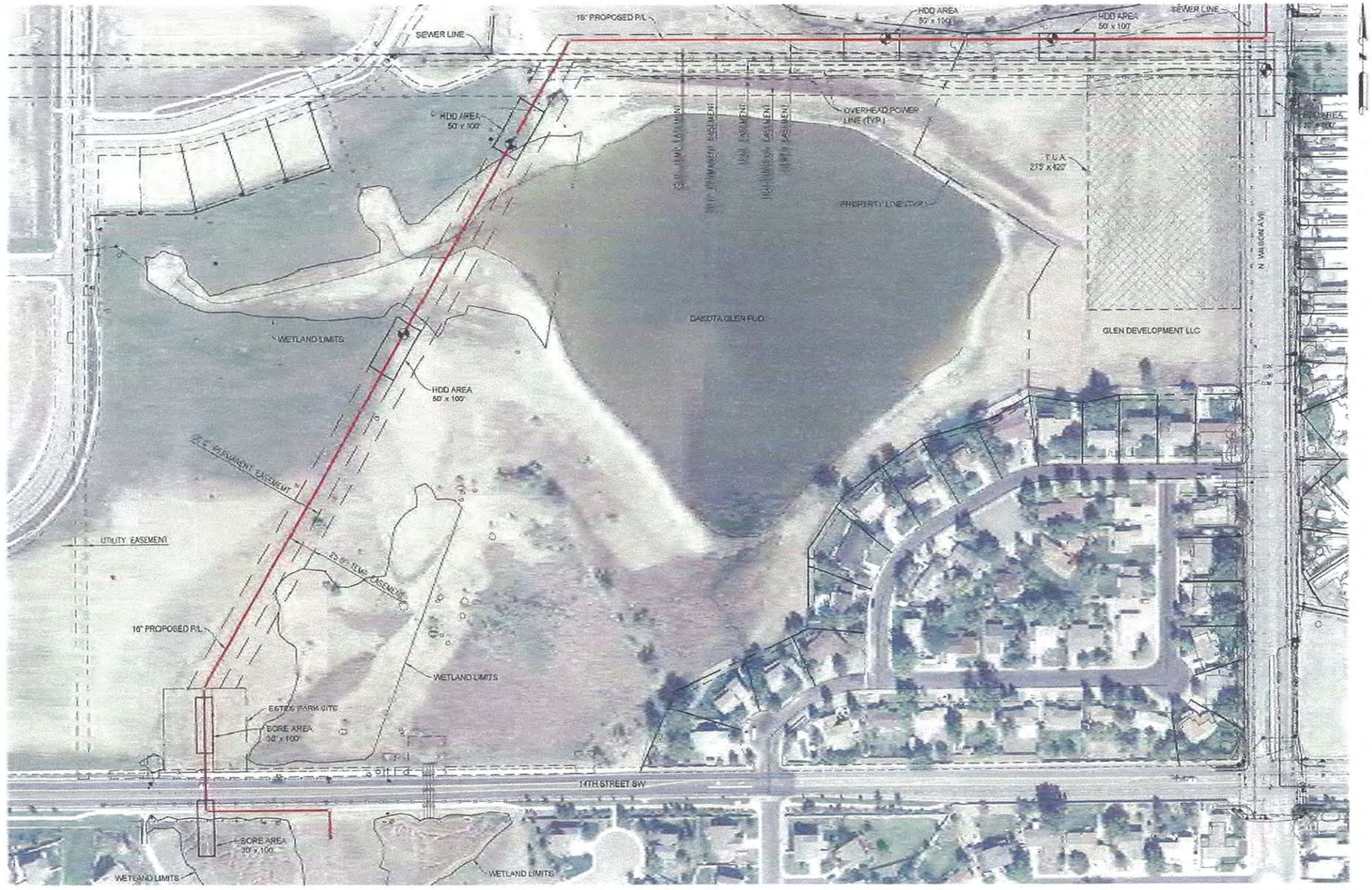


Section 21, Township 5N, Range 69W
LOVELAND , COLORADO



OVERALL PLAN VIEW
SCALE 1" : 100'

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XCEL PLANNED UNIT DEVELOPMENT (2 OF 5)

DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

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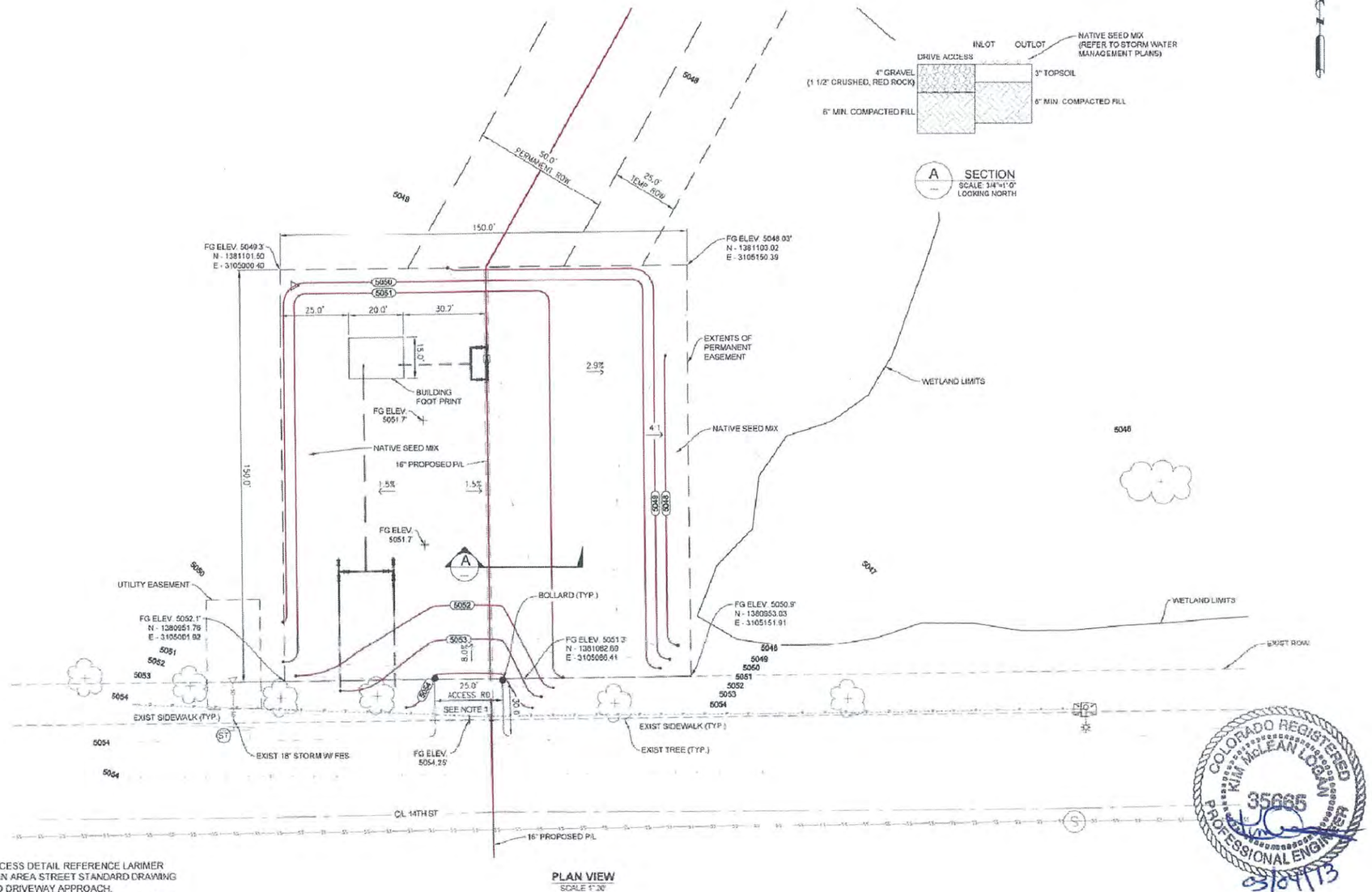
Section 21, Township 5N, Range 69W
LOVELAND , COLORADO



LEGEND

- LIGHT POLE
- ST STORM DRAIN
- S SANITARY SEWER
- ABOVE GROUND PIPING
- BELOW GROUND PIPING
- RADIO TRANSMISSION UNIT

GRADING LEGEND

2246	EXISTING CONTOUR
2234	FINISHED CONTOUR
FLOW	DRAINAGE FLOW DIRECTION
•	INTERSECTING POINT BETWEEN FINISHED CONTOUR AND EXISTING CONTOUR
FG	FINISHED GRADE

NOTES:
1. FOR DRIVE ACCESS DETAIL REFERENCE LARIMER COUNTY URBAN AREA STREET STANDARD DRAWING 706-STANDARD DRIVEWAY APPROACH.
2. COMPACT ALL NON STRUCTURAL FILL AREAS TO 90% OF THE MAXIMUM DRY DENSITY WITH STRUCTURAL FILL AREAS @ 95%.
3. REFERENCE PROJECT STORM WATER MANAGEMENT PLAN FOR ALL EROSION CONTROL MEASURES.
4. CONTRACTOR IS RESPONSIBLE WITH IDENTIFYING, LOCATING, AND POTHOLING ALL FOREIGN LINE CONFLICTS. CONTRACTOR IS REQUIRED BY STATUTE TO UTILIZE THE STATE ONE CALL SYSTEM (811) FOR UTILITY LOCATE REQUESTS.
5. A NATIVE SEED MIX THAT MEETS CITY OF LOVELAND STORM WATER STANDARDS SHALL BE SUBMITTED AND APPROVED PRIOR TO INSTALL.

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COLORADO REGISTERED PROFESSIONAL ENGINEER
KIM McLEAN LOGAN
35665
03/04/13

XCEL PLANNED UNIT DEVELOPMENT (3 OF 5)

DAKOTA GLEN 1 ST. SUBDIVISION

LOVELAND, COLORADO

BHA DESIGN, INC. • 1603 OAKRIDGE DR

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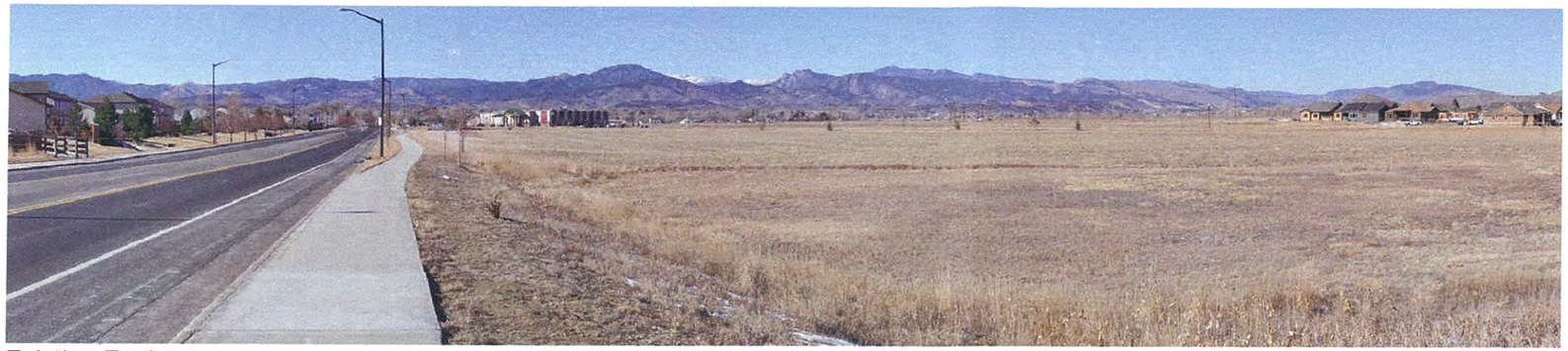
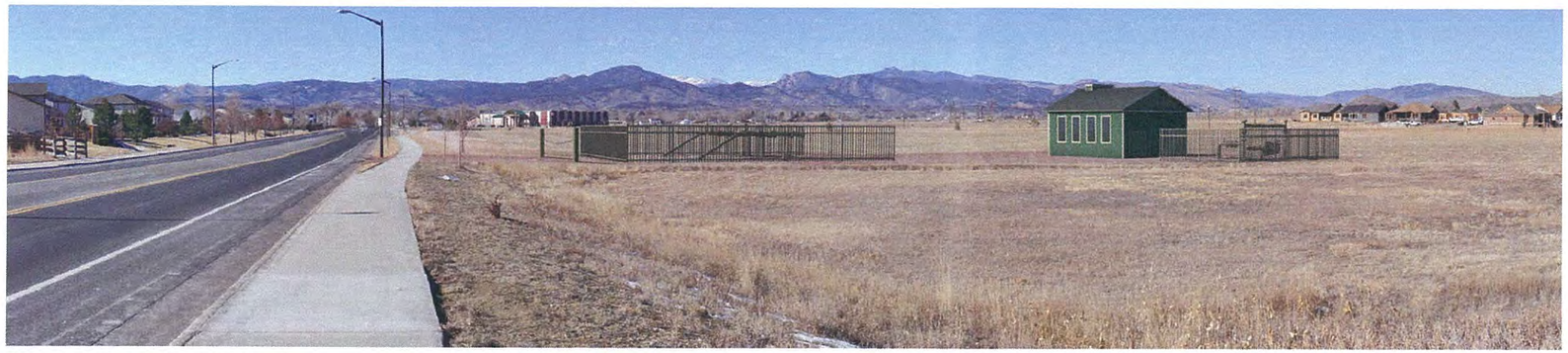


Existing Environment



Photographic Simulation

Parameter	Control House	Aboveground Pipeline	Fence	Bollard
Use	Controls the flow of gas from higher to lower pressures as the gas would move from the 16-inch transmission pipeline to smaller lateral and distribution pipelines.	Transmission of natural gas	Screening of aboveground gas piping	Entrance Gate
Quantity	1	2	2 locations	2
Height	~12 feet (similar roof pitch to existing pump house)	8.1 feet, 8.5 feet	8-feet	3.5 feet
Length	24 feet	17 feet, 11 feet	South Fence: 108-feet East Fence: 58-feet	NA
Width	22 feet	18 feet, 65 feet	South face: 32-feet East face: 24-feet	NA
Size	528 square feet	6.5-inch-diameter pipeline; footprints are 306 square feet, 715-977.5 square feet total		6.5 inch diameter
Architectural Design	Similar in character to existing pump house located north of the gas regulator station site	Painted steel tanks, 6 feet	Similar in character to Dakota Glen subdivision fence guidelines	NA
Exterior Materials	Walls: Split face concrete block Windows/Openings: Glass block/metal louvers Roof: Metal shingles	Painted steel	Ornamental Steel	Painted steel
Color	Walls: Teal blue, or similar to match hue of existing pump house Trim: Cream, to match hue of existing pump house Roof: Warm gray, to match hue of existing pump house	Medium/light tan	Medium/light tan	Medium/light tan

Disclaimer: Detailed design drawings to be submitted with building permit applications. Design drawings will substantially comply with the details included on this drawing.

XCEL PLANNED UNIT DEVELOPMENT (4 OF 5)

DAKOTA GLEN 1 ST. SUBDIVISION
LOVELAND, COLORADO

BHA DESIGN, INC. • 1603 OAKRIDGE DRIVE bha FT. COLLINS, CO 80525 • TEL: (970) 223 - 7477

SHEET

2013 - 16" West Main Natural Gas Pipeline Replacement Project - Dakota Glen PUD First Amendment
PROJECT AND LEGAL DESCRIPTION

Introduction

Public Service Company of Colorado (PSCo), an Xcel Energy company, is requesting a Planned Unit Development (PUD) Amendment as described in the City of Loveland Land Use Code Chapter 18.41. The Larimer 2013--16" West Main Natural Gas Pipeline Replacement Project (proposed Project) involves the construction, operation, and maintenance of a 16-inch high-pressure replacement natural gas transmission pipeline. The proposed Project encompasses Larimer, Weld, and Boulder counties and several incorporated communities and is approximately 77 miles long. An overview map showing all portions of the West Main Natural Gas Pipeline Replacement Project throughout Larimer County is included on the Project website: <http://www.xcelenergywestmainpipeline.com/west_main/route-maps/route-maps.html>. The existing 84 year old natural gas pipelines have reached the ends of their service lives, require safety upgrades, and cannot reliably keep up with growing system demand to deliver natural gas. The proposed Project would provide high-pressure transmission of natural gas with limited distribution systems taps as needed. It would provide an important link to future system upgrades for northern Colorado Front Range communities and would ensure more reliable natural gas delivery to customers in light of growing natural gas demand.

The proposed Project includes necessary pipeline and above-ground facilities located on private property within the Dakota Glen PUD in the city of Loveland. As part of its West Main Natural Gas Pipeline Replacement Project, PSCo is proposing to construct, operate, and maintain one new regulator station, referred to as the Estes Park Regulator Station, in the Dakota Glen PUD. Regulator stations control the flow of gas from higher to lower pressures as the gas would move from the 16-inch transmission pipeline to smaller lateral and distribution pipelines that serve the local community.

The preferred pipeline route enters the Dakota Glen PUD in the city of Loveland near the intersection of 14th Street Southwest (SW) and Angora Drive, approximately 2,000 feet west of the intersection of 14th Street SW and Wilson Avenue (CR17) at the Estes Park Regulator Station (see Sheet 12). The pipeline exits the Estes Park Regulator Station and heads to the northeast through undeveloped open land within the Dakota Glen PUD. North of the cattail reservoir/detention pond, the pipeline turns due east toward Wilson Avenue leaving the PUD boundary and continues north on Wilson Avenue.

A photographic simulation of the proposed Estes Park Regulator Station is provided in Sheet 14. The appearance of the control house has been designed to be similar to architectural characteristics of the existing pumphouse on the northwest side of the cattail reservoir/detention pond within the Dakota Glen PUD. The control house and aboveground piping would be painted beige to blend with the surrounding

This applic[illegible]ove[illegible] [illegible]f[illegible]a proposed Estes Park Regulator Station and pipeline within the Dakota Glen PUD boundary associated with the proposed Project. The proposed Project is an important part of PSCo's service plan to upgrade the existing natural gas transmission system along the northern Colorado Front Range with new natural gas pipelines that meet current safety, service, capacity, and reliability requirements while also meeting the increasing demand for natural gas in Larimer County, including the city of Loveland. The upgrade would involve replacing the existing 84-year-old, 8-inch natural gas transmission pipeline with a new high-pressure 16-inch pipeline to continue providing reliable, safe natural gas service.

Applicant Information

Applicant: Dan Tekavec, Project Manager
Public Service Company of Colorado
1123 West 3rd Avenue
Denver, CO 80223
(303) 571-3305
dan.tekavec@xcelenergy.com

Engineer: Randy Blank, PSCo Project Manager/Engineer
Public Service Company of Colorado
1901 East Horsetooth Road
Fort Collins, CO 80525
(970) 225-7847
randy.blank@xcelenergy.com

Location and Legal Description

The Estes Park Regulator Station and pipeline within the Dakota Glen PUD boundary is located in Larimer County within the municipal limits of the city of Loveland. The Project area subject to this PUD is located in the Dakota Glen Subdivision near the intersection of 14th Street SW and Angora Drive, approximately 2,000 feet west of the intersection of 14th Street SW and Wilson Avenue (CR17) and the undeveloped open land near the cattail reservoir/detention pond. PSCo has obtained a permanent easement on 0.516 acres of land for this regulator station, and 2.323 acres of permanent easement and 1.114 acres of temporary easement for the pipeline alignment within the Dakota Glen PUD.

Purpose and Need

PSCo currently operates the natural gas supply for most of Larimer County including the city of Loveland. The purpose of the proposed Project is to reliably maintain delivery of natural gas to area customers. The proposed Project is an important part of PSCo's service plan to meet growing natural gas demand in the area because the existing natural gas pipeline cannot meet load requirements at peak demand. The proposed natural gas pipeline upgrade would address safety, service reliability, and capacity concerns for the benefit of commercial and residential customers along the northern Colorado Front Range. Regulator stations are required to control the rate of gas flow and/or pressure though the station and maintain the desired pressure or flow level in the distribution system.

Project Construction Activities

The permanent ROW for operation and maintenance of the Project would be 50 feet. An additional temporary ROW needed for construction activities would be 25 feet.

Construction activities for the West Main Natural Gas Pipeline Replacement Project are proposed to begin approximately May 1, 2013, and operation of the replacement facility would begin during the fall/winter season of 2013.

In open trench areas, major activities involved in Project construction would include surveying, best management practice (BMP) installation, vegetation clearing, staging materials, pipeline trenching, pipeline installation and welding, pressure-testing, backfilling the pipeline trench, cleanup, re-grading the surface, revegetation, and revegetation monitoring. Surface disturbance would be limited to the permanent ROW and the temporary construction ROW and would include boring locations and modifications to regulator stations. Construction activities would be sequenced and likely would occur simultaneously in multiple locations. The pipeline trench would be approximately 72 inches deep with a width of approximately 24 to 36 inches. The new pipeline would sit approximately 48 inches below the final grade. Site restoration would occur according to the provisions of the Stormwater Management Plan (SWMP), which was provided to the City of Loveland on March 22, 2013. Temporary fencing would be utilized around the bore pits and trenches as needed to prevent public access and maximize safety.

Regulator station construction could run concurrently with natural gas pipeline construction. Surface disturbance associated with the Estes Park Regulator Station would be limited to the 0.516 acre permanent easement of the regulator station.

PSCo proposes to use boring techniques, as feasible, to avoid surface disturbance to wetlands, trails, and driveways. Boring techniques would involve drilling construction of the pipeline under these surface features. In wet areas, the natural gas pipeline would be weighted for stability to ensure that the pipeline remained securely in place during periods when soil might be saturated. All wetlands associated with the Dakota Glen PUD will be bored. As described in the Environmentally Sensitive Areas Report (ESAR) submitted under separate cover, the proposed Project would not affect mature stands of vegetation. A wetland delineation report was prepared for the proposed Project located within the PUD, and is provided in Attachment 2 of the ESAR. The proposed regulator station is located in an area that is higher than the surrounding wetlands primarily located to the east and would therefore not impact wetlands. The proposed pipeline crosses one wetland located along the western portion of the lake. The proposed pipeline would avoid effects to this wetland through the use of boring techniques. The locations of the boring entry/exit locations are shown in Sheet 12. As documented in the agency correspondence included in Attachment 3 of the ESAR, the U.S. Army Corps of Engineers has indicated that a wetland permit (per the Clean Water Act) would not be required. The construction BMPs and site mitigation measures would protect potential impacts to adjacent wetlands during construction and operation of the Project as described in Section IV of the ESAR. As discussed in Section IV.2 of the ESAR, BMPs would be implemented as described in Attachment 6 of the ESAR to minimize or mitigate soil erosion and to revegetate any areas disturbed during construction of the proposed Project. PSCo also would follow the Weed Management and Revegetation Plan provided in Attachment 7 of the ESAR. The Plan includes a preconstruction survey for noxious weeds and follow-up monitoring to ensure revegetation is successful.

PSCo plans to off-load and string pipeline as it is delivered along the ROW. Any stockpiling of pipeline would take place at the proposed Project ROW (including the temporary and permanent easement areas) or at existing PSCo yards. Miscellaneous materials (such as valves, fittings, and other construction materials) would be stored and delivered to the pipeline construction area from PSCo's Fort Collins and Campion Service Centers.

PSCo would install signs (pipeline markers) in the permanent 50-foot easement to identify that a natural gas pipeline is buried nearby. These markers are required by federal regulations for pipeline safety (49 CFR 192). A typical pipeline marker is shown in Attachment 2. These markers provide adequate warning and location of the natural gas pipeline to local residents and future construction contractors performing work in the area. Markers identify the product carried in the pipeline (such as natural gas), the name of the pipeline operator, the operator's 24-hour emergency contact number, and the area's one-call center number. These markers are approximately 4 feet above ground and occur approximately every 500 feet or in-line of sight, on both sides of road, water, and railroad crossings, and at all changes in direction. There would be approximately 4 pipeline markers within the Dakota Glen PUD; one at the Estes Park Regulator Station, one at the angle point near the existing pump house, one at the east end of Dakota Glen near Wilson Avenue, and one on the straight line pipeline alignment within the PUD.

Noise from heavy machinery would be of short duration during construction of the proposed natural gas pipeline. Construction would be limited daily hours between 7 a.m. and 7 p.m. per City of Loveland Municipal Code Chapter 7.32 Sound Limitations, and would occur Monday through Friday. Construction may occur on weekends and other hours outside the 7 a.m. to 7 p.m. timeframe on an as-required basis, with prior approval from the City Manager. Noise levels from equipment would be controlled through the use of standard maintenance procedures and the use of appropriate mufflers.

Construction of the natural gas pipeline and related facilities may generate a temporary increase in fugitive dust. PSCo would comply with state and Larimer County requirements for controlling dust emissions during the construction of the proposed Project. PSCo would employ BMPs for dust suppression, as described in the SWMP. During construction, water trucks would patrol work areas to control dust as necessary depending on weather and dust suppression, weed control, and soil conditioning.

Minimal odors from the proposed Project are expected, with the highest likelihood occurring during construction from vehicle exhaust, and during periods of maintenance activities when mercaptan may be noticeable. Mercaptan is a chemical injected into the natural gas product, as required by federal regulation, to produce a sulfurous odor ("rotten egg" odor) as a safety measure. It is not anticipated that maintenance activities beyond those already experienced by area residents would be required for the proposed Project.

Glare would potentially be visible from construction vehicles and equipment. Any glare experienced would be temporary in nature and would be similar to other sources of glare that exist in the environment (such as from vehicle on Wilson Avenue and residential streets, and glare from residential building materials).

PSCo has obtained a Storm Water Permit for Construction Activities from the Colorado Department of Public Health and Environment. The drainage plan for the proposed Project would consist of a SWMP and BMPs for the control of stormwater runoff during the construction period. Post-construction, the areas disturbed by trenching and boring activities for the natural gas pipeline would be recontoured to preconstruction conditions and revegetated as described in the SWMP.

PSCo adheres to the pipeline safety regulations established in the Code of Federal Regulations (CFR) at 49 CFR Part 192 by the U.S. Department of Transportation (DOT) to ensure public protection and to prevent accidents and failures. Specifically, the DOT Pipeline and Hazardous Materials Safety Administration is the federal authority for ensuring the safe, reliable, and environmentally sound operation of pipeline transmission systems under the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (PIPES Act).

Property Owners, Property, and Right-of-Way Acquisition

PSCo's land services representatives have worked with the landowner of the PUD to explain Project construction, operation, and maintenance activities and to negotiate the purchase of easements based on fair market value. The easement for the Estes Park Regulator Station would grant PSCo a permanent easement of 22,500 square feet (0.516 acres) to construct, operate, and maintain the regulator station. The permanent pipeline easements of 2.323 acres and temporary pipeline easements of 1.114 acres would grant PSCo a permanent 50-foot corridor and temporary 25-foot construction ROW to construct, operate, and maintain the natural gas pipeline within the Dakota Glen PUD. The landowner would maintain fee title to the land acquired under the easement. The land within the pipeline permanent and temporary easements granted to PSCo within the Dakota Glen PUD would be restored and revegetated and available for other uses upon completion of the construction period.

XCEL PLANNED UNIT DEVELOPMENT (5 OF 5)

DAKOTA GLEN 1 ST. SUBDIVISION
LOVELAND, COLORADO

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SHE
APRI **PC ATTACHMENT 6**

CONSENT AGENDA

1. **Vacation of Rights-of-Way, Millennium SW 5th Subdivision**

   Chair Meyers asked if the Staff wished to remove any of the items listed on the Consent Agenda. **Current Planning Manager Bob Paulsen** asked that item # 2 be removed from the Consent Agenda. **Vice-Chair Middleton** moved to approve the Consent Agenda, with the exception of Item #2. The motion was seconded by Commissioner Prior and the motion was unanimously approved.

REGULAR AGENDA

2. **Extension Request: Anderson First Subdivision Preliminary Plat**
   Current Planning Manager Bob Paulsen requested that this item be removed from the Consent Agenda so that the Commission could review the revised motion. This property consists of 89 acres located at the NE quadrant of the intersection of Hwy. 287 and Hwy. 60. The Preliminary Plat was approved in 2010. The Planning Commission has final authority on this matter. **Mr. Paulsen** moved to make a finding that the applicant sought an extension of the Preliminary Plat and the Preliminary Development Plan prior to their expiration, but was unable to complete the request until foreclosure was completed. Based on "good cause", Staff is recommending approval of the request for a two-year extension of the Preliminary Plat of the Anderson First Subdivision to 6/10/15. This item was opened to Public Hearing.

   With no citizen comments or Commission comments, **Vice-Chair Middleton** made a motion to approve the request for a two year extension to 6/10/15. Upon a second from **Commissioner Crescibene** the motion was unanimously adopted.

3. **Dakota Glen PUD: Preliminary Development Plan Amendment**
   This is the continuation of a public hearing item to consider a proposed amendment to the Preliminary Development Plan (PDP) for the Dakota Glen PUD. The amendment would modify permitted uses in the PUD to allow the construction of an above ground public utility facility and natural gas pipeline proposed by Xcel Energy. Since the May 13th Planning Commission meeting, a consensus has been reached by neighborhood residents and Xcel energy regarding the regulator station and associated landscaping.

   Commissioner Dowding asked that she be allowed to continue to recuse herself from this agenda item, but asked to stay on the dais for the discussion.

   Principal Planner Kerri Burchett addressed the Commission and gave a general description of the requested amendment. She indicated that a neighborhood meeting had been held on 5/20/13 between Dakota Glen homeowners and PSCo, during which time a discussion was held to determine the color of the facility, fencing options, landscaping and screening. During the meeting a consensus was reached, and the three outstanding concerns were resolved. A slide show with photo simulations of the finished site with neighborhood recommendations was presented. Staff recommends approval of the PUD amendment with conditions listed in the 6/10/13 Staff report.

Ms. Burchett introduced Mr. Dan Tekavec, Project Manager for PSCo. Mr. Tekavec thanked all who participated in the positive neighborhood meeting. 15 members from the Dakota Glen neighborhood, **Mr. Scott Bray, Developer of Dakota Glen,** and **Ms. Burchett** were in attendance at the meeting. Several color, fencing and landscape options and photo simulations were presented for a discussion. The homeowners chose a green color for the control house, no fencing, and suggested landscaping inclusive of shrubs, berms, and coniferous trees. PSCo will fund the installation of plants, berms and landscaping; west, north, and south of the Regulator Station. The Dakota Glen homeowners association will be responsible for the care, maintenance, and irrigation of the landscaping outside of the gasline easement. PSCo agreed to fund the replacement of trees that fail to establish for a period of 4 years after initial planting. In addition, PSCo agreed to replace 14 dead trees along SW 14th St. in the Dakota Glen PUD.

Commissioner Crescibene asked who would pay for the irrigation piping needed for maintenance of the site. **Mr. Tekavec** responded that the irrigation pipes already exist to the north and no new pipes would be required.

Commissioner Krenning thanked PSCo for their outstanding work with the Dakota Glen homeowners and stated that the extra time was to everyone's benefit.

Chair Meyers complimented the homeowners, PSCo, and **Ms. Burchett** for working together for a solution and felt they did an excellent job.

Commissioner Massaro stated that this is an outstanding example of what cooperation can accomplish when people work together to resolve the issues.

Chair Meyers opened the floor to a Public Hearing on the matter. Given that no citizen feedback was offered, **Mr. Meyers** closed the Public Hearing.

Commissioner Middleton complimented to PSCo for working with the public.

After **Mr. Tekavec** accepted the conditions in the amendment on behalf of PSCo, **Commissioner Middleton** moved to recommend that City Council approve the amendment with conditions. Upon a second from **Commissioner Krenning** the amendment with conditions was unanimously approved.

4. **Airpark North Addition: Zoning Ordinance Amendment**

This is a public hearing to consider a request to amend the Airpark North zoning ordinance. This 94-acre property zoned Developing Industrial is located immediately north of the Fort Collins-Loveland Airport. When the property was annexed in 1987, one of the conditions stated the owner would be required to submit a master plan prior to any development The property owner, Curt Burgener, is seeking to amend this requirement to allow an interim storage use on the property prior to the approval of a master plan and final development.

City Planner II, Troy Bliss stated that this item is a request to amend a zoning ordinance for the Airpark North Addition. It is a 93 acre parcel located on the northeast edge of Loveland. He stated that the property owner would like to use 21 acres of the parcel for outdoor storage. Although the Staff Report specifically uses the phrase "outdoor vehicle storage", **Mr. Bliss**

CITY OF LOVELAND
PLANNING COMMISSION MINUTES
May 13, 2013

A meeting of the City of Loveland Planning Commission was held in the City Council Chambers on May 13, 2013 at 6:30 p.m. Members present: Chairman Meyers; Vice-Chair Middleton; and Commissioners Massaro, Molloy, Dowding, Krenning and Prior. City Staff present: Bob Paulsen, Current Planning Manager; Judy Schmidt, Deputy City Attorney.

These minutes are a general summary of the meeting. For more detailed information, audio and videotapes of the meeting are available for review in the Community Services office.

CITIZEN REPORTS

There were no citizen reports.

STAFF MATTERS

1. **Current Planning Manager Mr. Paulsen** said there were no staff matters to report but wanted to remind the Commission that the next scheduled meeting for May 27, 2013 is canceled due to the Memorial Holiday.

COMMITTEE REPORTS

There were no committee reports.

COMMISSIONER COMMENTS

Commissioner Dowding stated that she recently had to opportunity to sit at the corner of the new Kum-and-Go facility that was recently opened on Hwy 34. She said that the wall that was built out front was beautiful and thanked those who constructed it for a job well done.

Chair Meyers shared that he had been asked to attend a study session with the City Council on May 28th to discuss a possible ban on fracking in Loveland. He was asked by the Mayor to get a consensus from the Commission regarding their position on a fracking ban. **Commissioner Dowding** stated that she believes there are sufficient safeguards in place and that a ban is not necessary. **Commissioner Prior** agreed and stated he is also against a ban. **Commissioner Molloy** said that the 1,000 foot setback was his concern. **Commissioner Massaro** expressed concern in regards to information that supports health issues that accompany fracking, along with home value questions that surround it. He would like to investigate a possible ban. **Commissioner Middleton** stated he has concerns regarding the current standards being used for fracking from an air and water quality perspective; however, he does not outright support a ban. **Commissioner Krenning** had no comment. **Chair Meyers** indicated that he will not support a ban because he feels it would be a losing legal battle with the State of Colorado.

EXHIBIT D

APPROVAL OF THE MINUTES

Commissioner Middleton abstained from voting as he did not attend the April 22nd meeting. **Commissioner Molloy** made a motion to approve the April 22, 2013 meeting minutes. Upon a second from **Commissioner Dowding,** the minutes were unanimously adopted.

REGULAR AGENDA

1. Amendment to Dakota Glen PUD

   This is a public hearing item to consider a proposed amendment to the Preliminary Development Plan (PDP) for the Dakota Glen PUD. The amendment would modify permitted uses in the PUD to allow the construction of an above ground public utility facility and natural gas pipeline that is part of regional project to replace an existing pipeline from the Wyoming border to Westminster, Colorado. The Planning Commission's responsibility is to conduct a quasi-judicial public hearing and forward a recommendation on this application to the City Council for final action.

   Commissioner Dowding recused herself from this discussion, indicating that she was in the notice area of this item and participated in the neighborhood meeting.

   Kerri Burchett, Principal Planner with the Current Planning Division, provided a summary of the major amendment and presented a slide illustrating the affected area of the Dakota Glen PUD. She stated that the applicant for this amendment is Public Service Company of Colorado (PSCo) and they are requesting to amend the PUD to add a use of an above ground public utility facility. She explained that the goal is to develop a new station for an underground pipeline that would go through the open space area of the PUD. This is a small part of a much larger Xcel state project to install 77 miles of new pipeline. The Regulator Station Site is necessary to control the flow of gas between a 16" line and a smaller line and will be located and accessed off 14th St. SW. The site will sit on approximately ½ acre with a 528 square foot control house. There will be two areas of above ground pipes with less than 380 square feet each, and would be a permanent lease situation between PSCo and the Dakota Glen HOA. The major concern from the neighborhood occupants is the aesthetics of the proposed building and pipes. A comparative slide was shown to explain the revised drawing of the site after the neighborhood meeting. The new drawing addressed the concerns of the neighborhood by modifying the color of the building, and adding a decorative, metal, 6' fence around the above ground pipes. **Ms. Burchett** went on to say that the Current Planning Staff was recommending the approval of the PUD Amendment with conditions. Planning Commission action is a recommendation to City Council and the project is scheduled for the June 18th City Council hearing, which will be the final action to approve or deny the project. Finally, she pointed out to the Commission that they each had a packet in front of them containing letters from Dakota Glen residents.

EXHIBIT D

Ms. Burchett introduced the applicant of the amendment request, **Mr. Randy Blank, PSCo Project Manager/Engineer**. **Mr. Blank** stated he has a 27 year history with Xcel Energy and is very familiar with the gas system in Northern Colorado. He thanked the Commissioner's for allowing him to present the amendment proposal. The goal of Xcel is to provide safe, reliable, gas service to the Front Range, which includes the entire city of Loveland. Currently there are 21,414 miles of natural gas distribution pipeline and 2,100 Regulator Stations; 230 of which are located in Northern Colorado. Xcel is in the process of replacing 95 miles of 1920's and 1930's transmission pipe between Westminster, CO and the Wyoming border. Xcel has held 8 public meetings between February 2012 and April 2013 to discuss the impact of this project on the community. In addition to the meetings, Xcel notified impacted neighborhoods via email, door hangers, website updates, public service announcements, and direct mailings. Xcel and Dakota Glen land owners worked together to develop the needed easements for this pipeline. The purpose of this Regulator Station is to make a tie between the new 16" line and an existing 6" line that runs east and west at 14th St. SW. The line serves the southwest part of Loveland and feeds up to Estes Park. The 16" line will have a slightly higher pressure than the 6" line, creating the need to regulate the pressure. Mr. Blank points out that Xcel meets or exceeds federal standards, state standards, and safety requirements, and has had no incidents of intentional damage in above ground pipes in over 20 years. In response to aesthetics concerns, PSCo began working with the Dakota Glen HOA. PSCo agreed to add a screen around the pipes and to restore the landscaping at the Regulator site. There will be no disruption to the wetlands or wildlife, and dust concerns have been addressed. It is the opinion of PSCo that property values will not be impacted since the facility was designed to blend with the PUD, and is far enough away from the actual home sites. Construction time frame for this project is 4-6 weeks and will begin in the fall of 2013.

Vice-Chair Middleton asked Mr. Blank engineering questions in order to clear the air on some of the concerns.

Q1) Where is the nearest fire hydrant to the facility?
A1) The nearest ones are in the Blackbird Knolls subdivision.

Q2) What is the pressure in the 16" line?
A2) The 16" pipeline is rated to 1020 psi, and the 6" line is a maximum 960 psi, but operates at an average of 400-700 psi.

Q3) Will there be a blow valve on the regulator?
A3) There is no blow down valve, but there are 2 regulators with monitors to prevent a buildup of pressure. It is a closed system.

Q4) What noise, if any, is associated with the regulators?
A4) The regulators will be wide open and will emit very little, if any, noise.

Q5) Where are the other Regulator Stations?
A5) The closest stations are the Berthoud Control Station and a new one to be built at 8th Street.

EXHIBIT D

Q6) What, if any, alternatives are available if the Commission does not approve this amendment?
A6) There are not many, if any, alternatives to this Regulator Station.

Commissioner Prior addressed Mr. Blank and Mr. Dan Tekavec, Project Manager at PSCo with questions.

Q7) Why did the new pipeline take a different alignment from Taft to Wilson?
A7) The location was chosen because Taft Avenue is a congested, busy corridor. Wilson has a wider right of way.

Q8) Is the existing infrastructure on Taft and SW 14th a regulator site?
A8) No, it's basically valve set.

Q9) Is power needed at the new Regulator Site?
A9) No electrical power will be needed.

Q10) What other sites were considered for this project?
A10) Original plans were to route the regulator to the middle of subdivision of Blackbird Knolls but we determined it was better to detour to the open space, west of Blackbird Knolls.

Commissioner Molloy addresses Ms. Burchett, and Mr. Tekavec, with questions.

Q11) Are there any plans for additional housing development in this area, or will it remain open space?
A11) **Ms. Burchett** stated there are no other development activities planned for this area and pointed out that it is preserved open space.

Q12) Can the infrastructure be placed below grade?
A12) **Mr. Tekavec** explained that the infrastructure has been pushed down as low as it possibly can be and will need to be placed above ground in order to be operated safely.

Public Comments

Mr. Clint Black, 942 Prism Cactus Circle, Loveland, CO. He stated that he thinks Xcel is a great company and believes this is a safe project, but indicated that he would prefer that Xcel put the pipes in a vault for access.

Mr. John Conger, 1023 Prism Cactus Circle, Loveland, CO, indicated that he feels like he represents his community well. He thinks the photos showing the simulation of the proposed Regulator Station are distorted and do not show the houses in the surrounding area. He believes the Regulator Station will have a negative impact on property values in Dakota Glen since its location is at the entrance of the development. He is concerned that the original notice sent out from Xcel in November 2012 did not mention above ground pipes. Finally, he feels that the financial "windfall" that the HOA got from the sale of the easement wasn't divided equitably.

EXHIBIT D

Mr. Dale Roberts, 3448 Peruvian Torch Drive, Loveland, CO, communicated that he had aesthetic and financial concerns about the Regulator Station. Most residents moved to Dakota Glen because of the open space and surrounding area. He asked what other locations were considered for the Regulator Station, and asked if the Fire Station site looked into and why it wasn't the chosen site? Can any other amendments be added at will for the Dakota Glen PUC or will it have to be brought before the Commission again? **Commissioner Middleton** asked **Mr. Roberts** why he thinks the site at the SW corner of Wilson would be a better location considering that it is much closer to homes than the proposed site. **Mr. Roberts** conceded that neighbors there wouldn't like it in their neighborhood either.

Ms. Jeanice Prohs, 3411 Angora Drive, Loveland, CO. Ms. Prohs said she and her family moved to Dakota Glen in March. She was attracted to the neighborhood because of its open space. She expressed concerns regarding aesthetics and safety.
Mr. Scott Bray, 2586 Eldorado Springs Drive, Loveland, CO. Mr. Bray is the developer of Dakota Glen. He wanted to clarify the timeframe as to when Xcel and PSCo contacted him. He said in 2011 he was contacted to help minimize the impact the Regulator Station would have on the homes and open space area. It was a period of over 9 months before negotiations began; he believes around the summer of 2012. He said he had very few negotiation powers from the beginning. He does not believe the underground pipeline would have any impact on the open space. **Mr. Bray** expressed that he worked hard to communicate with the homeowners.

Linda Chalcraft, 3461 Peruvian Torch Drive, Loveland, CO. Ms. Chalcraft moved into her new home in Dakota Glen two weeks ago. She insisted that she was never told of Xcel's plans to build the Regulator Station during the time her home was being constructed. She also said she has concerns about vandalism.

Commission Comments

Mr. Blank and Mr. Tekavec addressed questions put forth at the Public Hearing.

Mr. Tekavec explained that the reason vaults are no longer used by PSCo/Xcel is because the vaults are in a confined area, and in the event there is a leak, the gas can build up in higher concentrations and be dangerous for maintenance workers.

Ms. Burchett answered the question regarding the easement and what else could be built there if the amendment is approved. She explained that if anything new is built in the PUD, it must go through the hearing process, regardless if it is a major or minor amendment. Like other amendments, it would also require a public hearing, either at a Planning Commission meeting or a City Council meeting.

Mr. Tekavec told the Commission that alternate locations for the Regulator Station were considered, including the NE corner of Wilson/14th St. SW. The decision to place the station in the Dakota Glen open space area was made ultimately because it is preferable to a more heavily developed site.

EXHIBIT D

Mr. Bray explained to the Commission that when the aesthetic options for the Regulator Station were discussed, it was agreed to by the HOA and PSCo that the site had to match the Dakota Glen architectural standards. He also went on to say that the dead trees that line 14th St. will be replaced by PSCo.

Commissioner Massaro asked **Mr. Blank** what his is experience with vandalism at other sites. **Mr. Blank** responded that there are 230 Regulator Stations in Northern Colorado. There is some occasional tagging (graffiti) on the buildings, but no major vandalism. He stated that the site would not be electronically monitored; however, a technician does visit the site at least once a week, so any problems would be found and reported quickly.

Commissioner Krenning asked if there was a landscaping plan in place and was it addressed as a condition to the amendment? He went on to say that the original site had no fence in the simulation photos and that it seems as the fence may draw more attention to the facilities. He questioned whether the pipes can be camouflaged by trees or shrubs instead of a fence.

Ms. Burchett explained to **Mr. Krenning** that the plans to hide the pipes were mostly discussed between PSCo and Mr. Bray. Specifics on how to modify the site was not discussed in detail at the neighborhood meeting beyond an agreement that the aesthetics of the site needed to be addressed.

Commissioner Krenning commented he was not sure if the Commission could rule on something that is uncertain at this point. He stated the fence might not be the best option and indicated that he would like the Commission to delay a decision for two weeks in order to find a better solution.

Bob Massaro commented that he did not think that the homeowners of Dakota Glen had full input on decisions about the aesthetics of the site.

Commissioner Molloy stated that it appears the landscape plan is missing from the project packet.

Ms. Burchett responded that this is a preliminary plan and it might be absent of some details. She noted that plans to replace the trees that have died and other landscape details are available on sheet 4 and 8 in the packet.

Chair Meyers noted that there was a condition that a letter of approval from the HOA was to be sent to Planning and asked **Mr. Bray** if that was completed? **Ms. Burchett** confirmed that Planning did get the letter from **Mr. Bray.**

Commissioner Krenning asked to hear from homeowners and wanted to know what aesthetic choice they would approve if the Commission approves the amendment.

Mr. Conger responded to the question and said he would like the site look like it was intended. He would like it to blend in with the open space as much as possible.

EXHIBIT D

Commissioner Massaro commented that the homeowners have not had a clear voice in how the site should look from an aesthetics perspective.

Commissioner Molloy conceded that it won't be possible to move the Regulator Site to an alternate location. He also said that he cannot envision what the finished site will look like based on the simulation images.

Commissioner Krenning felt that the Commissioners are unsure what the conditions are and felt that this amendment is being rushed through. He asked to see this amendment continued and indicated that he would not vote to approve as it is.

Commissioner Prior agreed that the amendment approval needs to be delayed and said the final plan must be one that the homeowners will approve.

Vice-Chair Middleton indicated that he will not approve the amendment as presented.

Chair Meyers stated that he agrees that the pipes will need to be placed in the Dakota Ridge PUC. He said the Commission has the ability to make an impact on the aesthetics of the Regulation Station. He agreed the amendment approval needs to be continued until a solid plan can be developed.

Vice-Chair Middleton made a motion to approve the PUD amendment subject to the condition listed in Section 9 as amended on the record. Upon a second by **Commissioner Massaro** the amendment did not pass. **Chair Meyers** was not comfortable with approving the amendment as it stands and would rather see it continued. The motion is unanimously denied.

Chair Meyers asked if continuing this amendment would interrupt the Xcel project plan. **Mr. Blank** responded that a one month delay is not ideal, but that Xcel is willing to work with the Commission to ensure homeowners are happy with the end result.

Commissioner Krenning made a motion to continue the meeting on June 10, 2013. Upon a second by **Vice-Chair Middleton** the motion was unanimously adopted.

ADJOURNMENT

Chair Meyers, made a motion to adjourn. Upon a second by **Commissioner Krenning**, the motion was unanimously adopted.

Approved by:_____
Buddy Meyers, Planning Commission Chairman

_____
Kimber Kreutzer, Planning Commission Secretary

EXHIBIT D

Dakota Glen PUD

Preliminary Development Plan Amendment

City Council

July 16, 2013

Dakota Glen PUD Amendment

Location:

- West of Wilson Avenue, north side of 14th St. SW
- East of Boedecker Lake & Charter School

Site:

- 84 acre total

Dakota Glen PUD
Boedecker Lake
Fort Collins
Loveland
Lake Loveland
Fort Collins
Loveland
Fort Collins
Loveland
Fort Collins

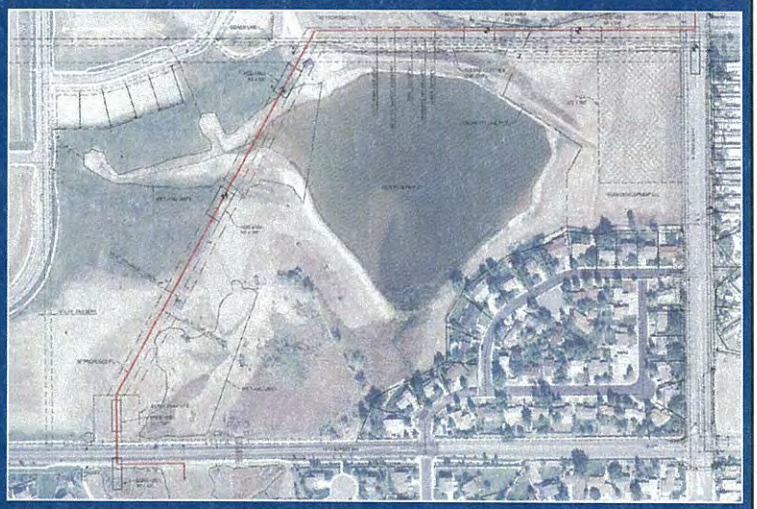
Dakota Glen PUD Amendment

Request:

- Add Use of Aboveground Public Utility Facility

Purpose:

- Develop a new regulator station & 16" underground pipeline
- Part of Statewide Xcel project to install 77 miles of new pipeline from Westminster to WY border



City Council Public Hearing July 16, 2013

Regulator Station Site

- Necessary to control flow of gas between 16 inch line and smaller lateral in 14th ST SW
- Located and accessed off of 14th Street SW
- ½ acre permanent lease area for regulator station
- 528 square foot control house
- 2 areas of above ground pipes, less than 380 square feet each

City Council Public Hearing July 16, 2013

EXHIBIT E

Planning Commission Summary

- PC Hearing on May 13th was continued
- Neighborhood meeting held on May 20th
  - Color of Control House
  - Site Fencing
  - Landscaping and Screening

- Consensus reached
- Recommend approval

EXHIBIT E

CITY OF LOVELAND
DEVELOPMENT SERVICES DEPARTMENT
Civic Center • 500 East 3rd Street • Loveland, Colorado 80537
(970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

AGENDA ITEM: **4**
MEETING DATE: 8/6/2013
TO: City Council
FROM: Troy Bliss, Current Planning
PRESENTER: Troy Bliss

TITLE:
An Ordinance Amending Ordinances 3380 and 3381 to Modify a Condition Set Forth Therein Pertaining to the Annexation and Zoning of the Airpark North Addition to the City of Loveland, Larimer County, Colorado

RECOMMENDED CITY COUNCIL ACTION:
Adopt the ordinance on second reading.

OPTIONS:
1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

SUMMARY:
This is a legislative action. This ordinance modifies a condition on the annexation and zoning of the Airpark North Addition. City Council unanimously adopted the ordinance on first reading at the July 16, 2013 regular meeting.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible

BACKGROUND:
The Airpark North Addition was annexed into the City in January of 1987 by Ordinance 3380 (the "Annexation Ordinance") and zoned as set forth in Ordinance 3381 (the "Zoning Ordinance"). The addition is a 94.5 acre parcel of land located directly north of the Fort Collins-Loveland Municipal Airport. The property is zoned I-Developing Industrial. The Annexation Ordinance and the Zoning Ordinance were approved subject to a number of conditions.

Interstate Land Holdings, LLC (property owner/applicant) would like to establish an interim outdoor storage use on a portion (21 acres) of the 94.5 acres. The Applicant would like to establish the proposed interim use to obtain some return on investment prior to developing the entire 94.5 acres with a much more substantial long-term use. Outdoor storage is a use permitted by right in the I– Developing Industrial zoning district subject to all applicable City standards. Application for a Site Development Plan is also required. However, one of the conditions imposed by Council on its approval of the Annexation and Zoning Ordinances (condition #25) requires that prior to any development, an overall master plan be prepared for the property.

The Applicant has requested that this condition not apply to interim use of a portion of the property for outdoor storage. It is unknown what future uses may be developed on the property. The original requirement for approval of a master plan would still apply if the property is developed beyond the proposed interim use for outdoor storage.

REVIEWED BY CITY MANAGER:

William D. Cahill

LIST OF ATTACHMENTS:
Ordinance
Staff memorandum

FIRST READING July 16, 2013

SECOND READING August 6, 2013

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCES 3380 AND 3381 TO MODIFY A CONDITION SET FORTH THEREIN PERTAINING TO THE ANNEXATION AND ZONING OF THE AIRPARK NORTH ADDITION TO THE CITY OF LOVELAND, LARIMER COUNTY, COLORADO

WHEREAS, the Airpark North Addition to the City of Loveland is approximately 94.5 acres of land located directly north of the Fort Collins-Loveland Municipal Airport (the "Property"); and

WHEREAS, the Property was annexed by Ordinance 3380 (the "Annexation Ordinance") adopted by the Loveland City Council in January 1987; and

WHEREAS, the Property was zoned I-Developing Industrial by Ordinance 3381 (the "Zoning Ordinance") in January 1987; and

WHEREAS, the Annexation and Zoning Ordinances were subject to a number of conditions, including "Condition #25" which reads:

"25. Prior to development an overall master plan shall be furnished for review by the Planning Commission that addresses the following:

a. The intent behind the development plans for this addition.
b. The concept of the landscaping, streetscape and signage.
c. The architectural character of the buildings and the means of control, i.e. covenants.
d. A traffic impact study."

WHEREAS, the owner of the Property proposes to use a twenty one (21) acre portion of the Property, as depicted on **Exhibit A** attached hereto and incorporated by reference, for outdoor storage (the "Proposed Interim Use"), which is a use by right in the I-Zone; and

WHEREAS, the owner of the Property has requested that the City amend Condition #25 to permit the Proposed Interim Use without requiring a master plan for the Property, with the understanding that a master plan will be continue to be required in connection with any other use and the Proposed Interim Use must meet all City regulations and standards; and

WHEREAS, the City Council desires to amend the Annexation and Zoning Ordinances to modify Condition #25 to permit such use without a master plan on an interim basis, on the terms and conditions forth herein.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That Condition #25 applicable to the Annexation Ordinance (#3380) and Zoning Ordinance (#3381) for the Property described as Airpark North Addition, City of Loveland, Larimer County, Colorado, is hereby amended to read as follows:

"25. Outdoor storage use on a 21-acre portion of the Airpark North Addition depicted on **Exhibit A** attached hereto and incorporated herein by reference shall be permitted as an interim use (the "Interim Use") without an overall master plan as required in accordance with the following provisions:

a. Notwithstanding the Interim Use without an overall master plan for the property, an overall master plan for the property shall be furnished by the property owner for review by the Planning commission upon the earlier of the following dates: (i) that date which is twenty (20) years from the date on which the City Council approves this Ordinance to permit the Interim Use without an overall master plan; or (ii) prior to development or use of all or any portion of the property for any purpose or use other than the Interim Use of a 21-acre portion of the Airpark North Addition (subject to all applicable City requirements and standards).
b. If at such time as the master plan becomes due under subparagraph a. above, the property owner desires to continue the Interim Use without providing an overall master plan for the property, an application to further amend the Annexation and Zoning Ordinances shall be required.
c. When required in accordance with the foregoing provisions, an overall master plan for the property shall be submitted for review by the Planning Commission and shall address: (i) the intent behind the development and plans for the property; (ii) the concept of the landscaping, streetscape and signage; (iii) the architectural character of the buildings and the means to control that architectural character (i.e., covenants); and (iv) a traffic study."

Section 2. That except as expressly amended herein, the Annexation Ordinance and the Zoning Ordinance shall remain in full force and effect and are each hereby reaffirmed and ratified as amended herein.

Section 3. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

ADOPTED this 8th day of August, 2013.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt
_____
Deputy City Attorney

AIRPARK NORTH ADDITION

A PORTION OF THE NORTHEAST CORNER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, IN THE COUNTY OF LARIMER, STATE OF COLORADO

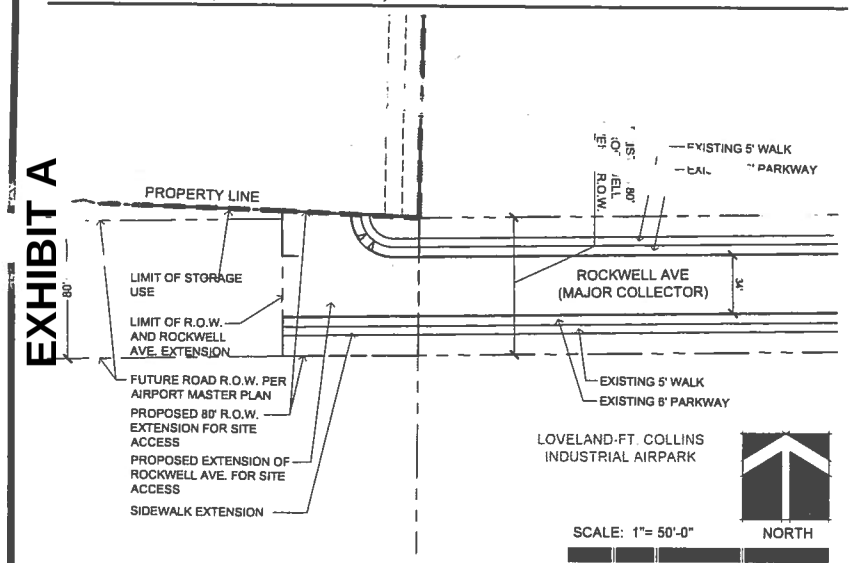
SITE DATA

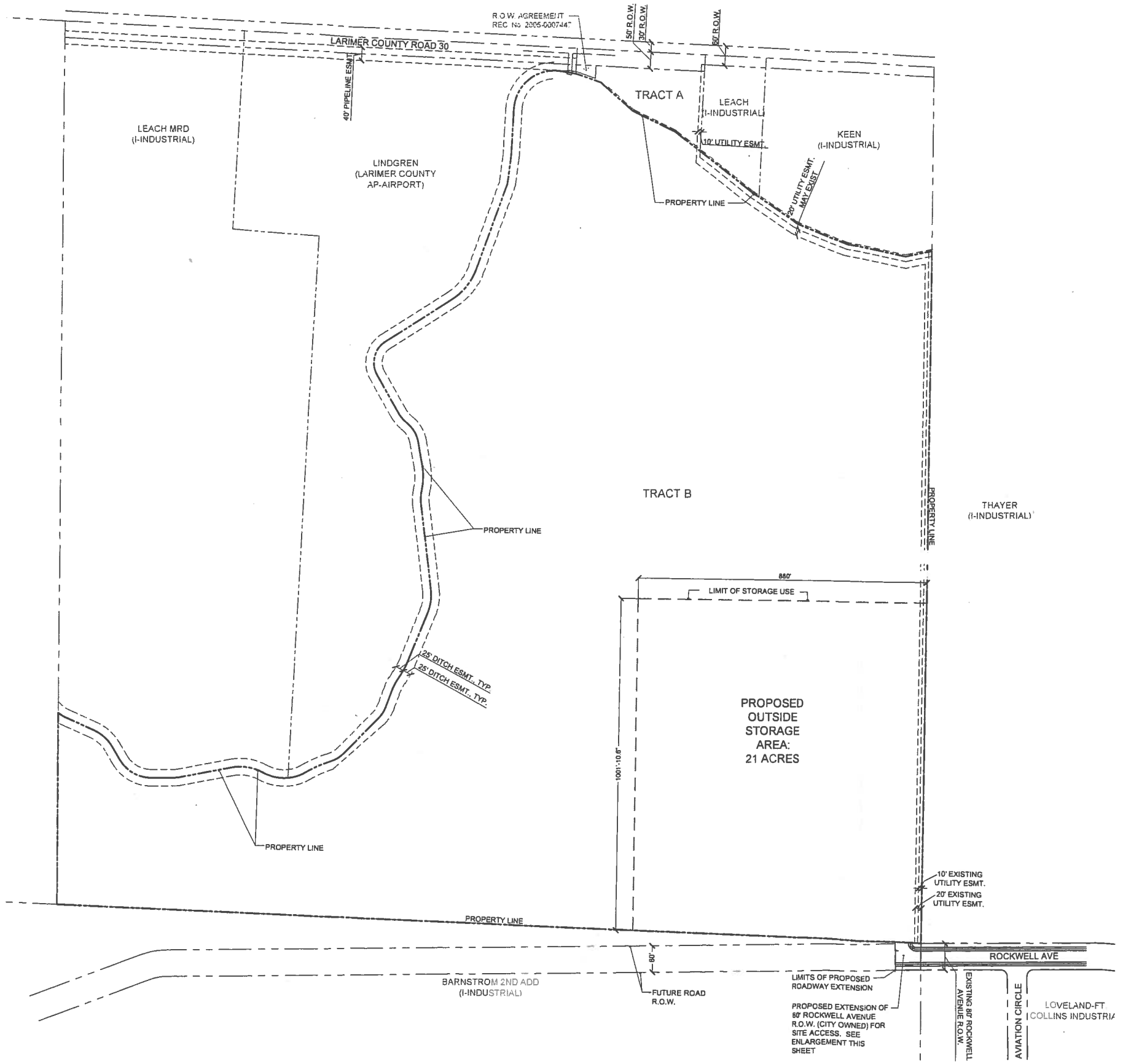
EXISTING ZONING	I-INDUSTRIAL
PROPOSED ZONING	I-INDUSTRIAL
PROPOSED LAND USE	OUTDOOR RV STORAGE

	AREA	PERCENTAGE
OVERALL EXISTING SITE		
TOTAL SITE AREA	4,052,534 SF 93.0 AC	100%
RV STORAGE	893,556 SF 20.5 AC	22%

PROPOSED 80' R.O.W. AND ROCKWELL AVENUE EXTENSION (CITY OWNED)

EXHIBIT A





The Fredrickson Group PLLC
PLANNERS / LANDSCAPE ARCHITECTS
1419 KELSEY CT., WINDSOR, CO 80550
(970) 674-3333
dsteele@TFGcolorado.com

OWEN CONSULTING GROUP, INC.
3115 Bradbur Pond Drive
Ft. Collins, CO 80526
Phone: (970) 226-0294
larryowen@comcast.net

CLIENT:
INTERSTATE LAND HOLDINGS, LLC.
7301 SW FRONTAGE RD #3
FORT COLLINS, CO 80528
(970) 482-4888

INTERSTATE LAND HOLDINGS, LLC.
AIRPARK NORTH ADDITION
OUTSIDE STORAGE EXHIBIT

No.	Revision/Issue	Date	By

PROJECT: ##
SCALE: 1" = 160'-0"

AN INSTRUMENT OF PROFESSIONAL SERVICE OF THE FREDRICKSON GROUP, LLC. THE FREDRICKSON GROUP SHALL, TO THE FULLEST EXTENT PERMITTED BY LAW, BE HELD HARMLESS OF ANY DAMAGE/LIABILITY, OR COST ALLEGEDLY ARISING OUT OF UNAUTHORIZED MODIFICATION, CHANGE, OR REUSE OF THIS DOCUMENT BY OTHERS.

PC ATTACHMENT 1

City of Loveland

Development Services
Current Planning
500 East Third Street, Suite 310 • Loveland, CO 80537
(970) 962-2523 • Fax (970) 962-2945 • TDD (970) 962-2620
www.cityofloveland.org

M E M O R A N D U M

TO: City Council

FROM: Troy Bliss, City Planner II, Current Planning Division

DATE: July 16, 2013

SUBJECT: Airpark North Addition, Annexation Amendment

I. EXHIBITS

A. Planning Commission packet
B. Planning Commission minutes
C. Slide presentation

II. KEY ISSUES

Staff believes that all key issues regarding the vacation have been resolved through the staff review process. The property is located within the Airport Influence Zone. Specific requirements for building design and height apply to properties that fall within this area. The Fort Collins-Loveland Municipal Airport has indicated that because the proposed outdoor storage use does not include any buildings to be constructed and that with such a use does not constitute a high concentration of people, they have no concerns with the proposal. The Planning Commission unanimously recommends approval of the annexation amendment as proposed.

III. BACKGROUND

The subject property was annexed in 1987 as the Airpark North Addition zoned I – Developing Industrial. It is designated as Tract B which contains approximately 94.5 acres directly north of the Fort Collins-Loveland Municipal Airport. This general area of the City represents the northeastern most part of our Growth Management Area (GMA) as identified on the Comprehensive Master Plan. When the annexation and zoning ordinances were considered, 30 conditions were applied to the property. These conditions function much like the annexation agreement in more recent years – including specific requirements that need to be satisfied in conjunction with development. One condition in particular (condition #25)(**see Attachment 4 in**

Exhibit 1

Exhibit A) requires that prior to development, an overall master plan for the property shall be provided.

IV. ANNEXATION AND ZONING ORDINANCE AMENDMENT

The attached ordinance concerns a request to amend the Airpark North Addition annexation to allow an interim outdoor storage use without submitting a master plan for the property. The property owner wants to use a 21-acre portion of the Airpark North Addition in a temporary or interim fashion for outdoor storage. This is a use that is permitted by right in the I – Developing Industrial zoning district subject to all applicable City standards. These standards include but are not limited to screening the storage area from public view, access/circulation, fencing, and landscape improvements. All of which would be captured through a Site Development Plan application. Requiring an overall master plan for an interim use of a portion of the property for outdoor storage would make that use uneconomical and it is unknown how the property will be developed in its entirety at this point.

Consequently, the owner has requested amendment of Condition #25 to the Annexation and Zoning ordinances so that this particular condition would not be applicable to the 21 acre outdoor storage use. Condition #25 would however continue to apply to the property and an overall master plan would be required with any development of the entire 94.5 acres or a use other than the proposed interim outdoor storage use.

V. PLANNING COMMISSION REVIEW

The amendment to the annexation and zoning ordinances was reviewed by the Planning Commission at a public hearing on June 10, 2013. The Planning Commission unanimously recommended approval, subject to the following condition which is reflected in the ordinance:

"25. Outdoor storage use on a 21-acre portion of the Airpark North Addition depicted on Exhibit A attached hereto and incorporated herein by reference shall be permitted as an interim use (the "Interim Use") without an overall master plan as required in accordance with the following provisions:
a. Notwithstanding the Interim Use without an overall master plan for the property, an overall master plan for the property shall be furnished by the property owner for review by the Planning Commission upon the earlier of the following dates: (i) that date which is twenty (20) years from the date on which the City Council approves this Ordinance to permit the Interim Use without an overall master plan; or (ii) prior to development or use of all or any portion of the property for any purpose or use other than the Interim Use of a 21-acre portion of the Airpark North Addition (subject to all applicable City requirements and standards).
b. If at such time as the master plan becomes due under subparagraph a. above, the property owner desires to continue the Interim Use without providing an overall master plan for the property, an application to further amend the Annexation and Zoning Ordinances shall be required.
c. When required in accordance with the foregoing provisions, an overall master plan for the property shall be submitted for review by the Planning Commission and shall address: (i) the intent behind the development and plans for the property; (ii) the concept of the landscaping, streetscape and signage; (iii) the architectural character of the buildings and the means to control that architectural character (i.e., covenants); and (iv) a traffic study."

RECOMMENDATION

Staff recommends, subject to any further information that may be presented at the public hearing, that City Council adopt the ordinance on first reading.

City of Loveland

Development Services
Current Planning
500 East Third Street, Suite 310 • Loveland, CO 80537
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Planning Commission Staff Report

June 10, 2013

Agenda #:	Regular Agenda - 4
Title:	Airpark North Addition, Annexation Amendment (PZ #13-00061)
Applicant:	Interstate Land Holdings, LLC
Request:	**Amend Zoning Ordinance**
Location:	Between Rockwell Avenue and County Road 30, west of Interstate 25
Existing Zoning:	I – Developing Industrial
Proposed Use:	Outdoor Vehicle Storage
Staff Planner:	Troy Bliss

Staff Recommendation

Subject to additional evidence presented at the public hearing, City staff recommends the following motion:

Recommended Motions:

1. *Move to recommend that City Council approve the Applicant's request to amend the Airpark North Addition annexation and zoning ordinances to modify condition Number 25 as set forth in Section IX of this report, as amended on the record.*

Summary of Analysis

This is a public hearing to consider a request to amend the Airpark North Addition annexation and zoning ordinances. Airpark North Addition was annexed into the City in January of 1987 by Ordinance 3380 (the "Annexation Ordinance") and zoned as set forth in Ordinance 3381 (the "Zoning Ordinance"). It is a 94.5 acre parcel of land located directly north of the Fort Collins-Loveland Municipal Airport. The Annexation Ordinance and the Zoning Ordinance were approved subject to a number of conditions.

The property owner would like to use a portion (21 acres) of the 94.5 acres for outdoor vehicle storage. This has been presented by the Applicant as an interim use of the property, where because of the nature of use, investment could be kept relatively low based upon infrastructure needs while getting some return on the property. Outdoor vehicle storage is a use permitted by right in the I– Developing Industrial zoning district subject to all applicable City standards. Application for a Site Development Plan is also required. However, one of the conditions imposed by Council on its approval of the Annexation and Zoning Ordinance s(condition #25) requires that prior to any development, an overall master plan be prepared for the property.

The Applicant has requested that this condition not apply to use or a portion of the property for outdoor vehicle storage. It is unknown what the overall use and development of the property will be. The items identified in the condition such as landscaping, streetscape, signage, architectural design, and traffic impacts could not be incorporated into a master plan for the entire property at this time.

I. SUMMARY

In January of 1987, the City annexed a 94.5 acre parcel of land into its municipal boundaries directly north of the Fort Collins-Loveland Municipal Airport known as the Airpark North Addition. The property was zoned DF – Developing Industrial which under today's zoning correlates to I – Developing Industrial. When the Annexation and Zoning Ordinances were considered on first reading (January 6, 1987), 30 conditions were applied to the property. The Annexation and Zoning ordinances with all the conditions function much like the annexation agreements in more recent years – including specific requirements that need to be satisfied in conjunction with development. Included in **Attachment 2** are the City Council minutes from January 6, 1987 listing all of the conditions of the Annexation and Zoning Ordinances. Although the recorded Annexation and Zoning ordinances (Ordinance #3380 & 3381 respectively), which are included in **Attachment 4**, do not include the conditions listed in the City Council minutes, these minutes clearly set for the conditions and the intent of the City Council. City Council minutes from January 20, 1987 (**Attachment 3**) merely reflect passage of the Ordinances on second reading. Research conducted by the City does not suggest that the intent was to remove these conditions listed in the minutes from January, 6 1987 or indicate any change to the Ordinances adopted on first reading on January 20, 1987.

The property owner wants to use a 21-acre portion of the Airpark North Addition in a temporary or interim fashion for outdoor vehicle storage. This is a use that is permitted by right in the I – Developing Industrial zoning district subject to all applicable City standards. These standards include but are not limited to screening the storage area from public view, access/circulation, fencing, and landscape improvements. All of which would be captured through a Site Development Plan application. However, in conjunction with the conditions applied to the Annexation and Zoning ordinances, condition #25 stipulates that prior to development, an overall master plan for the property shall be provided for Planning Commission review that addresses the intent of development, design concepts for landscaping, streetscape, and signage, architectural design, and traffic impacts.

Requiring an overall master plan for an interim use of a portion of the property for outdoor vehicle storage would make that use uneconomical and it is unknown how the property will be developed in its entirety at this point. Consequently, the owner has requested amendment of Condition #25 to the Annexation and Zoning ordinances so that this particular condition would not be applicable to the 21 acre outdoor vehicle storage use. Condition #25 would however continue to apply to the property and an overall master plan would be required with any development of the entire 94.5 acres or a use other than the proposed interim outdoor vehicle storage use. **Attachment 1** includes a justification from the owner's representative for consideration.

II. ATTACHMENTS

1. Letter of justification for amending the zoning ordinance with outdoor vehicle storage exhibit
2. January 6, 1987 City Council minutes
3. January 20, 1987 City Council minutes
4. Ordinance #3381

III. VICINITY MAP

IV. SITE DATA

ACREAGE OF SITE:	APPROXIMATELY 94.5 ACRES (21 ACRES FOR OUTDOOR VEHICLE STORAGE AREA)
PROPERTY ZONING / USE	I – DEVELOPING INDUSTRIAL
EXISTING ZONING / USE - NORTH	UNINCORPORATED LARIMER COUNTY / RURAL RESIDENTIAL
EXISTING ZONING / USE - SOUTH	I – DEVELOPING INDUSTRIAL / VACANT UNDEVELOPED AIRPORT PROPERTY
EXISTING ZONING / USE - EAST	UNINCORPORATED LARIMER COUNTY / VACANT UNDEVELOPED PROPERTY
EXISTING ZONING / USE - WEST	UNINCORPORATED LARIMER COUNTY / RURAL RESIDENTIAL

V. KEY ISSUES

There are no key issues regarding this request to amend the Airpark North Addition Annexation and Zoning ordinances. All City Divisions including the Fort Collins-Loveland Municipal Airport have no objections. Should this request to amend the Annexation and Zoning ordinances be approved, a subsequent Site Development Plan application will assure that the proposed outdoor vehicle storage use will comply with all applicable standards.

VI. BACKGROUND

The subject property was annexed in 1987 as the Airpark North Addition zoned I – Developing Industrial. It is designated as Tract B which contains approximately 94.5 acres directly north of the Fort Collins-Loveland Municipal Airport. This general area of the City represents the northeastern most part of our Growth Management Area (GMA) as identified on the Comprehensive Master Plan. It is also located within the Airport Influence Zone. Specific requirements for building design and height apply to properties that fall within this area. The Fort Collins-Loveland Municipal Airport has indicated that because the proposed outdoor storage use does not include any buildings to be constructed and that with such a use does not constitute a high concentration of people, they have no concerns with the proposal.

VII. STAFF, APPLICANT, AND NEIGHBORHOOD INTERACTION

A. **Notification:** An affidavit was received from David Kasprzak, on behalf of the applicant, certifying that written notice was mailed to all property owners within a 1,200 foot radius and notices were posted in a prominent location on the perimeter on May 24, 2013. In addition, a notice was published in the Reporter Herald on May 25, 2013.

B. **Neighborhood Response:** A neighborhood meeting is not required in conjunction with an application to amend a zoning ordinance. Staff has received one phone call from a surrounding property owner wishing to obtain additional information.

VIII. FINDINGS AND ANALYSIS

The Loveland Municipal Code and the Colorado Revised Statutes specify findings or criteria pertaining to annexation and zoning. However, there are no specific findings or analysis to consider when amending an ordinance tied to zoning of the annexation. Planning Commission is being asked to evaluate the information provided and arrive at recommendation to present to City Council.

IX. RECOMMENDED CONDITIONS

City Staff recommends the following condition in lieu of Condition #25:

25. Outdoor vehicle storage use on a 21-acre portion of the Airpark North Addition shall be permitted as an interim use of a portion of the property without an overall master plan as required in accordance with the following provisions.
    a. Notwithstanding the interim use of a 21-acre portion of the property for outdoor vehicle storage without requiring an overall master plan for the property, an overall master plan for the property shall be furnished by the property owner for review by the Planning Commission upon the earlier of the following dates: (i) that date which is twenty (20) years from the date on which City Council approves an ordinance on second reading amending the Airpark North Addition Annexation and Zoning Ordinances to permit outdoor vehicle storage on a 21 acre portion of the property without a master plan; or (ii) prior to development of all or any portion of the property for any purpose or use other than the interim use of a 21 acre portion of the property for outdoor vehicle storage (subject to all applicable City standards).
    b. If at such time as the master plan becomes due under subparagraph a. above, the property owner desires to continue the outdoor vehicle storage use without providing an overall

master plan for the property, an application to further amend the Annexation and Zoning Ordinances will be required.

c. When required in accordance with the foregoing provisions, an overall master plan for the property shall be submitted for review by Planning Commission and shall address (i) the intent behind the development and plans for the property; (ii) the concept of the landscaping, streetscape and signage; (iii) the architectural character of the buildings and the means of control (i.e., covenants); and (iv) a traffic impact study.

The Frederickson Group
Planners and Landscape Architects

April 11, 2013

Greg George
Development Services Director
500 East Third Street, Suite 210
Loveland, CO 80537

RE: Request to Amend Ordinance for the Zoning of Airpark North Addition

Background

Airpark North Addition is a 93-acre parcel that was annexed into the City of Loveland in January, 1987. It is located generally south of Larimer County Road 30, north of the Loveland-Fort Collins Airport property – north of the extension of Rockwell Ave. There are vacant parcels bordering the property on the east and west sides that have not been annexed, and remain in Larimer County at this time. When the property was annexed, it was zoned "DF-Developing Industrial". The parcel has remained undeveloped to date.

The Ordinance to zone Airpark North Addition Includes a list of 30 conditions. Condition 25, is stated as follows:

"25. Prior to development an overall master plan shall be furnished for review by the Planning Commission that addresses the following:

a. *The intent behind the development plans for this addition,*
b. *The concept of the landscaping, streetscape and signage,*
c. *The architectural character of the buildings and the means of control, i.e., covenants,*
d. *A traffic impact study."*

We believe the intent of that language was to make sure no permanent buildings or significant infrastructure will be construction without a master plan. That is clearly necessary and appropriate. However, a limited use of the property that does not include major permanent improvements should not trigger the requirement for a master plan.

Long Term Objective

The property has been identified by the city as a key component in the future development of the airport because of the potential for a through the fence relationship. Mr. Curt Burgener, the owner of the property, is not a developer. He is a Loveland resident who lives just west of the airport and is eager to help the city meet its long term vision for the future of the airport. This will require coordination between the airport, the city and adjacent private landowners. He is currently participating in the community outreach effort being facilitated by the city and the NCEDC.

The timing and manner in which his property can best be used to help the long term vision is not yet clear. Mr. Burgener is willing to be patient as more information unfolds over the months and

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years ahead. However, it is necessary for him to realize some income from the property while a coordinated public-private plan is developed.

Request

With this letter, the owner of the property, Mr. Curt Bergener, requests that the Zoning Ordinance for this property be amended to allow for outside storage without the requirement for a Master Plan, as described in condition 25. This request would be limited to a 21-acre portion of the lot, located generally in the south east corner of the lot, which would use Rockwell Drive as a primary access point, and as depicted on Exhibit A attached. The outside storage use would include vehicles, R.V.'s, boats, semi-trucks, various trailers and construction and other materials consistent with Industrial Uses. A short extension of Rockwell Drive and a short extension of a water line for a fire hydrant are the only public improvements needed.

The proposed outside storage use would continue until there are plans for permanent development of the property; at which time a master plan would be required. It is requested that the requirement for a Master Plan would be required under the following conditions:

1. The owner of the 93 acres requests a building permit for a structure with a permanent foundation anywhere on the property.

2. The owner/developer submits an application for use of any of the property outside the 21 acres identified for storage.

It is understood that if the ordinance amendment is approved, the Owner would proceed through a formal Site Plan Review application prior to storage of any materials on the site.

Thank you for your consideration of this request.

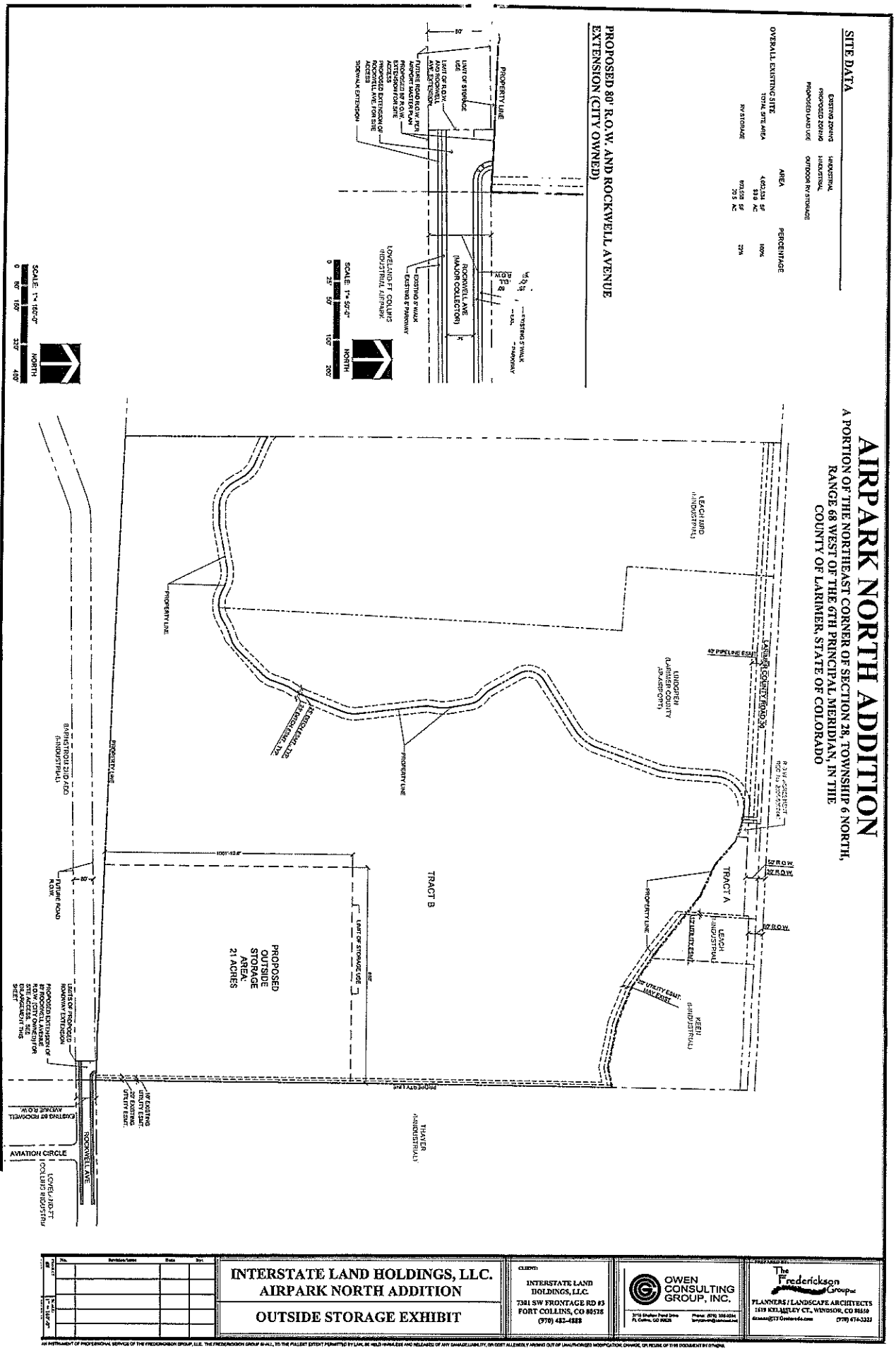
Sincerely,

Deanne Frederickson
Project Planner

CC Curt Burgener
Robert Hau
Rich Shannon

Attachments:
1. Site Development Plan Application
2. Vicinity Map
3. Exhibit A: Outside Storage Use area
4. Council Meeting Minutes dated January 6, 1987

619 Kennedy Dr. Windsor, CO 80550 • 970.674.3423 • Cell 970.217.6586 • deanne@



PC ATTACHMENT 1

Ord. 1st Rdg: Zone Airpark North Addn.

13e. "AN ORDINANCE AMENDING SECTION 18.04.040 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO ZONING REGULATIONS FOR 'AIRPARK NORTH ADDITION' TO THE CITY OF LOVELAND, AND DECLARING AN EMERGENCY TO EXIST REQUIRING THE IMMEDIATE PASSAGE AND ADOPTION OF THIS ORDINANCE" was approved and ordered published on first reading. The proposed zoning to be DF - Developing Industrial.

The preceding matters relating to Airpark North Addition were approved subject to the following conditions.

1. Developer to pay capital expansion fees as per the capital expansion fee Ordinance No. 3045, Chapter 16.38 of the Loveland Municipal code.

2. The developer agrees to participate in providing drainage plans and improvements as required by the City for the area.

3. Elevation of foundations and the lot grades shall be designed to provide for adequate surface water removal.

4. Any existing utilities that must be redesigned, rearranged, relocated, upgraded or extended will be done at the developer's expense unless otherwise agreed upon by the utility in question.

5. No building permits may be issued until all public improvements have been completed and approved by the City of Loveland, or a satisfactory guarantee has been made to the City of Loveland for all incomplete public improvements as per the Municipal Code 16.40.

6. Any irrigation ditches that are modified require the permission of the ditch owner.

7. All buildings must be constructed in compliance with the current Uniform Building code requirements.

8. The applicant is officially placed on notice that any building permit application relating to this development will be subject to all applicable City fees unless expressly waived by City Council.

9. Zoning recommended: DF - Developing Industrial.

10. Legal description does not include Tract A within the area.

11. Code 16.20.030 - Character type and position of survey monuments along all points of the boundary should be indicated on plat. All distances and bearings to the nearest hundredth and second.

12. Code 16.24.030 - Show hatched boundary.

13. Add the following note to the plat: "Louden Ditch right-of-way or easement to be defined prior to development."

14. Code 16.24.100 - Show relationship to adjacent area including Barnstorm Second Addition. Dimensions as per Barnstorm Second Addition do not match the south and west properties lines of this annexation.

15. Code 16.24.160 - Signature of owner and notaries to appear on map.

16. Code 16.24.070 - Surveyors's certificate, signature and notary and seal should appear on map.

17. Code 16.24.160(K) - The information required by Subsections "g" through "e", "h" and "i" can be furnished at a later date provided that the following note is placed on the final map: "Public improvements shall be designed and submitted to the City and approved prior to development of this subdivision."

18. County Road 30 ultimate right-of-way is 100 feet; therefore 50 feet right-of-way should be shown on the map at this time. Also, the existing right-of-way north of the Section line should also be contained within this annexation. Further, a note shall be added to the plat as follows: "The City of Loveland reserves the right to require street rights-of-way within this addition consistent with City of Loveland policies at any time prior to or at the time of development of this parcel.

All anticipated road rights-of-way will be required to be provided as a result of the East Loveland Transportation District Study. Rights-of-way as per this study will be required to be granted at a time deemed necessary by the City Engineer. Any costs associated with the granting of this right-of-way will be the developer's responsibility.

19. Each filing for development shall submit estimates of the number of trips to be generated by the use. On a development specific basis, the City Traffic Engineer will evaluate the use and estimated trips against the assumptions and finding of the East Loveland Transportation Study. Based upon review of the City Traffic Engineer, a substantial deviation from the plan can require a detailed Traffic Impact Study to determine the extent of necessary modifications to the Transportation Master Plan.

20. Any roads to be constructed within this addition to be public must be reviewed and approved by the City Engineer prior to their installation. The roadways must meet City Codes and Standards.

21. Add note on plat: "No development to occur until public improvement plans have been approved by the City Engineer." Construction plans for streets to be built must include plan and profile and meet all geometric standards of the City of Loveland.

22. Mineral extraction report required prior to annexation.

23. Petitioners shall be given credit in the amount of the reasonable cost of requested public improvements paid by them, whether directly through a metropolitan district, special district or other means, for that portion of such improvements which would ordinarily be paid out of the City of Loveland's Capital Expansion fees.

24. Due to the proximity of this site to the Airport, all development is to meet applicable (FAA) criteria.

25. Prior to development an overall master plan shall be furnished for review by the Planning Commission that addresses the following:

a. The intent behind the development plans for this addition.
b. The concept of the landscaping, streetscape and signage.
c. The architectural character of the buildings and the means of control, i.e., covenants.
d. A traffic impact study.

26. The current agricultural use of the property is considered a legal nonconforming use and will be allowed to continue in accordance with the provisions of Chapter 18.56 of the Loveland Municipal code.

27. Water rights are required pursuant to Section 16.36.030 of the Loveland Municipal code for all zoning districts except DR - Developing Resource district. Payments of cash-in-lieu of transferring water rights to the City for zoning approval may be deferred if the following conditions are met:

a. Zoning approval must be obtained by January 31, 1987.

b. Deferral applies only to lands to be zoned commercial and/or industrial.

c. The property must be "dry land"; land that historically has never been irrigated, as determined by the Water Department and City Attorney.

d. At the time of "final approval for development" as defined in the Loveland Municipal Code, or prior to the issuance of the first building permit, whichever sooner occurs, the then current water rights requirement normally imposed at the time of DE or DF, and at the time of water tap application, must be met, except that areas actually served by another water utility shall not be required to meet the raw water requirements of the City.

e. A note will be placed on the annexation map showing that the water rights requirement may not have been met in conjunction with this annexation or zoning.

28. Sketch plan, preliminary drainage report, final drainage report, and erosion control plan must be provided as per City of Loveland Storm Drainage Criteria Manual prior to development.

29. Water and sewer services will be based upon agreements between the City and the various service districts. Provided that in the event the City of Loveland acquires water and sewer service provision, the property owners will not incur any costs associated with the City's acquisition of this service. Further, any City fees associated with water and sewer taps, will be charged only on those taps purchased after the City's acquisition of such service. No additional fees will be imposed on taps within the area of this annexation.

30. Statement indicating utility easement to be dedicated at time of final plan.

Ord. 1st Rdg: Water Surcharge Fee

14. "AN ORDINANCE AMENDING SECTION 13.04.245 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO EXCESS USE SURCHARGE FOR WATER, AND DECLARING AN EMERGENCY TO EXIST REQUIRING THE IMMEDIATE PASSAGE AND ADOPTION OF THIS ORDINANCE" was approved and ordered published on first reading. The purpose of the change in this ordinance is to simplify the billing of the water surcharge fee. Currently, the year-end and year-beginning annual water usage is prorated using January 1st as the cutoff date. The proposed change would calculate the water surcharge based on the annual billed usage, eliminating the need for a proration and explanations of the prorate process to customers.

Public Hrg. & Ord. 1st Rdg: Subsidized Single-Parent Household

15. "AN ORDINANCE AMENDING CHAPTER 18.04 OF THE LOVELAND MUNICIPAL CODE, THE SAME DEFINING SUBSIDIZED SINGLE-PARENT HOUSEHOLD, AND DECLARING AN EMERGENCY TO EXIST REQUIRING THE IMMEDIATE PASSAGE AND ADOPTION OF THIS ORDINANCE" was approved and ordered published on first reading. The purpose of this ordinance is to clarify when it is appropriate to apply reduced parking standards for use-by-right developments that house low income, single-parent families.

"AN ORDINANCE APPROVING THE ANNEXATION OF CERTAIN TERRITORY TO THE CITY OF LOVELAND, COLORADO, TO BE KNOWN AND DESIGNATED AS 'LONGVIEW MIDWAY FOURTH ADDITION' TO THE CITY OF LOVELAND, AND DECLARING AN EMERGENCY TO EXIST REQUIRING THE IMMEDIATE PASSAGE AND ADOPTION OF THIS ORDINANCE" was approved and ordered published on second reading.

Ord. #3379: Zone Longview Midway Fourth Addn.

1c. "AN ORDINANCE AMENDING SECTION 18.04.040 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO ZONING REGULATIONS FOR 'LONGVIEW MIDWAY FOURTH ADDITION' TO THE CITY OF LOVELAND, AND DECLARING AN EMERGENCY TO EXIST REQUIRING THE IMMEDIATE PASSAGE AND ADOPTION OF THIS ORDINANCE" was approved and ordered published on second reading. Zoning to be DR - Developing Resources.

Ord. #3380: Annex Airpark North Addition

2a. "AN ORDINANCE APPROVING THE ANNEXATION OF CERTAIN TERRITORY TO THE CITY OF LOVELAND, COLORADO, TO BE KNOWN AND DESIGNATED AS 'AIRPARK NORTH ADDITION' TO THE CITY OF LOVELAND, AND DECLARING AN EMERGENCY TO EXIST REQUIRING THE IMMEDIATE PASSAGE AND ADOPTION OF THIS ORDINANCE" was approved and ordered published on second reading.

There is a need for a drainage easement across the northeast portion of the property. The easement is needed to convey storm water from a detention pond on the airport property across the Louden Ditch. Because of previous agreements with Triad Development Corporation the acquisition of this easement is felt to be a private matter and the City will not require this easement as a condition of annexation but will work with the parties involved to facilitate negotiations.

Public Hrg. & Ord. #3381: Zone Airpark North Addition

2b. "AN ORDINANCE AMENDING SECTION 18.04.040 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO ZONING REGULATIONS FOR 'AIRPARK NORTH ADDITION' TO THE CITY OF LOVELAND, AND DECLARING AN EMERGENCY TO EXIST REQUIRING THE IMMEDIATE PASSAGE AND ADOPTION OF THIS ORDINANCE" was approved and ordered published on second reading. The zoning to be DF - Developing Industrial.

Ord. #3382: Water Surcharge Fee

3. "AN ORDINANCE AMENDING SECTION 13.04.245 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO EXCESS USE SURCHARGE FOR WATER, AND DECLARING AN EMERGENCY TO EXIST REQUIRING THE IMMEDIATE PASSAGE AND ADOPTION OF THIS ORDINANCE" was approved and ordered published on second reading. The change in this ordinance is to simplify the billing of the water surcharge fee.

Ord. #3383: Subsidized Single-Parent Household

4. "AN ORDINANCE AMENDING CHAPTER 18.04 OF THE LOVELAND MUNICIPAL CODE, THE SAME DEFINING SUBSIDIZED SINGLE-PARENT HOUSEHOLD, AND DECLARING AN EMERGENCY TO EXIST REQUIRING THE IMMEDIATE PASSAGE AND ADOPTION OF THIS ORDINANCE" was approved and ordered published on second reading. This ordinance will clarify when it is appropriate to apply reduced parking standards for use-b
house low income, single-parent families.

FIRST READING January 6, 1987

SECOND READING January 20, 1987

ORDINANCE NO. 3381

AN ORDINANCE AMENDING SECTION 18.04.040 OF THE LOVELAND MUNICIPAL CODE, THE SAME RELATING TO ZONING REGULATIONS FOR "AIRPARK NORTH ADDITION" TO THE CITY OF LOVELAND, AND DECLARING AN EMERGENCY TO EXIST REQUIRING THE IMMEDIATE PASSAGE AND ADOPTION OF THIS ORDINANCE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That Section 18.04.040 of the Loveland Municipal Code and the map referred to therein, said map being part of said Municipal Code and showing the boundaries of the district specified, shall be and the same is hereby amended in the following particulars, to wit:

That the territory recently annexed to the City of Loveland and known as "Airpark North Addition" to the City of Loveland, Colorado, shall be included within the boundaries of the district designated as follows:

DF - Developing Industrial; All of Airpark North Addition to the City of Loveland, Larimer County, Colorado.

Section 2. That the City Council finds and determines that matters relating to zoning of "Airpark North Addition" constitute an emergency and are necessary for the orderly development of said addition; and, whereas in the opinion of the City Council an emergency exists requiring the immediate passage of this ordinance for the preservation of the public health, safety and welfare, this ordinance shall become effective upon its passage, adoption and signature of the mayor.

Signed this 20th day of January, 1987.

Mayor

CITY OF LOVELAND SEAL COLORADO

ATTEST:

City Clerk

I, Theresia Shereman, City Clerk of the City of Loveland Colorado, hereby certify that the above and foregoing Ordinance was introduced at a regular (or special) meeting of the City Council, held on January 6, 1987, and was initially published in the Loveland Daily Reporter Herald, a newspaper published within the city limits in full on January 10, 1987, and by title except for parts thereof which were amended after such initial publication which parts were published in full in said newspaper on January 24, 1987.

APPROVED AS TO FORM

BY: _____

FOR THE CITY ATTORNEY

EFFECTIVE DATE January 20, 1987

PC ATTACHMENT 4

CITY OF LOVELAND
PLANNING COMMISSION MINUTES
June 10, 2013

A meeting of the City of Loveland Planning Commission was held in the City Council Chambers on June 10, 2013 at 6:30 p.m. Members present: Chairman Meyers; Vice-Chair Middleton, and Commissioners Ray, Massaro, Dowding, Crescibene, Krenning and Prior. Member(s) absent: Commissioner Molloy. City Staff present: Bob Paulsen, Current Planning Manager; Judy Schmidt, Deputy City Attorney; Kimber Kreutzer, Planning Commission Secretary.

These minutes are a general summary of the meeting. For more detailed information, audio and videotapes of the meeting are available for review in the Community Services office.

CITIZEN REPORTS

There were no citizen reports.

STAFF MATTERS

1. **Current Planning Manager Mr. Paulsen** introduced Kimber Kreutzer, the new Planning Commission Secretary.
2. The next Planning Commission Meeting scheduled for 6/24/13 will be held only to approve the meeting minutes from the 6/10/13 meeting. Only 5 Commissioners will be needed for a Quorum. **Chair Meyers, Commissioner Krenning, Current Planning Manager Paulsen, and Deputy City Attorney Schmidt** will not be present at the 6/24/13 meeting. **Deputy City Attorney Schmidt** asked the Commission if a representative from the City Attorney's office is needed at the 6/24/13 meeting in her absence. The Commission agreed that no Counsel needs to be present to approve the meeting minutes.

COMMITTEE REPORTS

There were no committee reports.

COMMISSIONER COMMENTS

Commissioner Crescibene was not present at the 5/13/13 Planning Commission Meeting when **Chair Meyers** surveyed the Commission about fracking and he asked if he could publicly state his opinion. He stated that he is in support of fracking because he believes it will help the U.S. become independent from foreign oil and doesn't like to use the phrase "ban". He continued that he would like full disclosure from oil and gas companies as to what chemicals they use during fracking to ensure that water supplies are not being polluted.

APPROVAL OF THE MINUTES

Chairman Meyers asked for a motion to approve the minutes from the 5/13/2013 meeting. Commissioner Dowding moved to approve the minutes. Upon a second by **Commissioner Prior** the minutes were approved unanimously.

CONSENT AGENDA

1. **Vacation of Rights-of-Way, Millennium SW 5th Subdivision**

   Chair Meyers asked if the Staff wished to remove any of the items listed on the Consent Agenda. **Current Planning Manager Bob Paulsen** asked that item # 2 be removed from the Consent Agenda. **Vice-Chair Middleton** moved to approve the Consent Agenda, with the exception of Item #2. The motion was seconded by Commissioner Prior and the motion was unanimously approved.

REGULAR AGENDA

2. **Extension Request: Anderson First Subdivision Preliminary Plat**

   Current Planning Manager Bob Paulsen requested that this item be removed from the Consent Agenda so that the Commission could review the revised motion. This property consists of 89 acres located at the NE quadrant of the intersection of Hwy. 287 and Hwy. 60. The Preliminary Plat was approved in 2010. The Planning Commission has final authority on this matter. **Mr. Paulsen** moved to make a finding that the applicant sought an extension of the Preliminary Plat and the Preliminary Development Plan prior to their expiration, but was unable to complete the request until foreclosure was completed. Based on "good cause", Staff is recommending approval of the request for a two-year extension of the Preliminary Plat of the Anderson First Subdivision to 6/10/15. This item was opened to Public Hearing.

   With no citizen comments or Commission comments, **Vice-Chair Middleton** made a motion to approve the request for a two year extension to 6/10/15. Upon a second from **Commissioner Crescibene** the motion was unanimously adopted.

3. **Dakota Glen PUD: Preliminary Development Plan Amendment**

   This is the continuation of a public hearing item to consider a proposed amendment to the Preliminary Development Plan (PDP) for the Dakota Glen PUD. The amendment would modify permitted uses in the PUD to allow the construction of an above ground public utility facility and natural gas pipeline proposed by Xcel Energy. Since the May 13th Planning Commission meeting, a consensus has been reached by neighborhood residents and Xcel energy regarding the regulator station and associated landscaping.

   Commissioner Dowding asked that she be allowed to continue to recuse herself from this agenda item, but asked to stay on the dais for the discussion.

   Principal Planner Kerri Burchett addressed the Commission and gave a general description of the requested amendment. She indicated that a neighborhood meeting had been held on 5/20/13 between Dakota Glen homeowners and PSCo, during which time a discussion was held to determine the color of the facility, fencing options, landscaping and screening. During the meeting a consensus was reached, and the three outstanding concerns were resolved. A slide show with photo simulations of the finished site with neighborhood recommendations was presented. Staff recommends approval of the PUD amendment with conditions listed in the 6/10/13 Staff report.

Ms. Burchett introduced Mr. Dan Tekavec, Project Manager for PSCo. Mr. Tekavec thanked all who participated in the positive neighborhood meeting. 15 members from the Dakota Glen neighborhood, **Mr. Scott Bray, Developer of Dakota Glen,** and **Ms. Burchett** were in attendance at the meeting. Several color, fencing and landscape options and photo simulations were presented for a discussion. The homeowners chose a green color for the control house, no fencing, and suggested landscaping inclusive of shrubs, berms, and coniferous trees. PSCo will fund the installation of plants, berms and landscaping; west, north, and south of the Regulator Station. The Dakota Glen homeowners association will be responsible for the care, maintenance, and irrigation of the landscaping outside of the gasline easement. PSCo agreed to fund the replacement of trees that fail to establish for a period of 4 years after initial planting. In addition, PSCo agreed to replace 14 dead trees along SW 14th St. in the Dakota Glen PUD.

Commissioner Crescibene asked who would pay for the irrigation piping needed for maintenance of the site. **Mr. Tekavec** responded that the irrigation pipes already exist to the north and no new pipes would be required.

Commissioner Krenning thanked PSCo for their outstanding work with the Dakota Glen homeowners and stated that the extra time was to everyone's benefit.

Chair Meyers complimented the homeowners, PSCo, and **Ms. Burchett** for working together for a solution and felt they did an excellent job.

Commissioner Massaro stated that this is an outstanding example of what cooperation can accomplish when people work together to resolve the issues.

Chair Meyers opened the floor to a Public Hearing on the matter. Given that no citizen feedback was offered, **Mr. Meyers** closed the Public Hearing.

Commissioner Middleton complimented to PSCo for working with the public.

After **Mr. Tekavec** accepted the conditions in the amendment on behalf of PSCo, **Commissioner Middleton** moved to recommend that City Council approve the amendment with conditions. Upon a second from **Commissioner Krenning** the amendment with conditions was unanimously approved.

4. **Airpark North Addition: Zoning Ordinance Amendment**

This is a public hearing to consider a request to amend the Airpark North zoning ordinance. This 94-acre property zoned Developing Industrial is located immediately north of the Fort Collins-Loveland Airport. When the property was annexed in 1987, one of the conditions stated the owner would be required to submit a master plan prior to any development The property owner, Curt Burgener, is seeking to amend this requirement to allow an interim storage use on the property prior to the approval of a master plan and final development.

City Planner II, Troy Bliss stated that this item is a request to amend a zoning ordinance for the Airpark North Addition. It is a 93 acre parcel located on the northeast edge of Loveland. He stated that the property owner would like to use 21 acres of the parcel for outdoor storage. Although the Staff Report specifically uses the phrase "outdoor vehicle storage", **Mr. Bliss**

noted that other equipment such as construction equipment would also be stored at this location. The reference to outdoor vehicle storage should be changed to just outdoor storage. **Mr. Bliss** pointed out that this parcel is zoned industrial and outdoor storage is a permitted use. If the amendment is approved the applicant would still have to follow through with a site plan application for interim use on the 21 acres. Property owners within 1,200 feet were notified of the zoning ordinance amendment indicating that the Planning Commission would hold a public hearing on the issue. Because the long-term use of this property is unknown, and the owner wishes to leave the option of further development on the site open, Staff is recommending the approval of this amendment with the conditions outlined in the Staff Report. The condition generally states that a Master Plan would be required if; 1) plans called for further development of the 93 acres or; 2) after 20 years of interim use of the outdoor storage, whichever comes first.

Commissioner Middleton asked **Mr. Bliss** to clarify the definition of "interim use" **Mr. Bliss** confirmed that 20 years would be the interim timeframe.

Mr. Bliss introduced **Mr. Rich Shannon from Pinnacle Consulting Group**. He stated he is before the Commission to represent the interest of the property owner. He explained that the property owner is not a developer but a resident in Loveland who is eager to help the city meet its long term vision for the future of the airport. Until the long term goals are developed, the owner would like to use his property for outdoor storage in the interim.

Chair Meyers opened the floor to a Public Hearing on the matter.

Mr. Bill Braden, 6230 Aviation Dr., Loveland, CO stated that he is a resident of Centre Point. He is on the Board of Directors of the Centre Point HOA and said he is speaking for himself and said that he has no problem with the property owners plan to use this parcel temporarily as an outdoor storage facility.

Mr. Jim Sampson, 3647 E CR7, Fort Collins, CO shared that he owns 2 properties adjacent to Airpark North and he also said he supports plans for the use as an outdoor storage facility.

Ms. Amy Lundgre, 3825 E CR 3C, Fort Collins, CO stated her support for the interim use of this property.

Since there were no further comments from the public, **Chair Meyers** closed the Public Hearing.

Commissioner Middleton asked what, if any, chemicals will be stored at the site. **Mr. Paulsen** explained that the Planning Commission relies on the City Fire Department to determine what, if any, chemicals are considered hazardous. Items of hazardous nature are only allowed in areas that are zoned for heavy industrial use and by right would not be allowed to be stored at this site.

Commissioner Dowding questioned if a short extension of Rockwell Drive and an extension of a water line for a fire hydrant would be the only public improvements needed at the site. **Mr. Bliss** confirmed they are the only required improvements but he was unsure of the exact length of the improvements and that arrangements are still being worked out. She commented that a 20 year interim seemed like a long time.

Commissioner Krenning asked Staff if this item could have been approved at the Director level. He pointed out that a great deal of time and resources were used for this request. **Ms. Schmidt** responded that the annexation and the zoning ordinances were both a provision requiring a master plan as a condition of approval. It is not within the power of Staff to vary how the conditions are amended. **Mr. Krenning** stated that he had no problem approving this amendment and stated that it appeared it is a good use and a good fit for this parcel.

On behalf of the applicant, **Mr. Shannon** accepted the conditions in the amendment.

Commissioner Krenning moved to recommend that City Council approve the amendment with conditions. Upon a second from **Commissioner Prior** the amendment with conditions was unanimously approved.

5. **Gateway PUD: General Development Plan Amendment**

This is a public hearing item to consider a proposed amendment to the Gateway General Development Plan requested by McWhinney Real Estate Services to allow a residential density increase from 16 units per acre to 22 units per acre on parcel A-1. This parcel is located on Hahn's Peak road and includes a lot that is vacant and suitable for multi-family development.

Senior Planner, Noreen Smyth stated that the purpose of this amendment request is to allow for the future submittal of Site Development Plan and Building Permit applications for a multi-family residential development aimed at seniors. The maximum number of residential units would increase from 500 to 586, which is a 17% increase. A formal application for a Site Development Plan can only be submitted when and if the amendment is approved. A neighborhood meeting was held on 5/9/2013 with the Developer, and concerns about traffic and parking were addressed by the applicant. Because the Municipal Code Findings relative to a GDP amendment have been met, Planning Staff is recommending the approval of this amendment without conditions.

Ms. Smyth introduced **Kim Perry, VP of Community Design for McWhinney Enterprises.** Ms. Perry stated that this 6.2 acre parcel in the GDP is one of the last undeveloped parcels in the PUD. The amendment would allow the development of an active adult apartment community which would be built next to Park Regency Assisted Living Residence. **Ms. Perry** explained that senior apartment projects typically have a more compact development model and this project will have no 3 bedroom units. Smaller average unit size allows more units in the same size building. Fewer parking spaces allow the same number of units to be built on a smaller site. Comparison to GDP maximum densities in the area revealed that Millennium GDP currently has 20 and 30 units/acre and **Ms. Perry** stated the new project would be comparable to existing developments in the area. The preliminary site plan revealed that surface and garage parking will be included. The program and services

in the project are leaned toward senior services, including a shuttle bus service, and possibly a small fleet of electric cars that residents could share and use.
Ms. Perry shared that the owner of Park Regency is in favor of this project and would like to see the amendment approved. The units will be market rate apartments for seniors.

Chair Meyers opened the meeting up to a Public Hearing. Not seeing any citizens come forward with comments, **Chair Meyers** closed the Public Hearing.

Commissioner Dowding agreed that this project would be a beautiful complement to Park Regency. She asked for clarification on page 3 in her packet. It said there were 583 units versus the 586 discussed earlier. **Ms. Smyth** confirmed that 586 is the correct number however she noted the number of units can be less in the final plan.

Commissioner Massaro asked about the number of dwelling units per acre and felt that 22 per acre were pushing the limit. **Ms. Perry** stated that higher density projects are likely in the future. He questioned the transportation plans for this project. **Ms. Perry** confirmed that the traffic study was done under the assumption that there would be no car sharing and the study confirmed there would be no impact on the traffic in the area.

Commissioner Crescibene asked if the units for this project would be for purchase or rental, and if each apartment would contain kitchens. **Ms. Perry** stated that all the units would be rental apartments and that each one would contain a full use kitchen.

Scott Mickeleit, Developer for Asante discussed transportation plans and stated that ideas are being looked at including electric shuttles. He stated that the project would blend in well with the master plan for Centerra. He added that a 14 person passenger van and shared vehicles are alternatives being explored for future residents.

Commissioner Ray stated that a 17% increase is substantial and felt that plans shown for the project mitigated his concerns, but wanted **Ms. Perry** to elaborate. **Ms. Perry** pointed out that Asante knows their customer profile well. Singles and couples are the major clientele allowing for 1-2 bedroom units. She felt like the amount of common space and open space is extremely adequate and well planned out.

Vice-Chair Middleton commented that this is a great location and the best use of land. He continued that Asante is a great company and that he strongly supports this project and suggested that fellow Commissioner's do the same.

Commissioner Crescibene liked the idea that the units are rental properties and also supported the project.

Vice-Chair Middleton moved to recommend that City Council approve the amendment. Upon a second from **Commissioner Dowding** the amendment without conditions was unanimously approved.

ADJOURNMENT

Chair Meyers, made a motion to adjourn. Upon a second by **Commissioner Dowding**, the motion was unanimously adopted.

Approved by:

Rich Middleton, Planning Commission Vice- Chairman

Kimber Kreutzer, Planning Commission Secretary

AIRPARK NORTH ADDITION

CITY OF LOVELAND
DEVELOPMENT SERVICES DEPARTMENT
Civic Center • 500 East 3rd Street • Loveland, Colorado 80537
(970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

AGENDA ITEM: **5**
MEETING DATE: 8/6/2013
TO: City Council
FROM: Greg George, Development Services Department
PRESENTER: Bethany Clark

TITLE:
An Ordinance Enacting a Supplemental Budget and Appropriation to the 2013 City Of Loveland Budget for Consulting Services to Develop the Highway 287 Business Development Corridor Plan

RECOMMENDED CITY COUNCIL ACTION:
Adopt the ordinance on second reading.

OPTIONS:
1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

SUMMARY:
This is an administrative action. This is an administrative action to adopt an ordinance on second reading appropriating $150,000 for consulting services to assist in developing a Highway 287 Business Development Corridor Plan. In January of 2012, City Council held their annual Council Advance to set the priorities for the year. One of the goals the Council set as a priority was to "Develop a Highway 287 Business Development Plan" to guide its development and improve the quality of development along the corridor. This goal was carried through as a priority in the 2013 annual Council Advance. As one of the main corridors into Loveland's downtown, the Highway 287 corridor has great potential for redevelopment and becoming a gateway to Downtown Loveland. The plan will serve as a guide for residents, property owners, developers, City staff, and elected officials in making good land use, design, and development decisions in the corridor. The ordinance was unanimously passed on first reading by City Council on July 16, 2013.

BUDGET IMPACT:
☐ Positive
☒ Negative

☐ Neutral or negligible

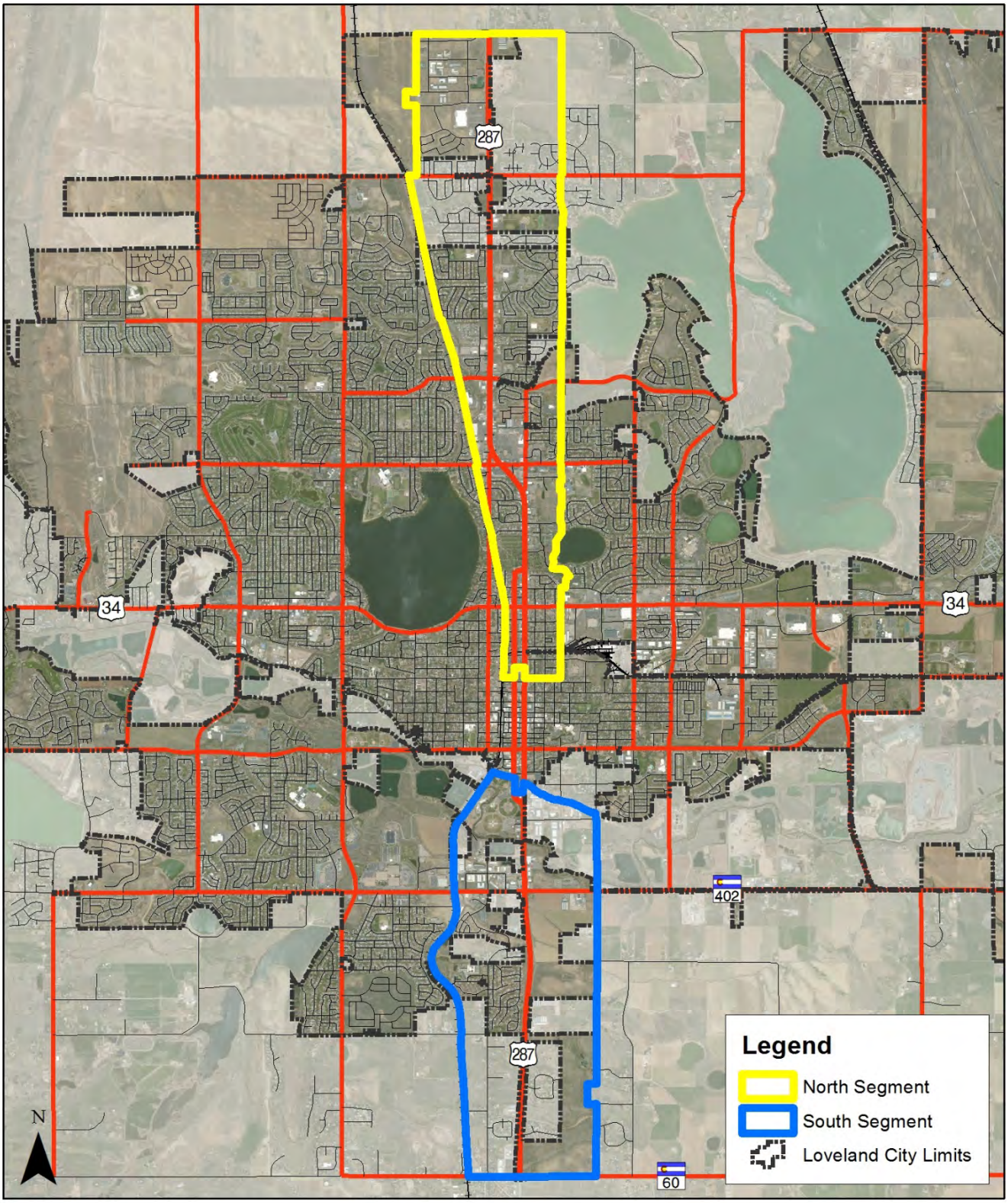
The funding is from reserves, which reduces the flexibility for funding other potential needs.

BACKGROUND:
The Highway 287 Business Development Corridor Plan will include two segments of Highway 287: the 4.5 mile segment north of Downtown and the 3.0 mile segment south of Downtown (see ***Attachment 1***). Development of the plan will include an extensive public outreach component, market study and economic analysis. The primary goals of the plan are to: (i) generate private investment in the 287 corridor; (ii) create a positive image along the corridor through well designed, high quality development; (iii) facilitate redevelopment of deteriorating areas; (iv) increase jobs and generate new tax revenue through new development; (v) create a gateway corridor to downtown Loveland and; (vi) improve public infrastructure along the corridor.

In response to a Statement of Qualification sent out in May 2013, City staff received nine responses from well qualified firms. Estimated costs from five of the firms were slightly less than $150,000.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:
U.S. Highway 287 Business Development Corridor Plan Study Area
Ordinance



City of Loveland
Community and
Strategic Planning

US Highway 287 Corridor Segments
Study Area

ATTACHMENT 1

FIRST READING July 16, 2013

SECOND READING August 6, 2013

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 CITY OF LOVELAND BUDGET FOR CONSULTING SERVICES TO DEVELOP THE HIGHWAY 287 BUSINESS DEVELOPMENT CORRIDOR PLAN

WHEREAS, the City has reserved funds not anticipated or appropriated at the time of the adoption of the City budget for 2013; and

WHEREAS, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the City budget for 2013, as authorized by Section 11-6(a) of the Loveland City Charter.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That reserves in the amount of $150,000 from fund balance in the General Fund are available for appropriation. Revenues in the total amount of $150,000 are hereby appropriated for consulting services to develop the Highway 287 Business Development Corridor Plan. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

Supplemental Budget
General Fund 100

Revenues		
Fund Balance		150,000
Total Revenue		**150,000**
Appropriations		
100-19-193-0000-43450	Professional Services	150,000
Total Appropriations		**150,000**

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

ADOPTED this 8th day of August, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Deputy City Attorney

CITY OF LOVELAND
PUBLIC WORKS DEPARTMENT
Administration Offices • 410 East Fifth Street • Loveland, Colorado 80537
(970) 962-2555 • FAX (970) 962-2908 • TDD (970) 962-2620

AGENDA ITEM: **6**
MEETING DATE: 8/6/2013
TO: City Council
FROM: Ken Cooper, Public Works – Facilities Management
PRESENTER: Ken Cooper

TITLE:
An Ordinance on Second Reading Enacting a Supplemental Budget and Appropriation to the 2013 City of Loveland Budget for Preliminary Programming and Design of the Public Safety Training Campus

RECOMMENDED CITY COUNCIL ACTION:
Approve the ordinance on second reading.

OPTIONS:
1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

SUMMARY:
This is an administrative action. This ordinance appropriates funding from reserves in the Police Capital Expansion Fee Fund for preliminary program and design of the Police Training Facility. Full design and construction of the facility are programmed in 2016-2018 in three phases in the 2014 Capital Program. City Council unanimously approved this ordinance on first reading at the July 16, 2013 regular meeting.

BUDGET IMPACT:
☐ Positive
☒ Negative
☐ Neutral or negligible

The project is funded with reserves in the Police Capital Expansion Fee Fund that reduce the flexibility for use on other projects.

BACKGROUND:

The Loveland Police Department currently operates weapons training and vehicle/driver training at two separate sites:

- Weapons training is performed primarily at the Police Shooting Range, an outdoor facility located on the campus of the City of Loveland Water Treatment Plant. The range was created in the late 1960's with almost no improvements since that time.

- Vehicle/Driver training is performed primarily on a small asphalt track located at the Loveland Fire Rescue Authority's Fire Training Grounds campus. It provides no specific vehicle training tools, and cones are used to create training scenarios.

There are countless training inefficiencies with the current situation and Loveland City Council considers it a priority to plan and construct a training campus that will better meet the needs of the Police Department and the community as a whole. It's expected that a campus to house both weapons training and vehicle/driver training would be on a site of about 40 acres in or near Loveland.

Much research has been done the past several years by City staff on the requirements of an indoor shooting range. Plans are for a range to be built and managed by Loveland Police, but also available as a regional training facility for several other agencies in and around Colorado's Northern Front Range. Agencies likely to use the shooting range include Larimer County Sheriff, Fort Collins Police, Greeley Police, Weld County Sheriff, and others. A driving platform constructed at the new training campus might also serve as a regional facility.

Currently, the City is considering three possible locations for such a campus:

- Fort Collins-Loveland Airport – located at 4824 Earhart Road in Loveland. Near the west/southwest end of the 1,100 acre campus, unused and undeveloped acreage could be transitioned into a Police Training Campus.
- Police & Courts – located at 810 E. 10th Street in Loveland.
- Colorado Youth Outdoors "Swift Ponds" campus – located at 4927 E. County Road 36 in Fort Collins. CYO is developing their land to the north, but a 40-acre parcel remains at the SW end of their property that could be developed for a regional training facility.

The City has considered a number of project delivery methods in the past several years to meet the training needs of the Police Department. In March, the City moved ahead with an RFP process and Belford Watkins Group Architects of Fort Collins was selected to provide design and engineering services.

With the likelihood for a regional training solution, City staff also selected Will Welch to manage the project as an owner's representative. His strong experience on similar, multi-faceted capital construction projects provides an excellent foundation for project success. He'll ensure the City's needs are met, but also blended with the needs of possible project partners.

Police capital expansion fees will be used to fund the programming and design work these consultants will provide. This request is to appropriate $310,000 to move the project forward. These requested funds will provide project management work by Will Welch throughout the multi-year project, and provide preliminary programming and design work by Belford Watkins Group.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:
Ordinance

FIRST READING July 16, 2013

SECOND READING August 6, 2013

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 CITY OF LOVELAND BUDGET FOR PRELIMINARY PROGRAMMING AND DESIGN OF THE PUBLIC SAFETY TRAINING CAMPUS

WHEREAS, the Police Department established a comprehensive strategic plan for staffing and capital/resource improvements to be implemented over the next 10 years to address the future growth of the community so that it can meet the future public safety needs of the citizens of Loveland served by the Police Department; and

WHEREAS, a component of the strategic plan is the construction of a public safety training campus, which City Council included in its 2013 goals and priorities; and

WHEREAS, the City has reserved funds not anticipated or appropriated at the time of the adoption of the City budget for 2013; and

WHEREAS, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the City budget for 2013, as authorized by Section 11-6(a) of the Loveland City Charter.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That reserves in the amount of $310,000 from fund balance in the Police Capital Expansion Fee Fund 265 are available for appropriation. Revenues in the total amount of $310,000 are hereby appropriated for preliminary programming and design of the public safety training campus. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

Supplemental Budget
Law Enforcement Capital Expansion Fee Fund 265

Revenues		
Fund Balance		310,000
Total Revenue		**310,000**
Appropriations		
265-23-250-0000-49355-PDTRNCMP	Design Architect	310,000
Total Appropriations		**310,000**

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

ADOPTED this 8th day of August, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt

Deputy City Attorney

CITY OF LOVELAND
PUBLIC WORKS DEPARTMENT
Administration Offices • 410 East Fifth Street • Loveland, Colorado 80537
(970) 962-2555 • FAX (970) 962-2908 • TDD (970) 962-2620

AGENDA ITEM: **7**
MEETING DATE: 8/6/2013
TO: City Council
FROM: Keith Reester, Public Works Department
PRESENTER: David Klockeman, Public Works Department

TITLE:
An Ordinance on Second Reading Enacting a Supplemental Budget and Appropriation to the 2013 City of Loveland Budget for Traffic Sign, Traffic Signal and Pavement Marking Maintenance on State Highways within the City of Loveland

RECOMMENDED CITY COUNCIL ACTION:
Approve the ordinance on second reading.

OPTIONS:
1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

SUMMARY:
This is an administrative action to adopt an ordinance appropriates additional revenue from a contract increase with the Colorado Department of Transportation (CDOT) for traffic sign, traffic signal, and pavement marking maintenance on State Highways within the City. The ordinance was approved unanimously on first reading by City Council at the July 16, 2013 meeting.

BUDGET IMPACT:
☒ Positive
☐ Negative
☐ Neutral or negligible

Outside revenue from CDOT increases the contract by $36,720, which funds the appropriation.

BACKGROUND:
Under the contract, the City of Loveland shall provide traffic signal, traffic signs, and pavement markings (lane striping as well as symbols for turn lanes, crosswalks, etc.), for 48 traffic signals

and along 25.41 miles of State Highways 287, 34 and 402, as well as, the I-25 West Frontage Road (north of Crossroads Boulevard to LCR 30). The annual compensation provided to the City of Loveland for the services described shall be: $400.00 per traffic signal per month for a subtotal of $230,400 per year; $700 per mile traffic signs per month for traffic signs and pavement markings, for a subtotal of $213,444 per fiscal year; and $25,000 per year for preventative maintenance / replacement costs. The total annual amount is $468,844. (The previous annual amount was $386,755.) The term of the contract will be 5 years.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:
Ordinance

FIRST READING July 16, 2013

SECOND READING August 6, 2013

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 CITY OF LOVELAND BUDGET FOR SIGN AND SIGNAL MAINTENANCE ON STATE HIGHWAYS

WHEREAS, the City has received funds not anticipated or appropriated at the time of the adoption of the City budget for 2013; and

WHEREAS, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the City budget for 2013, as authorized by Section 11-6(a) of the Loveland City Charter.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That revenues in the amount of $36,720 from a contract increase with the Colorado Department of Transportation (CDOT) in the Transportation Fund 211 are available for appropriation. Revenues in the total amount of $36,720 are hereby appropriated for sign and signal maintenance on State highways. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

Supplemental Budget
Transportation Fund 211

Revenues		
211-23-235-0000-32106	Sate Contract-Traffic Signal Maintenance	36,720
Total Revenue		**36,720**
Appropriations		
211-23-235-1704-42317	Traffic Signals	36,720
Total Appropriations		**36,720**

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the

amendments shall be published in full. This Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

ADOPTED this 8th day of August, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

CITY OF LOVELAND
CITY MANAGER'S OFFICE
Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2303 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: **8**
MEETING DATE: 8/6/2013
TO: Mayor and City Council
FROM: Assistant City Manager
PRESENTER Rod Wensing

TITLE:
A Motion Setting a Special Meeting for August 13, 2013 of City Council, for the Purpose of Holding an Executive Session in Order to Receive a Report from the City Attorney and Outside Legal Counsel Regarding the City's Franchise Agreement with Comcast and to Instruct City Negotiators Going Forward

RECOMMENDED CITY COUNCIL ACTION:
Approve the motion.

OPTIONS:
1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

SUMMARY:
This is an administrative action. The motion will set a special Council meeting and waive the required notice in the City Charter 4.2(b).

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible

BACKGROUND:
August 13, 2013 would normally be a Study Session date, but the City Manager's Office is requesting a second Executive Session that will allow the City Council to instruct staff, the City Attorney and our outside legal negotiator, Ken Fellman of Kissinger & Fellman, PC.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

None

CITY OF LOVELAND
DEVELOPMENT SERVICES DEPARTMENT
Civic Center • 500 East 3rd Street • Loveland, Colorado 80537
(970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

AGENDA ITEM: **9**
MEETING DATE: 8/6/2013
TO: City Council
FROM: Greg George, Development Services
PRESENTER: Alison Hade, Community Partnership Office

TITLE:
A Resolution of the City Council of the City of Loveland, Colorado Approving a Community Development Block Grant Annual Action Plan and Grant Application for 2013 – 2014

RECOMMENDED CITY COUNCIL ACTION:
Conduct a public hearing and adopt the resolution.

OPTIONS:
1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

SUMMARY:
This is an administrative action. The resolution approves the 2013-2014 Community Development Block Grant (CDBG) Annual Action Plan. Adoption of the plan will allow the City to receive and distribute CDBG funds.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible

Resolution #R-40-2013 authorizes the allocation of 2013-2014 Community Development Block Grant funding that was appropriated in the City Budget.

BACKGROUND:
The U.S. Department of Housing and Urban Development (HUD) requires the City of Loveland to complete an Annual Action Plan describing how the City intends to spend CDBG funding between October 1, 2013 through September 30, 2014. The Loveland City Council authorized

the allocation of 2013-2014 CDBG funding on June 18, 2013 through the adoption of Resolution #R-40-2013. The Annual Action Plan provides detailed information for HUD and includes the City's official application for funding.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:
Resolution
Annual Action Plan

RESOLUTION #R-55-2013

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO APPROVING A COMMUNITY DEVELOPMENT BLOCK GRANT ANNUAL ACTION PLAN AND GRANT APPLICATION FOR 2013 – 2014

WHEREAS, the City of Loveland, Colorado receives federal Community Development Block Grant ("CDBG") dollars from the U.S. Department of Housing and Urban Development ("HUD"); and

WHEREAS, HUD requires the City to submit an annual action plan and grant application providing detailed information regarding the City's plan to spend the federal funding; and

WHEREAS, the City has developed a Community Development Block Grant Annual Action Plan and Grant Application for 2013 – 2014, a copy of which is on file with the City Clerk ("Annual Action Plan"); and

WHEREAS, the Annual Action Plan includes information regarding the allocation of 2013 – 2014 CDBG funds that was approved by the City Council on June 18, 2013 through the adoption of Resolution #R-40-2013; and

WHEREAS, the City Council desires to approve the Annual Action Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That the Community Development Block Grant Annual Action Plan and Grant Application for 2013 – 2014, a copy of which is on file with the City Clerk, is hereby approved.

Section 2. That this Resolution shall be effective as of the date of its adoption.

ADOPTED this 6th day of August, 2013.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt

Deputy City Attorney

2013-2014

Community Development Block Grant

Annual Action Plan

DRAFT

City of Loveland

The City of Loveland's 2013–2014 Community Development Block Grant (CDBG) Annual Action Plan was produced by the Loveland Community Partnership Office. For more information on the plan, or to make a comment, please contact:

Alison Hade

Community Partnership Administrator

City of Loveland

500 East Third Street, Suite 210

Loveland, Colorado 80537

(970) 962-2517

alison.hade@cityofloveland.org

www.cityofloveland.org/communitypartnership

TABLE OF CONTENTS

Executive Summary	1
Financial Resources	4
Annual Objectives	5
Table 3A Summary of Specific Annual Objectives	6-7
Table 3C Description of Activities	8-18
Geographic Distribution	19-20
Allocation Priorities	19
Table 3B Annual Affordable Housing Goals	21
Public Housing	22
Homeless and Special Needs	22
Homelessness Prevention	22-23
Barriers to Affordable Housing	24
Other Actions	25-26
Program Specific Requirements	26
Lead Based Pain	27
Monitoring Sub-recipients	28-29
Fair Housing and Analysis of Impediments to Fair Housing	30
Appendices	31
Appendix A - 2011 Area Median Income Chart	32
Appendix B - Proof of Publication	33-34
Appendix C - City Council Resolution	35-39
Appendix D - Certifications	40-47
Appendix E - Application for Federal Assistance SF-424	48-51

EXECUTIVE SUMMARY- 91.220(B)

The Annual Action Plan is a one-year plan describing how the City of Loveland intends to spend CDBG funds during the time period of **October 1, 2013 through September 30, 2014**.

The objectives and outcomes identified in the 2013 Annual Action Plan are to address creating a **suitable living environment** and **decent housing** by **increasing availability/accessibility,** and **affordability** for **persons with low to moderate incomes**. Specific proposed outcomes and objectives for 2013-2014 that reflect the 5-year Consolidated Plan objectives listed under ALLOCATION PRIORITIES on Page 19 are:

HUD-Defined Outcomes & Objectives	One Year Proposed Outcomes from Activities
Increase availability/accessibility to a suitable living environment	Rehabilitate 60,000 sq.ft building that will house multiple non-profit organizations to provide a wide array of services at one location.
Increase availability/accessibility to a suitable living environment	Purchase a building in which to counsel victims of sexual assault.
Increase affordability of decent housing	Emergency funding for 10 homeowners with low to moderate income to maintain units as safe and decent.
Increase affordability of decent housing	Low interest loan to one homeowner with low to moderate income to maintain unit as safe and decent.
Increase affordability of decent housing	Down payment assistance for one household with low to moderate income.
Increase availability/accessibility of decent housing	Minor rehabilitation of 129 homes occupied by seniors living independently and with low to moderate income.
Increase availability/accessibility to a suitable living environment.	Counseling and case management for 13 victims of domestic violence living in two-year transitional housing.
Increase availability/accessibility to a suitable living environment.	Case management for 100 homeless family members
Increase availability/accessibility to a suitable living environment.	Case management for 155 homeless individuals
Increase affordability of decent housing	Counseling assistance provided to 1,250 individuals.

PAST PERFORMANCE - 91.220(B)

Many performance outcomes of City of Loveland CDBG sub-recipients have been achieved. Loveland residents with low income received the benefit of new housing, housing rehabilitation, case management and shelter. During the 2012-2013 grant year, CDBG funds were expended to:

- Provide emergency rehabilitation assistance for 15 families (3/4 year data; outcome is expected to be achieved by the end of the program year).
- Rehabilitate the sidewalks surrounding 16 low-income apartments (outcome achieved).
- Low-interest loan for home rehabilitation for five families (3/4 year data; outcome already exceeded by 67%).
- Low-interest loan for down payment on a home for five families (3/4 year data; outcome is expected to be exceeded by 50%).
- Purchase three lots on which to build single-family homes for families at or below 60% of the area median income (outcome achieved).
- Minor home rehabilitation in 81 homes owned/occupied by low income seniors (3/4 year data; prorated for full year will meet the outcome by 50%).
- Overnight shelter and case management for 151 chronically homeless adults (met outcome by 93%).
- Case management and shelter for 130 adults and children (3/4 year data; prorated for full year exceeds outcome by 217%).
- Housing counseling provided to 1,071 people (3/4 year data; prorated for full year exceeds number of people served by 18%).
- Purchase land for construction of 30 low-income apartments (outcome not achieved). Funding was reallocated to purchase land for construction of 12 multi-family housing units and will be spent by August 2013.

Specific information regarding prior (full-year) performance is available through the Consolidated Annual Performance Evaluation Report, which can be found at:

www.cityofloveland.org/communitypartnership

CITIZEN PARTICIPATION—91.220(B)

The citizen participation process was followed in completing the 2013 Annual Action Plan. The City of Loveland consulted with the Loveland Affordable Housing Commission and Human Services Commission (two volunteer City groups that review applications from sub-recipients for CDBG funding), Loveland City Council, and numerous human service agencies that serve lower income populations and Loveland citizens to request that they share the Annual Action Plan with their clients (see partial list of human service agencies on page 23). Efforts to broaden public participation included open meetings of the two Commissions, discussion of the plan at public City Council meetings, public notice in the local newspaper, posting the document on the City's website, posting the document on the Community Partnership Office's Facebook page, making the document available in hard copy form, mailing the document to community members upon request, and providing a Spanish language version upon request. The Annual Action Plan was available for public comment from July 17, 2013 through August 15, 2013.

A public hearing on the use of funds for the 2013 grant year was held on June 18, 2013; Appendix C includes a copy of the City Council Resolution adopting the use of CDBG funding for the grant year. A public hearing on the 2013 Annual Action Plan was held on August 6, 2013 in the Loveland City Council Chambers. A legal notice for this meeting was placed in the local newspaper and can be found in Appendix B.

A summary of comments or views, and a summary of comments or views not accepted and the reasons therefore are as follows:

FINANCIAL RESOURCES - 91.220(c)(1) and (c)(2)

The federal, state, and local resources the jurisdiction expects to receive to address the identified needs are listed below. Federal resources include Section 8 funds made available to the jurisdiction, Low-Income Housing Tax Credits, and competitive funds expected to be available to address priority needs and specific objectives identified in the plan. A brief explanation of how federal funds will leverage resources from private and non-federal public sources is included.

Resource	Estimated Amount	Leverage Additional Funds
2013 City of Loveland CDBG	$291,697	CDBG funding can be considered local match to obtain other funding for local projects.
Title I/NCLB (received by school district, not city)	$28,616	Thompson School District.
Low Income Housing Tax Credits (applied for by housing developers, not city)	$5,100,000	Creates equity to leverage other resources.
Section 8 Vouchers (made available to the Housing Authority, not to the city)	$3,500,000 (showing expected loss of $300k)	Housing Authority of the City of Loveland resources.
City of Loveland Human Services Grant	$450,000	Private grants.
City of Loveland Fee Waivers	$692,579	Fee waivers and fee locks for affordable housing and public facilities projects.
Private Sources (grants, donations, corporate gifts, local fundraising)	$6,996,932	Additional program funding for the projects described in this Annual Action Plan beyond the resources listed above
Program income	$0	The City of Loveland does not currently have program income from any projects.

ANNUAL OBJECTIVES - 91.220(C)

Activity	Sub-Recipient Agency	HUD Objective	National Objective	One Year Goal—Proposed Outcome	CDBG $
Public Facility Rehabilitation	House of Neighborly Service	SL-1	LMC	Rehabilitate 60,000 sq. ft. building that will house multiple agencies.	$155,240 **
Public Facility Acquisition	Sexual Assault Victim Advocates	SL-1	LMC	Purchase building in which to counsel victims of sexual assault.	$10,000
Housing Rehabilitation	Housing Authority	DH-2	LMH	Low interest loan to one homeowner for housing rehabilitation.	$10,000
Housing Rehabilitation	Housing Authority	DH-2	LMH	Emergency funding to 10 homeowners for housing rehabilitation.	$10,000
Down Payment Assistance	Housing Authority	DH-2	LMH	Down payment assistance for one low or moderate income household.	$5,000
Housing Rehabilitation	Volunteers of America	DH-1	LMH	Rehabilitate 129 homes of seniors living independently.	$17,300
				Sub-total capital projects	$207,540
Homeless Case Management	House of Neighborly Service	SL-1	LMC	Case management for 155 chronically homeless individuals.	$13,048
Homeless Case Management	Alternatives to Violence	SL-1	LMC	Counseling and case management for 13 victims of domestic violence living in transitional housing.	$6,376
Homeless Case Management	House of Neighborly Service	SL-1	LMC	Case management for 100 homeless family members.	$8,535
Housing Counseling	Neighbor to Neighbor	DH-2	LMC	Housing counseling for 1,250 individuals.	$15,795
				Sub-total public services	$43,754
Program Administration	City of Loveland			Planning and administration.	$58,339
				2012 CDBG funds	$309,633

HUD Defined—Outcome / Objective Codes	Availability / Accessibility	Affordability	Sustainability
Decent Housing	DH-1	DH-2	DH-3
Suitable Living Environment	SL-1	SL-2	SL-3
Economic Opportunity	EO-1	EO-2	EO-3

LMH	Low-Mod Housing
LMC	Low-Mod Clientele

** Note that this allocation includes $17,936 in funding that was returned to HUD in May 2013 because it was originally used for an ineligible project.

City of Loveland

ANNUAL OBJECTIVES - 91.220(c)(3)

Table 3A Summary of Annual Objectives **(Note that the Outcomes/Obj are not accurate for the listed descriptions.**

Specific Objective		Source of Funds	Year	Performance Indicator	Expected Number	Actual Number	Percent Completed
Create a Suitable Living Environment with the Purpose of New or Improved Availability/Accessibility (SL-1)						Actual Estimate	
SL 1.1	Build shelter for victims of domestic violence.	CDBG, City, other public and private sources	2010	# of facilities built	1	0	0%
			2011			0	0%
			2012			0	0%
			2013			1	100%
			2014				
			MULTI-YEAR GOAL		1	1	100%
SL 1.2	Shelter homeless individuals, including day and night in-clement weather shelter.		2010	# of persons served	100	158	158%
			2011		100	185	185%
			2012		100	246	246%
			2013		100	228	228%
			2014		100		0%
			MULTI-YEAR GOAL		500	817	163%
SL 1.3	Shelter homeless families.		2010	# of families sheltered	18	23	128%
			2011		18	28	156%
			2012		18	12	67%
			2013		18	37	206%
			2014		18		0%
			MULTI-YEAR GOAL		90	100	111%
SL 1.5	Provide services to veterans (duplicate numbers from 1.2 & 1.3)		2010	# of persons served	50	44	88%
			2011		50	21	42%
			2012		50	5	10%
			2013		50	15	30%
			2014		50		0%
			MULTI-YEAR GOAL		250	85	34%
SL 1.6	Assist low-income households through public service activities including child care, case manage-ment, mental health, health care, services to persons with disabilities and seniors.		2010	# of persons served	1,000	3,355	336%
			2011		1,000	3,706	371%
			2012		1,000	4,976	498%
			2013		1,000	4,000	400%
			2014		1,000		0%
			MULTI-YEAR GOAL		5,000	16,037	321%
SL 1.7	Provide facilities that service needs of low-income persons in Loveland.		2010	# of facilities constructed or rehabilitated	2	0	0%
			2011			1	50%
			2012			0	0%
			2013			2	100%
			2014				0%
			MULTI-YEAR GOAL		2	3	150%

Table 3A Summary of Specific Annual Objectives (cont.)

Provide Decent Housing with Purpose of New or Improved Availability/Accessibility (DH-1)							
DH 1.1	Assist seniors to remain in housing through rehabilitation.	CDBG, City, other public and private sources	2010	# of households served	35	116	331%
			2011		35	138	394%
			2012		35	81	231%
			2013		35	129	369%
			2014		35		0%
			MULTI-YEAR GOAL		175	464	265%
Provide Decent Housing with Purpose of New or Improved Affordability (DH-2)							
DH 2.1	Provide additional transitional housing for the homeless.	CDBG, City, other public and private sources	2010	# of units built	1	0	0%
			2011		1	0	0%
			2012		1	1	100%
			2013		1	0	0%
			2014		1		0%
			MULTI-YEAR GOAL		5	1	20%
DH 2.2	Housing counseling and rent assistance.		2010	# of persons served	1000	1359	136%
			2011		1000	1117	112%
			2012		1000	1071	107%
			2013		1000	1250	125%
			2014		1000		0%
			MULTI-YEAR GOAL		5000	4797	96%
DH 2.3	Purchase land to provide affordable housing.		2010	# of units purchased	5	15	300%
			2011		5	0	0%
			2012		5	6	120%
			2013		5	0	0%
			2014		5		0%
			MULTI-YEAR GOAL		25	21	84%
DH 2.4	Build affordable senior housing.		2010	# of units built	5	0	0%
			2011		50	0	0%
			2012		5	60	1200%
			2013		10	0	0%
			2014		5		0%
			MULTI-YEAR GOAL		75	60	80%
DH 2.5	Down-payment assistance.		2010	# of households served	20	6	30%
			2011		20	0	0%
			2012		20	5	25%
			2013		20	1	5%
			2014		20		0%
			MULTI-YEAR GOAL		100	12	12%
DH 2.6	Maintain transitional housing for victims of domestic violence.		2010	# of units rehabilitated	4	3	75%
			2011			1	25%
			2012			0	
			2013			0	
			2014				
			MULTI-YEAR GOAL		4	4	100%

DESCRIPTION OF ACTIVITIES - 91.220(D)

Table 3C
Consolidated Plan Listing of Projects

Jurisdiction's Name City of Loveland

Priority Need
Public facility to house multiple non-profit organizations in one location.

Project
Public facility

Activity
Rehabilitation of a 60,000 square foot facility that will house multiple non-profit organizations.

Description
House of Neighborly Service purchased a large building and will operate as the Community Life Center, offering a one-stop location for clients to access multiple services.

Objective category: ☒ Suitable Living Environment ☐ Decent Housing ☐ Economic Opportunity
Outcome category: ☒ Availability/Accessibility ☐ Affordability ☐ Sustainability

Location/Target Area:
(Street Address): 1511 E. 11th Street
(City, State, Zip Code): Loveland, Colorado 80537

Specific Objective Number SL-1	Project ID TBD by IDIS
HUD Matrix Code 03	CDBG Citation 570.201(c)
Type of Recipient Non-profit organization	CDBG National Objective LMC
Start Date (mm/dd/yyyy) 10/01/2013	Completion Date (mm/dd/yyyy) 9/30/2014
Performance Indicator Persons Served	Annual Units 20,200
Local ID 13-HNS	Units Upon Completion 20,200

Funding Sources:

CDBG	155,240
ESG	
HOME	
HOPWA	
Total Formula	
Prior Year Funds	
Assisted Housing	
PHA	
Other Funding	5,026,260
Total	5,181,500

The primary purpose of the project is to help: ☒ the Homeless ☐ Persons with HIV/AIDS ☒ Persons with Disabilities ☐ Public Housing Needs

Table 3C
Consolidated Plan Listing of Projects

Jurisdiction's Name City of Loveland

Priority Need
Public facility to serve victims of sexual assault.

Project
Public facility

Activity
Acquisition of public facility for victims of sexual assault.

Description
Sexual Assault Victim Advocates will purchase a facility to counsel victims of sexual assault.

Objective category: ☒ Suitable Living Environment ☐ Decent Housing ☐ Economic Opportunity
Outcome category: ☒ Availability/Accessibility ☐ Affordability ☐ Sustainability

Location/Target Area:
(Street Address): 4812 S. College Avenue
(City, State, Zip Code): Fort Collins, Colorado 80524

Specific Objective Number SL-1	Project ID TBD by IDIS
HUD Matrix Code 03	CDBG Citation 570.201(c)
Type of Recipient Non-profit organization	CDBG National Objective LMC
Start Date (mm/dd/yyyy) 10/01/2013	Completion Date (mm/dd/yyyy) 9/30/2014
Performance Indicator Persons Served	Annual Units 50
Local ID 13-SAVA	Units Upon Completion 50

Funding Sources:	
CDBG	205,224 **
ESG	
HOME	
HOPWA	
Total Formula	
Prior Year Funds	
Assisted Housing	
PHA	
Other Funding	334,776
Total	540,000

** $195,224 in CDBG from City of Fort Collins

The primary purpose of the project is to help: ☐ the Homeless ☐ Persons with HIV/AIDS ☐ Persons with Disabilities ☐ Public Housing Needs

Table 3C
Consolidated Plan Listing of Projects

Jurisdiction's Name City of Loveland

Priority Need
Emergency affordable housing rehabilitation for owner/occupied households below 80% AMI.

Project
Property rehabilitation

Activity
Emergency funding for housing rehablitation.

Description
Rehabilitate owner/occupied homes of households with income below 80% AMI.

Objective category: ☐ Suitable Living Environment ☒ Decent Housing ☐ Economic Opportunity
Outcome category: ☐ Availability/Accessibility ☒ Affordability ☐ Sustainability

Location/Target Area:
(Street Address): To Be Determined
(City, State, Zip Code): Loveland, Colorado

Specific Objective Number DH-2	Project ID TBD by IDIS
HUD Matrix Code 14A	CDBG Citation 570.202(a)(1)
Type of Recipient Non-profit organization	CDBG National Objective LMH
Start Date (mm/dd/yyyy) 10/01/2013	Completion Date (mm/dd/yyyy) 9/30/2014
Performance Indicator Housing units	Annual Units 10
Local ID 13-LHIP EM	Units Upon Completion 10

Funding Sources:

CDBG	30,000 **
ESG	
HOME	
HOPWA	
Total Formula	
Prior Year Funds	
Assisted Housing	
PHA	
Other Funding	
Total	30,000

** $20,000 in CDBG from City of Fort Collins

The primary purpose of the project is to help: ☐ the Homeless ☐ Persons with HIV/AIDS ☐ Persons with Disabilities ☐ Public Housing Needs

Table 3C
Consolidated Plan Listing of Projects

Jurisdiction's Name City of Loveland

Priority Need
Affordable housing rehabilitation for owner/occupied households below 80% AMI.

Project
Property rehabilitation

Activity
Low interest loans to homeowners for housing rehabilitation.

Description
Rehabilitate owner/occupied homes of households with income below 80% AMI.

Objective category: ☐ Suitable Living Environment ☒ Decent Housing ☐ Economic Opportunity
Outcome category: ☐ Availability/Accessibility ☒ Affordability ☐ Sustainability

Location/Target Area:
(Street Address): To Be Determined
(City, State, Zip Code): Loveland, Colorado

Specific Objective Number DH-2	Project ID TBD by IDIS
HUD Matrix Code 14A	CDBG Citation 570.202(a)(1)
Type of Recipient Non-profit organization	CDBG National Objective LMH
Start Date (mm/dd/yyyy) 10/01/2013	Completion Date (mm/dd/yyyy) 9/30/2014
Performance Indicator Housing units	Annual Units 1
Local ID 13-LHIP	Units Upon Completion 1

Funding Sources:	
CDBG	110,000 **
ESG	
HOME	
HOPWA	
Total Formula	
Prior Year Funds	
Assisted Housing	
PHA	
Other Funding	446,900
Total	556,900

** $100,000 in CDBG from City of Fort Collins

The primary purpose of the project is to help: ☐ the Homeless ☐ Persons with HIV/AIDS ☐ Persons with Disabilities ☐ Public Housing Needs

Table 3C
Consolidated Plan Listing of Projects

Jurisdiction's Name City of Loveland

Priority Need
Down payment assistance for households below 80% AMI.

Project
Direct homeownership assistance

Activity
Downpayment assistance for low/moderate income households.

Description
Provide down payment assistance to households with income below 80% AMI.

Objective category: ☐ Suitable Living Environment ☒ Decent Housing ☐ Economic Opportunity
Outcome category: ☐ Availability/Accessibility ☒ Affordability ☐ Sustainability

Location/Target Area:
(Street Address): To Be Determined
(City, State, Zip Code): Loveland, Colorado

Specific Objective Number DH-2	Project ID TBD by IDIS
HUD Matrix Code 13	CDBG Citation 570.201(3)(n)
Type of Recipient Non-profit organization	CDBG National Objective LMH
Start Date (mm/dd/yyyy) 10/01/2013	Completion Date (mm/dd/yyyy) 9/30/2014
Performance Indicator Housing units	Annual Units 1
Local ID 13-LHOP	Units Upon Completion 1

Funding Sources:

CDBG	40,460 **
ESG	
HOME	169,800 *
HOPWA	
Total Formula	
Prior Year Funds	
Assisted Housing	
PHA	
Other Funding	175,000
Total	385,260

** $35,460 in State CDBG
* $169,800 State HOME

The primary purpose of the project is to help: ☐ the Homeless ☐ Persons with HIV/AIDS ☐ Persons with Disabilities ☐ Public Housing Needs

Table 3C
Consolidated Plan Listing of Projects

Jurisdiction's Name City of Loveland

Priority Need
Sustainable, affordable housing for seniors with low income.

Project
Housing rehabilitation

Activity
Rehabilitate homes, including making homes more accessible, for seniors.

Description
Provide minor safety rehabilitation in homes of seniors with low income living independently.

Objective category: ☐ Suitable Living Environment ☒ Decent Housing ☐ Economic Opportunity
Outcome category: ☒ Availability/Accessibility ☐ Affordability ☐ Sustainability

Location/Target Area:
(Street Address): To Be Determine
(City, State, Zip Code): Loveland, Colorado

Specific Objective Number DH-1	Project ID TBD by IDIS
HUD Matrix Code 14H	CDBG Citation 570.202(b)(11)
Type of Recipient Non-profit organization	CDBG National Objective LMH
Start Date (mm/dd/yyyy) 10/01/2013	Completion Date (mm/dd/yyyy) 9/30/2014
Performance Indicator Housing units	Annual Units 129
Local ID 13-VOA	Units Upon Completion 129

Funding Sources:

CDBG	17,300
ESG	
HOME	
HOPWA	
Total Formula	
Prior Year Funds	
Assisted Housing	
PHA	
Other Funding	41,616
Total	58,916

The primary purpose of the project is to help: ☐ the Homeless ☐ Persons with HIV/AIDS ☒ Persons with Disabilities ☐ Public Housing Needs

Table 3C
Consolidated Plan Listing of Projects

Jurisdiction's Name City of Loveland

Priority Need
Case management for victims of domestic violence.

Project
Public service

Activity
Case management for victims of domestic violence residing in two-year transitional housing.

Description
Case management services for victims of domestic violence residing in two-year transitional housing.

Objective category: ☒ Suitable Living Environment ☐ Decent Housing ☐ Economic Opportunity
Outcome category: ☒ Availability/Accessibility ☐ Affordability ☐ Sustainability

Location/Target Area:
(Street Address): 313 E. 4th Street
(City, State, Zip Code): Loveland, Colorado 80537

Specific Objective Number SL-1	Project ID TBD by IDIS
HUD Matrix Code 05G	CDBG Citation 570.201(e)
Type of Recipient Non-profit organization	CDBG National Objective LMC
Start Date (mm/dd/yyyy) 10/01/2013	Completion Date (mm/dd/yyyy) 9/30/2014
Performance Indicator Persons Served	Annual Units 13
Local ID 13-ATV	Units Upon Completion 13

Funding Sources:

CDBG	6,376
ESG	
HOME	
HOPWA	
Total Formula	
Prior Year Funds	
Assisted Housing	
PHA	
Other Funding	106,681
Total	113,057

The primary purpose of the project is to help: ☒ the Homeless ☐ Persons with HIV/AIDS ☐ Persons with Disabilities ☐ Public Housing Needs

Table 3C
Consolidated Plan Listing of Projects

Jurisdiction's Name City of Loveland

Priority Need
Case management and supportive services for homeless families.

Project
Public service

Activity
Case management for families that are homeless.

Description
Operation of the Angel House, which is the day shelter for homeless families, managed by House of Neighborly Service.

Objective category: ☒ Suitable Living Environment ☐ Decent Housing ☐ Economic Opportunity
Outcome category: ☒ Availability/Accessibility ☐ Affordability ☐ Sustainability

Location/Target Area:
(Street Address): 101 E. 6th Street
(City, State, Zip Code): Loveland, Colorado 80537

Specific Objective Number SL-1	Project ID TBD by IDIS
HUD Matrix Code 05	CDBG Citation 570.201(e)
Type of Recipient Non-profit organization	CDBG National Objective LMC
Start Date (mm/dd/yyyy) 10/01/2013	Completion Date (mm/dd/yyyy) 9/30/2014
Performance Indicator Persons Served	Annual Units 100 or 30 families
Local ID 13-HNS AH	Units Upon Completion 100 or 30 families

Funding Sources:	
CDBG	8,535
ESG	
HOME	
HOPWA	
Total Formula	
Prior Year Funds	
Assisted Housing	
PHA	
Other Funding	85,175
Total	93,710

The primary purpose of the project is to help: ☒ the Homeless ☐ Persons with HIV/AIDS ☐ Persons with Disabilities ☐ Public Housing Needs

Table 3C
Consolidated Plan Listing of Projects

Jurisdiction's Name City of Loveland

Priority Need
Case management and supportive services for homeless individuals.

Project
Public service

Activity
Case management for individuals who are homeless.

Description
Operation of the 137 Connection, which is the day shelter for homeless individuals, managed by House of Neighborly Service.

Objective category: ☒ Suitable Living Environment ☐ Decent Housing ☐ Economic Opportunity
Outcome category: ☒ Availability/Accessibility ☐ Affordability ☐ Sustainability

Location/Target Area:
(Street Address): 137 S. Lincoln Avenue
(City, State, Zip Code): Loveland, Colorado 80537

Specific Objective Number SL-1	Project ID TBD by IDIS
HUD Matrix Code 05	CDBG Citation 570.201(e)
Type of Recipient Non-profit organization	CDBG National Objective LMC
Start Date (mm/dd/yyyy) 10/01/2013	Completion Date (mm/dd/yyyy) 9/30/2014
Performance Indicator Persons Served	Annual Units 155
Local ID 13-HNS 137	Units Upon Completion 155

Funding Sources:

CDBG	13,048
ESG	
HOME	
HOPWA	
Total Formula	
Prior Year Funds	
Assisted Housing	
PHA	
Other Funding	79,295
Total	92,343

The primary purpose of the project is to help: ☒ the Homeless ☐ Persons with HIV/AIDS ☐ Persons with Disabilities ☐ Public Housing Needs

Table 3C
Consolidated Plan Listing of Projects

Jurisdiction's Name City of Loveland

Priority Need
Housing counseling for low and moderate income households.

Project
Housing counseling

Activity
Housing counseling provided by HUD-certified Neighbor to Neighbor counselors.

Description
Housing counseling for low to moderate income clients at risk of losing their housing.

Objective category: ☐ Suitable Living Environment ☒ Decent Housing ☐ Economic Opportunity
Outcome category: ☐ Availability/Accessibility ☒ Affordability ☐ Sustainability

Location/Target Area:
(Street Address): 1511 E. 11th Street
(City, State, Zip Code): Loveland, Colorado 80537

Specific Objective Number DH-2	Project ID TBD by IDIS
HUD Matrix Code 05U	CDBG Citation 570.201(e)
Type of Recipient Non-profit organization	CDBG National Objective LMC
Start Date (mm/dd/yyyy) 10/01/2013	Completion Date (mm/dd/yyyy) 9/30/2014
Performance Indicator Persons Served	Annual Units 1,250
Local ID 13-N2N	Units Upon Completion 1,250

Funding Sources:	
CDBG	15,795
ESG	
HOME	
HOPWA	
Total Formula	
Prior Year Funds	
Assisted Housing	
PHA	
Other Funding	180,745
Total	196,540

The primary purpose of the project is to help: ☐ the Homeless ☐ Persons with HIV/AIDS ☐ Persons with Disabilities ☐ Public Housing Needs

Table 3C
Consolidated Plan Listing of Projects

Jurisdiction's Name City of Loveland

Priority Need
Project administration.

Project
Administration

Activity
Administration

Description
Program administrative costs.

Objective category: ☐ Suitable Living Environment ☐ Decent Housing ☐ Economic Opportunity
Outcome category: ☐ Availability/Accessibility ☐ Affordability ☐ Sustainability

Location/Target Area:
(Street Address): 500 E. Third Street, Ste. 210
(City, State, Zip Code): Loveland, Colorado 80537

Specific Objective Number N/A	Project ID TBD by IDIS
HUD Matrix Code 21A	CDBG Citation 570.206
Type of Recipient City/Administration	CDBG National Objective N/A
Start Date (mm/dd/yyyy) 10/01/2013	Completion Date (mm/dd/yyyy) 9/30/2014
Performance Indicator N/A	Annual Units 0
Local ID 13-Admin	Units Upon Completion 0

Funding Sources:	
CDBG	58,339
ESG	
HOME	
HOPWA	
Total Formula	
Prior Year Funds	
Assisted Housing	
PHA	
Other Funding	
Total	58,339

The primary purpose of the project is to help: ☐ the Homeless ☐ Persons with HIV/AIDS ☐ Persons with Disabilities ☐ Public Housing Needs

GEOGRAPHIC DISTRIBUTION 91.220(F)

The map on the following page shows the location of the CDBG-funded projects with a physical office within city limits. The City of Loveland does not limit the use of CDBG funds to any specific geographic location within the city, or to any specific groups based on race, minority or ethnic concentration. Instead, all funds are used to serve persons with low to moderate income who live within the Loveland city limits.

CONCENTRATION OF MINORITY OR LOW INCOME HOUSEHOLDS

Areas of poverty are more prevalent south of H34 and along the H287 corridor. Although the greatest pockets of poverty are just outside of City limits, those community members are more likely to access services in downtown Loveland than in any other community. Although these areas exist, as noted, the City of Loveland does not allocate CDBG funds based on ethnicity, race, or geographic location, and has not designated any neighborhoods as Target Areas.

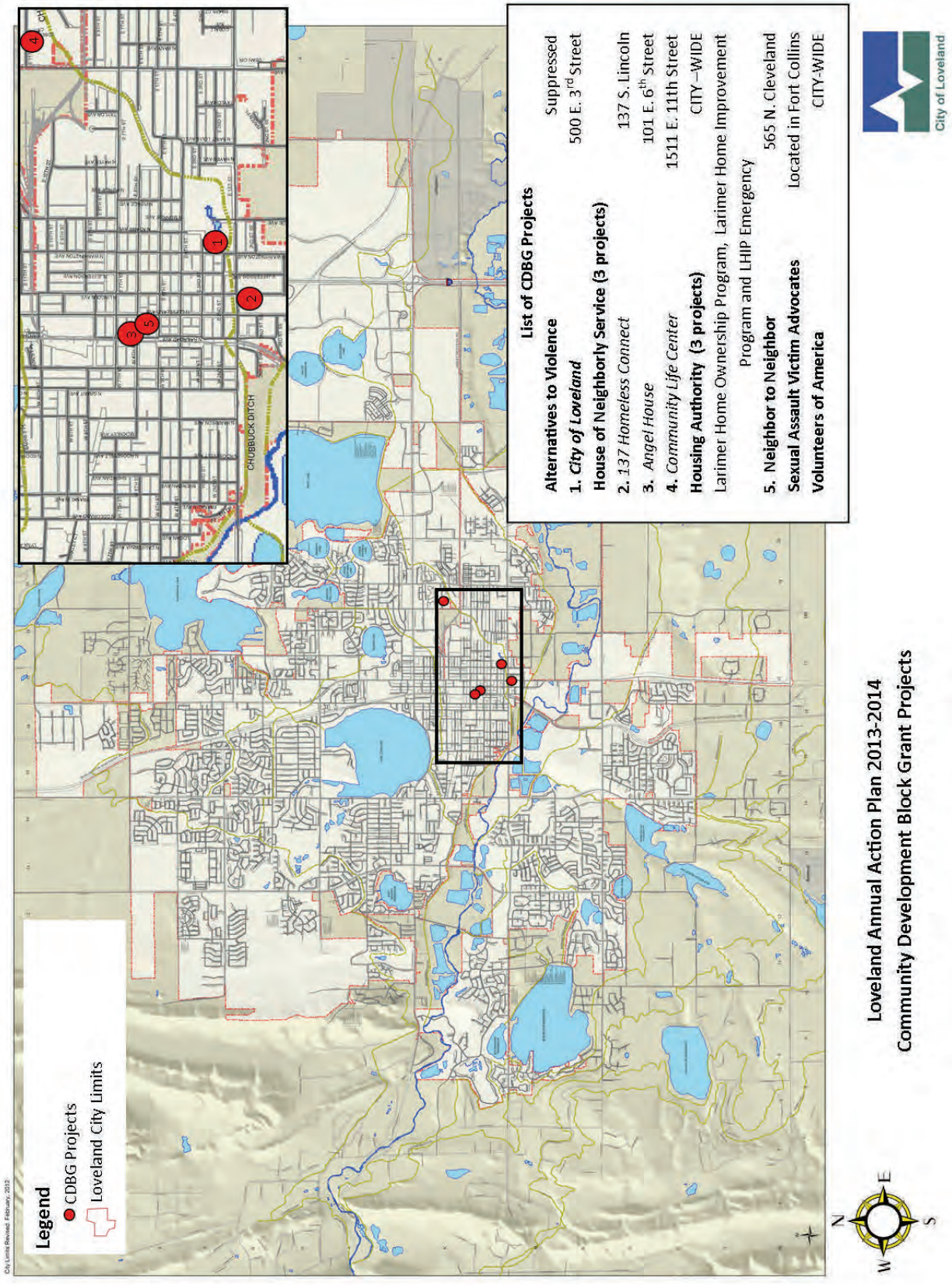
ALLOCATION PRIORITIES are based on need, income level of persons served, and whether or not a proposed activity meets one of the **objectives outlined in the 5-Year Consolidated Plan**, which are to:

1. Provide services to homeless and nearly homeless persons including shelter, case management, transitional and permanent housing.
2. Create and rehabilitate housing for households with low income, giving funding priority to activities that serve households with income below 50% of the area median income.
3. Decrease poverty in the community by financially supporting services and facilities that meet basic needs and provide self-sufficiency opportunities.

All CDBG funds received from HUD during the 2010-2015 timeframe will be used to address at least one of the priority needs categories listed above

OBSTACLES to meeting underserved needs include, but are not limited to:

- The vacancy rates throughout the county are lower than those statewide, and rents are over $1,000 a month on average, which puts additional pressure on low-income housing.
- The number of chronically homeless individuals and families has remained steady. The Housing Authority will begin work on 10 units of housing for homeless veterans, although that number will not begin to fulfill the demand for needed housing.
- Sequestration will not allow for additional Section 8 vouchers, which keeps many families either homeless or at risk of homelessness.


List of CDBG Projects
Alternatives to Violence
1. City of Loveland
House of Neighborly Service (3 projects)
2. 137 Homeless Connect
3. Angel House
4. Community Life Center
Housing Authority (3 projects)
Larimer Home Ownership Program, Larimer Home Improvement Program and LHIP Emergency
5. Neighbor to Neighbor
Sexual Assault Victim Advocates
Volunteers of America
Suppressed
500 E. 3rd Street
137 S. Lincoln
101 E. 6th Street
1511 E. 11th Street
CITY –WIDE
565 N. Cleveland
Located in Fort Collins
CITY-WIDE
Legend
CDBG Projects
Loveland City Limits
CHUBBUCK DITCH
Loveland Annual Action Plan 2013-2014
Community Development Block Grant Projects
City of Loveland

ANNUAL AFFORDABLE HOUSING GOALS 91.220(G)

Table 3B Summary of Specific Annual Objectives

Grantee Name: City of Loveland Program Year: 2011-2012	Expected Annual Number of Units To Be Completed	Actual Annual Number of Units Completed	Resources used during the period			
			CDBG	HOME	ESG	HOPWA
BENEFICIARY GOALS (Sec. 215 Only)						
Homeless households	30	5	☒	☐	☐	☐
Non-homeless households	458	1,285	☒	☐	☐	☐
Special needs households	125	72	☒	☐	☐	☐
Total Sec. 215 Beneficiaries*	613	1,362	☒	☐	☐	☐
RENTAL GOALS (Sec. 215 Only)						
Acquisition of existing units	0	0	☒	☐		☐
Production of new units	0	61	☒	☐		☐
Rehabilitation of existing units	102	123	☒	☐	☐	☐
Rental Assistance	450	689	☒	☐		☐
Total Sec. 215 Affordable Rental	552	873	☒	☐	☐	☐
HOME OWNER GOALS (Sec. 215 Only)						
Acquisition of existing units	1	0	☒	☐		
Production of new units	7	13	☒	☐		
Rehabilitation of existing units	50	464	☒	☐		
Homebuyer Assistance	3	12	☒	☐		☐
Total Sec. 215 Affordable Owner	61	489	☒	☐	☐	☐
COMBINED RENTAL AND OWNER GOALS (Sec. 215 Only)						
Acquisition of existing units	1	0	☒	☐		☐
Production of new units	7	74	☒	☐		☐
Rehabilitation of existing units	152	587	☒	☐	☐	☐
Rental Assistance	450	689	☒	☐		☐
Homebuyer Assistance	3	12	☒	☐		☐
Combined Total Sec. 215 Goals*	613	1,362	☒	☐	☐	☐
OVERALL HOUSING GOALS (Sec. 215 + Other Affordable Housing)						
Annual Rental Housing Goal	552	873	☒	☐	☐	☐
Annual Owner Housing Goal	61	489	☒	☐	☐	☐
Total Overall Housing Goal	613	1,362	☒	☐	☐	☐

PUBLIC HOUSING – 91.220(H)

The Housing Choice Voucher program is administered by the Housing Authority of the City of Loveland (HACOL). Therefore, the City of Loveland is not directly involved in encouraging residents to participate in self-sufficiency programs or in homeownership. During the 2013-2014 CDBG grant year, funds will be used to support programs offered by HACOL, including down payment assistance for homeownership. HACOL has not been designated as "troubled" by HUD.

HOMELESS AND SPECIAL NEEDS - 91.220(I)

The City of Loveland's plan for the investment and use of available resources and specific planned actions over the next year aimed at eliminating chronic homelessness are:

- Use of CDBG funds to retain several case managers to work with chronically homeless persons.
- Use of CDBG funds to pay for case management for victims of domestic violence.
- Work with local non-profits to produce LOVELAND HOMELESS CONNECT on October 25, 2013, a one-day event designed to provide resources and support to homeless and nearly homeless individuals and families in Loveland.
- Discussions on a City-wide basis, including elected officials, business members, and concerned citizens, to address issues outlined during a City-wide community conversation about homelessness that took place on January 31, 2013.
- Implementation of the HEARTH Act requirements; working regionally to bring in additional funding to serve the chronically homeless, specifically rapid re-housing funding.

SPECIFIC ACTION STEPS TO ADDRESS THE NEEDS OF PERSONS WHO ARE NOT HOMELESS IDENTIFIED IN ACCORDANCE WITH 91.215(E) ARE TO EXPEND CDBG FUNDS TO:

- Provide emergency funding to rehabilitate homes to maintain them as decent and safe.
- Provide housing counseling to help community members avoid homelessness by retaining their homes.
- Rehabilitate existing housing by providing low interest loans to homeowners with low to moderate income.
- Upgrade existing affordable rental housing for persons who are frail, elderly, disabled or have special needs.

Homelessness Prevention

Other planned action steps over the next year to address individuals and families with children at imminent risk of becoming homeless are to invest City of Loveland Human Services Grant Funds into the following services to specifically help maintain financial stability and housing:

AGENCY	SERVICE
Alternatives to Violence	Transitional housing for domestic violence victims
Boys & Girls Club	Youth programs and child care
Center for Adult Learning	Adult education and job skills
Community Kitchen	Daily meal program
Disabled Resource Services	Case management, financial assistance and medical equipment for the disabled
Food Bank for Larimer County	Food distribution and prepared meals for children
Grand Families Program	Support and assistance for grand parents raising grand children
Homeless Gear	Employment assistance through the Hand-Up Program
House of Neighborly Service	Food, clothing, medical assistance
Matthews House	Life skills for youth aging out of foster care
Meals on Wheels	Meal distribution program
Neighbor to Neighbor	Foreclosure prevention
Northern Colorado AIDS Project	Food and shelter assistance, mental health services for people living with HIV/AIDS
Project Self-Sufficiency	Single parent family housing and case management
Respite Care	Child care services
Teaching Tree	Preschool
Thompson Valley Preschool	Preschool
Touchstone Health Partners	Mental health services

Barriers to Affordable Housing 91.220(j)

Actions that will take place during the next year to remove barriers to affordable housing are:

- Waiver of building permit and development fees for housing constructed by Habitat for Humanity. Consideration of building permit and development fee waivers for other builders and developers of qualified affordable housing.
- Credit of city use tax to all builders of affordable housing units.
- Continuing to address additional incentives for developers and builders to create affordable rental and for-sale housing through fee waivers or a density bonus program. The Community Partnership Office has been contacted by three for-profit developers wanting to build multi-family units with a percentage of units allocated to low-income residents.
- Propose a city sponsored fund for rehabilitation of infill units in need of minor to major repairs. The fund could include fee waivers, CDBG funding, low-interest loans for either owner/occupied housing or for landlord/tenant housing, and working with programs such as Habitat for Humanity to complete some of the work to ensure future affordability.
- Specific CDBG-funded activities listed in this Action Plan.

OTHER ACTIONS 91.220(K)

Actions that will take place during the next year to address obstacles to meeting underserved needs, foster and maintain affordable housing, evaluate and reduce the number of housing units containing lead-based paint hazards, reduce the number of poverty-level families, develop institutional structure, and enhance coordination between public and private agencies are listed below:

- The City of Loveland will continue to partner with the United Way of Larimer County on the Loveland Alliance for Non-profits to provide a venue for education, communication, collaboration, and coordination between public and private agencies, almost all of which serve low-income persons. The purpose of these meetings is to foster collaboration and coordination between housing and human services agencies and organizations.

- The City of Loveland will provide grant funding in the amount of $450,000 to assist non-profit organizations serving persons with low income, many of which are also living below the poverty line, to provide food, shelter, physical and mental health care, case management, housing, housing counseling, education and child care.

- The City of Loveland will help foster and maintain affordable housing by investing CDBG in housing rehabilitation and the purchase of land on which to build affordable homes. Additionally, the City will waive permit fees for houses constructed by Habitat for Humanity and will consider additional fee waivers for other builders of affordable units.

- The City of Loveland will assist in reducing the number of housing units containing lead-based paint by requiring that all activities funded with CDBG dollars comply with federal lead-based paint regulations; lead-based paint reduction regulations are incorporated into all legal agreements between the city and sub-recipients. Additional information about lead-based paint can be found below.

- The CPO has been working with groups regionally, including the North Front Range Continuum of Care, to address obstacles to housing, the regional governance of organizations working to reduce homelessness, the implementation of using the HMIS system to understand and track our homeless families and individuals, and developing a coordinated assessment to assist in placing people into housing.

- A question was added to the Human Services Grant proposal to address accessibility to programs by asking agencies how they accommodate clients who are unable to access services during normal business hours or who lack transportation, two barriers that may keep people in need from receiving assistance. Program accessibility will continue to be addressed in order to find ways to meet the needs of our underserved.

Actions to coordinate housing strategy with local and regional transportation planning strategies to ensure, to the extent practicable, that residents of affordable housing have access to public transportation include:

- Meetings with the Director of Public Works to discuss bus routes and subsidized bus passes for low income residents, and to request distributing bus passes to the homeless at the Loveland Homeless Connect event on October 25, 2013
- Coordination of information between the Development Services and Transportation departments.
- Encouraging new affordable housing development near major transportation corridors.
- The City of Loveland provides bus tokens to local non-profits to distribute to their clients in need of subsidized transportation.
- A local non-profit has taken on the burden of screening clients for other agency programs, such as food stamps (county) and housing (housing authority) to limit the need of clients to travel to multiple destinations, and has recently purchased a building that will house multiple non-profits, which will further reduce travel time and transportation issues for the clients of many agencies.

PROGRAM SPECIFIC REQUIREMENTS - 91.220(I)(1)

A. No program income is expected to be received during the program year. No program income was received in the preceding program year.

B. No proceeds from Section 108 loan guarantees will be used during the year to address priority needs and specific objectives identified in the strategic plan.

C. No surplus funds from any urban renewal settlement for community development and housing activities will be used during the year.

D. No grant funds have been returned to the line of credit for which the planned use has not been included in a prior statement or plan.

E. No income will be received from float-funded activities.

Lead Based Paint

CDBG recipients must certify that no lead-based paint will be used in residential units assisted with CDBG funds and must document that all occupants of structures built before 1978 have been notified of the hazard of lead-based paint and have received a lead-based paint pamphlet. A fact sheet containing information about current efforts to protect children from lead-based paint poisoning has been prepared by the Environmental Protection Agency and HUD, and made is available to organizations.

- Notification Requirements: Landlords renting units in structures built before 1978 must utilize the pamphlet entitled "Protect Your Family from Lead in Your Home" to notify their tenants of the potential hazards of lead-based paint (copies of this pamphlet are available from the CPO). The same pamphlet must also be used to notify buyers of homes built before 1978 of the hazards of lead-based paint. The landlord/seller must document that the tenant/buyer was provided with the pamphlet.
- Identification of Defective Paint Surfaces: Subrecipients must complete visual inspections for defective surfaces in all property constructed prior to 1978. All interior and exterior surfaces, including those in common areas must be examined. Subrecipients must contact the CPO CDBG Coordinator if defective paint surfaces are detected. Surfaces identified as being defective shall require further analysis and shall require interim controls. The presence of lead based paint may ultimately require lead based paint abatement, including abating bare soils.
- Lead Hazard Evaluations: Federal regulations require that Lead Hazard Evaluations be performed by EPA-certified inspectors on all pre-1978 homes receiving over $5,000 in federal funds. The "chewable surfaces" of any home occupied by a child under seven years old who has an identified blood lead level must be tested for lead content using an approved lead detection method. Subrecipients should keep the CPO CDBG Coordinator informed of the status/results of lead based paint testing.

Lead evaluation and hazard reduction treatment depends on the level of assistance: up to and including $5,000 = paint testing, more than $5,000 and up to $25,000 = risk assessment, more than $25,000 = abate lead paint hazards. Addressing units that have the presence of lead-based paint also depends upon the amount of assistance received: up to $5,000 = repair surfaces to be disturbed using safe work practices and using a certified renovation firm, more than $5,000 and up to $25,000 = interim controls of lead hazards using safe work practices and trained workers of a certified renovation firm, more than $25,000 = abatement of all lead hazards using a certified abatement firm. Clearance must be passed before work areas can be reoccupied. A *Notice of Lead Hazard Reduction* notice must also be given to the property owner within 15 days of the clearance test.

The following programs are subject to the Lead Safe Housing Rule (LSHR): down payment assistance, closing cost assistance, loan guarantees, PMI assistance, subsidized interest rates, and finance acquisition. A visual assessment for deteriorated paint in assisted units built prior to 1978 must be conducted by trained personnel. Exceptions to the LSHR are: units built after 1977, if the rehabilitation does not disturb a painted surface, demolition of unoccupied units, housing designated specifically for the elderly or disabled, units with no bedrooms, properties where lead-based paint has already been removed or is not present.

MONITORING

Sub-recipients of Community Development Block Grant (CDBG) funds must enter into a legal agreement with the City of Loveland specifying how and when grant funds will be spent. The city does not disburse payment to grant recipients until a contract has been executed. Each recipient must provide quarterly progress reports to provide proof of performance.

To further describe the City of Loveland monitoring plan and to comply with monitoring responsibilities of sub-recipient projects, the following will be applied:

- Each recipient must submit a final report when grant year funds have been fully expended. The report must contain information on activities for which program funds were used, the number of people served, demographics of people served, and the source and amount of other program funds. This information is entered into the IDIS system to begin project monitoring in furtherance of progress made on both the Annual Action Plan and the Consolidated Plan.

- Annually, the city selects grant recipients for a full monitoring, including a site-visit, to ensure that CDBG funds are used to assist low to moderate income persons, and that funding used to provide low-income housing is specific to homes that are occupied by low and moderate income households. A check list is completed during the site visit to address program regulations and requirements. This monitoring process includes ensuring that administrative, programmatic, and financial performance is in compliance, and that the project is adequately documented.

- If it is determined that the sub-recipient has not met a requirement of the CDBG program, the City of Loveland will provide written notice of this determination and give the sub-recipient an opportunity to demonstrate within a stated time frame that it has done so. If the sub-recipient is unable to demonstrate compliance, the City of Loveland will begin by providing technical assistance. If the sub-recipient is still unable to resolve any compliance issues, the City of Loveland will take corrective or remedial action. Said action will be designed to prevent a continuation of the deficiency, or mitigate to the extent possible, any adverse effects or consequences, and prevent any reoccurrence.

MONITORING CONT.

The City of Loveland provides the U.S. Department of Housing and Urban Development with monitoring information to ensure program compliance with 24 CFR 91.520, to include the following:

- Quarterly and final reports received from sub-recipients are thoroughly reviewed for completeness and to ensure that the grant serves low to moderate income residents. Project documentation includes the racial and ethnic status of persons assisted and actions that affirmatively further fair housing.

- Subrecipients are required, by contract, to complete projects by July 31st of the program year. If the subrecipient is unable to meet this deadline, grant funding may be reallocated to an agency with a project ready to be completed within the end of the current grant year.

- Progress toward the City of Loveland annual strategic plan is documented, including resources made available to the project.

- Project information is submitted to HUD within 90 days after the close of the program year, and includes progress toward the City's objective of providing affordable housing, including the number and types of families served based on income level.

- The use of CDBG funds during any program year are assessed against priorities and specific objectives identified in the Consolidated and Annual Action Plans.

Any CDBG projects that require a permit will also be inspected for compliance with local housing codes; subrecipients will be required to comply.

Fair Housing and Analysis of Impediments to Fair Housing

As described in the City of Loveland 2010-2015 Consolidated Plan, and as part of the City of Loveland's certification to affirmatively further fair housing, the City assumes the responsibility of fair housing by conducting an Analysis of Impediments to Fair Housing Choice (AI) and by taking appropriate actions to overcome the effects of any impediments identified by the analysis. The City of Loveland updated the Analysis of Impediments to Fair Housing Choice in 2012. A copy of the current analysis is available online at: http://www.cityofloveland.org/index.aspx?page=901

The following impediments and action items were described in the 2012 AI. Specific actions taken in 2013 will be found in the CAPER that will be submitted in HUD in December, 2013.

1) Housing discrimination
    - promote the distribution of fair housing information in Loveland
    - explore projects that address greater accessibility in housing
    - conduct fair housing surveys every other year
    - place fair housing posters at many locations throughout Loveland
    - provide information to housing providers about immigration and fair housing
    - monitor the denial of mortgages to Latinos
2) Language and Culture
    - develop and adopt a Limited English Proficiency Plan
    - support agencies to develop written materials in Spanish and other languages as needed
    - help agencies access a local translation service as needed
3) Marketing to Least Likely to Apply
    - monitor final reports from subrecipients to ensure equal benefit
    - work with local agencies to assist with marketing to least likely to apply
4) Affordable Housing
    - direct housing assistance to agencies working to house people with disabilities
    - promote a mix of housing types to all income levels
    - continue to direct funding to organizations that provide transitional housing
    - direct funding to programs that work on housing rehabilitation and keeping people in their homes
    - request the expertise of the Disabilities Advisory Commission to look at multi-family housing and true accessibility
    - continue to improve accommodating people wishing to participate in the public meeting process

The City of Loveland Community Partnership Office investigates all suggestions of discrimination or barriers to fair housing. A survey that was conducted as part of the AI update asked questions about filing a fair housing complaint, such as: 1) Have you ever been denied housing in Loveland for any of the following reasons (race, color, national origin, family size, disability or religion); 2) Did you file a housing discrimination complaint (yes/no); 3) What happened with your complaint; 4) If you did not file, why not? Respondents were given the opportunity to provide their name and phone number and a Community Partnership Office employee called each respondent to gather additional information and to offer assistance if the person felt that he or she experienced discrimination. No fair housing violations were filed as a result of these conversations.

Appendices

A: 2013 Area Median Income Chart

B: Affidavit of Publication

C: City Council Resolution

D: Certifications

E: Application for Federal Assistance SF-424

APPENDIX A
2013 AREA MEDIAN INCOME CHART

2013 HUD Income Guidelines
Loveland - Ft Collins Metropolitan Statistical Area
Issued December 2012

# persons in household	1	2	3	4	5	6	7	8
100% Area Median Income	$53,100	$60,700	$68,300	$75,800	$81,900	$88,000	$94,000	$100,100
80%	$42,500	$48,550	$54,600	$60,650	$65,550	$70,400	$75,250	$80,100
75%	$39,825	$45,525	$51,225	$56,850	$61,425	$66,000	$70,500	$75,075
70%	$37,170	$42,490	$47,810	$53,060	$57,330	$61,600	$65,800	$70,070
60%	$31,860	$36,420	$40,980	$45,480	$49,140	$52,800	$56,400	$60,060
50%	$26,550	$30,350	$34,150	$37,900	$40,950	$44,000	$47,000	$50,050
40%	$21,240	$24,280	$27,320	$30,320	$32,760	$35,200	$37,600	$40,040
30%	$15,950	$18,200	$20,500	$22,750	$24,600	$26,400	$28,250	$30,050

APPENDIX B
AFFIDAVIT OF PUBLICATION

See Following Page

City of Loveland

APPENDIX C
CITY COUNCIL RESOLUTION

See Following Page

RESOLUTION #R-40-2013

A RESOLUTION APPROVING THE 2013 GRANT FUNDING RECOMMENDATIONS OF THE LOVELAND HUMAN SERVICES COMMISSION AND THE LOVELAND AFFORDABLE HOUSING COMMISSION

WHEREAS, the City of Loveland, Colorado recognizes the valuable services provided by human services agencies in the Loveland community; and

WHEREAS, the City Council of the City of Loveland recognizes the need to provide opportunities for the well-being of less fortunate citizens; and

WHEREAS, the City has established the Human Services Grant Program to provide financial assistance to agencies meeting the human services needs in the community; and

WHEREAS, the City has budgeted $450,000 in the 2013 City of Loveland budget for the Human Services Grant Program; and

WHEREAS, the City receives federal Community Development Block Grant ("CDBG") funds through the U.S. Department of Housing and Urban Development ("HUD") to assist in meeting the housing needs for Loveland citizens with low incomes; and

WHEREAS, the City anticipates receiving a total of $291,697 in CDBG funds for the 2013-2014 federal fiscal year; and

WHEREAS, in addition to the 2013-2014 federal CDBG funds, the City returned $17,936 in CDBG funds to HUD for the 2009-2010 federal fiscal year, which was subsequently returned to the City and is available for 2013 CDBG grant funding; and

WHEREAS, the City Council has charged the Human Services Commission with the task of reviewing all grant applications made to the City for Human Services Grant funds and for CDBG funds, except for "bricks and mortar" applications that are housing related, and making a funding recommendation to the City Council regarding such grant funds distribution; and

WHEREAS, the City Council has charged the Affordable Housing Commission with the task of reviewing all "bricks and mortar" grant applications made to the City for CDBG funds related to housing and making a recommendation to the City Council regarding such grant funds distribution; and

WHEREAS, the Human Services Commission and the Affordable Housing Commission have reviewed all grant applications made to the City for Human Services Grant funds and CDBG funds, and have made a recommendation to the City Council regarding distribution of those grant funds; and

WHEREAS, the City Council desires to approve the grant funding recommendations of the Human Services Commission and the Affordable Housing Commission.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That the 2013 grant funding recommendations of the Human Services Commission regarding the distribution of Human Services Grant funds are hereby approved in the following amounts to the following agencies, subject to execution of a recipient contract with the City of Loveland by the agency on or before August 31, 2013:

Agency	Total Grant Amount
Alliance for Suicide Prevention	$1,853
Alternatives to Violence	$20,170
Alternatives to Violence	$4,854
Audio Information Network	$1,088
Boys & Girls Club	$21,661
Carc-A-Van/Senior Alternatives in Transportation	$6,198
Catholic Charities of Larimer County	$3,752
Center for Adult Learning	$23,038
Colorado Health Network/Northern Co. AIDS Project	$5,022
Community Kitchen	$5,021
Court Appointed Special Advocates	$10,550
Court Appointed Special Advocates	$9,851
Crossroads Safehouse	$19,036
Disabled Resource Services	$13,262
Easter Seals Colorado/WINGS	$10,244
Elderhaus	$8,187
Ensight Skills Center	$2,272
Food Bank for Larimer County	$25,365
Food Bank/Loveland Rotary Kids Pak	$2,500
Homeless Gear/Hand-Up Cooperative	$4,010
House of Neighborly Service	$26,415
House of Neighborly Service	$21,661
House of Neighborly Service/Center for Adult Learning	$7,500
Larimer County Child Advocacy Program	$16,697
Loveland Youth Gardeners	$1,700
Matthews House	$17,979
McKee Medical Center Foundation/Stepping Stones	$3,292
Meals on Wheels	$31,729
Neighbor to Neighbor	$7,148
Pathways Hospice	$2,111

Project Self-Sufficiency	$16,126
Rehab and Visiting Nurses Association	$14,270
Respite Care	$7,218
Thompson Valley Preschool	$8,644
Touchstone Health Partners	$23,516
Touchstone Health Partners	$5,074
Turning Point Center	$16,798
United Day Care Center/Teaching Tree	$5,099
Women's Resource Center	$19,089
Total Grant Amount	$450,000

Section 2. That the 2013 grant funding recommendations of the Human Services Commission and the Affordable Housing Commission for the 2013 Community Development Block Grant Program are hereby approved in the following amounts to the following agencies, subject to: (a) the approval of the U.S. Department of Housing and Urban Development and the allocation and receipt of Community Development Block Grant funds to the City of Loveland in 2013; (b) City Council budget and appropriation of such allocated federal funding; and (c) execution of a subrecipient contract with the City of Loveland by the agency or project owner on or before December 31, 2013:

Agency	Total Grant Amount
Alternatives to Violence	$6,376
House of Neighborly Service	$13,048
House of Neighborly Service	$8,535
House of Neighborly Service	$155,240
Housing Authority of the City of Loveland	$25,000
Neighbor to Neighbor	$15,795
Sexual Assault Victim Advocates	$10,000
Volunteers of America	$17,300
City of Loveland Program Administration	$58,339
Total Grant Amount	$309,633

Section 3. That this Resolution shall take effect as of the date of its adoption.

ADOPTED this 18th day of June, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

Teresa A. Andrews
City Clerk

CITY OF LOVELAND SEAL COLORADO

APPROVED AS TO FORM:

Yost Schmidt
Deputy City Attorney

APPENDIX D
CERTIFICATIONS

See Following Pages

LOCAL GOVERNMENT CERTIFICATIONS

In accordance with the applicable statutes and the regulations governing the consolidated plan regulations, the jurisdiction certifies that:

Affirmatively Further Fair Housing -- The jurisdiction will affirmatively further fair housing, which means it will conduct an analysis of impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting that analysis and actions in this regard.

Anti-displacement and Relocation Plan -- It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implementing regulations at 49 CFR 24; and it has in effect and is following a residential antidisplacement and relocation assistance plan required under section 104(d) of the Housing and Community Development Act of 1974, as amended, in connection with any activity assisted with funding under the CDBG or HOME programs.

Drug Free Workplace -- It will or will continue to provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

2. Establishing an ongoing drug-free awareness program to inform employees about -

   (a) The dangers of drug abuse in the workplace;
   (b) The grantee's policy of maintaining a drug-free workplace;
   (c) Any available drug counseling, rehabilitation, and employee assistance programs; and
   (d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph 1;

4. Notifying the employee in the statement required by paragraph 1 that, as a condition of employment under the grant, the employee will -

   (a) Abide by the terms of the statement; and

   (b) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

5. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph 4(b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

6. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph 4(b), with respect to any employee who is so convicted -

   (a) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1, 2, 3, 4, 5 and 6.

Anti-Lobbying -- To the best of the jurisdiction's knowledge and belief:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

3. It will require that the language of paragraph 1 and 2 of this anti-lobbying certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

Authority of Jurisdiction -- The consolidated plan is authorized under State and local law (as applicable) and the jurisdiction possesses the legal authority to carry out the programs for which it is seeking funding, in accordance with applicable HUD regulations.

Consistency with plan -- The housing activities to be undertaken with CDBG, HOME, ESG, and HOPWA funds are consistent with the strategic plan.

Section 3 -- It will comply with section 3 of the Housing and Urban Development Act of 1968, and implementing regulations at 24 CFR Part 135.

_____ 7.10.13
Signature/Authorized Official Date

City Manager

_____
Title

Specific CDBG Certifications

The Entitlement Community certifies that:

Citizen Participation -- It is in full compliance and following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.105.

Community Development Plan -- Its consolidated housing and community development plan identifies community development and housing needs and specifies both short-term and long-term community development objectives that provide decent housing, expand economic opportunities primarily for persons of low and moderate income. (See CFR 24 570.2 and CFR 24 part 570)

Following a Plan -- It is following a current consolidated plan (or Comprehensive Housing Affordability Strategy) that has been approved by HUD.

Use of Funds -- It has complied with the following criteria:

1. Maximum Feasible Priority. With respect to activities expected to be assisted with CDBG funds, it certifies that it has developed its Action Plan so as to give maximum feasible priority to activities which benefit low and moderate income families or aid in the prevention or elimination of slums or blight. The Action Plan may also include activities which the grantee certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community, and other financial resources are not available);

2. Overall Benefit. The aggregate use of CDBG funds including section 108 guaranteed loans during program year(s) 2012-2013, (a period specified by the grantee consisting of: (1) one, (2) two, or (3) three (circle # of year(s) specific consecutive program years), shall principally benefit persons of low and moderate income in a manner that ensures that at least 70 percent of the amount is expended for activities that benefit such persons during the designated period;

3. Special Assessments. It will not attempt to recover any capital costs of public improvements assisted with CDBG funds including Section 108 loan guaranteed funds by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements.

   However, if CDBG funds are used to pay the proportion of a fee or assessment that relates to the capital costs of public improvements (assisted in part with CDBG funds) financed from other revenue sources, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds.

   The jurisdiction will not attempt to recover any capital costs of public improvements assisted with CDBG funds, including Section 108, unless CDBG funds are used to pay the proportion of fee or assessment attributable to the capital costs of public improvements financed from other revenue sources. In this case, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds. Also, in the case of properties owned and occupied by moderate-income (not low-income) families, an assessment or charge may be made against the property for public improvements financed by a source other than CDBG funds if the jurisdiction certifies that it lacks CDBG funds to cover the assessment.

Excessive Force -- It has adopted and is enforcing:

1. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and

2. A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within its jurisdiction;

Compliance With Anti-discrimination laws -- The grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 USC 2000d), the Fair Housing Act (42 USC 3601-3619), and implementing regulations.

Lead-Based Paint -- Its activities concerning lead-based paint will comply with the requirements of part 35, subparts A, B, J, K and R, of title 24;

Compliance with Laws -- It will comply with applicable laws.

William J. Cahill 7.10.13

Signature/Authorized Official Date

City Manager

Title

City of Loveland

OPTIONAL CERTIFICATION
CDBG

Submit the following certification only when one or more of the activities in the action plan are designed to meet other community development needs having a particular urgency as specified in 24 CFR 570.208(c):

The grantee hereby certifies that the Annual Plan includes one or more specifically identified CDBG-assisted activities which are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community and other financial resources are not available to meet such needs.

William A. Cahill 7.10.13

Signature/Authorized Official Date

City Manager

Title

APPENDIX TO CERTIFICATIONS

INSTRUCTIONS CONCERNING LOBBYING AND DRUG-FREE WORKPLACE REQUIREMENTS:

A. Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

B. Drug-Free Workplace Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification.

2. The certification is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HUD, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies. (This is the information to which jurisdictions certify).

4. For grantees who are individuals, Alternate II applies. (Not applicable jurisdictions.)

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio stations).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

500 East Third Street
Loveland, Colorado 80537

Check ___ if there are workplaces on file that are not identified here.

The certification with regard to the drug-free workplace required by 24 CFR part 24, subpart F.

9. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C.812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

APPENDIX E

APPLICATION FOR FEDERAL ASSISTANCE SF-424

See Following Pages

OMB Number: 4040-0004
Expiration Date: 04/31/2012

Application for Federal Assistance SF-424

Version 02

*1. Type of Submission	*2. Type of Application	*If Revision, select appropriate letter(s):
☐ Preapplication	☑ New	
☑ Application	☐ Continuation	* Other (Specify)
☐ Changed/Corrected Application	☐ Revision	

*3. Date Received:	4. Application Identifier: B-13-MC-08-0012
5a. Federal Entity Identifier:	*5b. Federal Award Identifier:

State Use Only:

6. Date Received by State:	7. State Application Identifier:

8. APPLICANT INFORMATION:

* a. Legal Name: City of Loveland

* b. Employer/Taxpayer Identification Number (EIN/TIN):	*c. Organizational DUNS:
84-6000609	076481407

d. Address:

*Street1: 500 E. Third Street
Street 2:
*City: Loveland
County: Larimer
*State: Colorado
Province:
Country: USA
*Zip/ Postal Code: 80537

e. Organizational Unit:

Department Name:	Division Name:
Development Services	Community Partnership Office

f. Name and contact information of person to be contacted on matters involving this application:

Prefix: Ms. First Name: Alison
Middle Name:
*Last Name: Hade
Suffix:

Title: Administrator

Organizational Affiliation:
City of Loveland

*Telephone Number: (970) 962-2517 Fax Number: (970) 962-2903

*Email: alison.hade@cityofloveland

OMB Number: 4040-0004
Expiration Date: 04/31/2012

Application for Federal Assistance SF-424 Version 02

9. Type of Applicant 1: Select Applicant Type: C. City or Township Government

Type of Applicant 2: Select Applicant Type:

- Select One -

Type of Applicant 3: Select Applicant Type:

- Select One -

*Other (specify):

*10. Name of Federal Agency:
U.S. Department of Housing and Urban Development

11. Catalog of Federal Domestic Assistance Number:

14.218

CFDA Title:

Community Development Block Grant

*12. Funding Opportunity Number:

*Title:

13. Competition Identification Number:

Title:

14. Areas Affected by Project (Cities, Counties, States, etc.):

City of Loveland

*15. Descriptive Title of Applicant's Project:

2013 Annual Action Plan

Attach supporting documents as specified in agency instructions.

City of Loveland

OMB Number: 4040-0004
Expiration Date: 04/31/2012

Application for Federal Assistance SF-424 Version 02

16. Congressional Districts Of:

*a. Applicant CO-004 *b. Program/Project: CO-004

Attach an additional list of Program/Project Congressional Districts if needed.

17. Proposed Project:

*a. Start Date: 10/1/13 *b. End Date: 9/30/14

18. Estimated Funding ($):

*a. Federal	$291,697.00
*b. Applicant	
*c. State	
*d. Local	
*e. Other	
*f. Program Income	
*g. TOTAL	$291,697.00

***19. Is Application Subject to Review By State Under Executive Order 12372 Process?**

☐ a. This application was made available to the State under the Executive Order 12372 Process for review on
☐ b. Program is subject to E.O. 12372 but has not been selected by the State for review.
☑ c. Program is not covered by E.O. 12372

*20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes", provide explanation.)
☐ Yes ☑ No

21. *By signing this application, I certify (1) to the statements contained in the list of certifications** and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 218, Section 1001)

☑ **I AGREE

** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.

Authorized Representative:

Prefix: Mr. *First Name: William

Middle Name: D.

*Last Name: Cahill

Suffix:

*Title: City Manager

*Telephone Number: (970) 962-2306 Fax Number:

*Email: bill.cahill@cityofloveland.org

*Signature of Authorized Representative: William D Cahill Date Signed: 6/28/13

CITY OF LOVELAND
LOVELAND FIRE RESCUE AUTHORITY
Administration Offices • 410 East Fifth Street • Loveland, Colorado 80537
(970) 962-2471 • FAX (970) 962-2922 • TDD (970) 962-2620

AGENDA ITEM: **10**
MEETING DATE: 8/6/2013
TO: City Council
FROM: Randy Mirowski, Loveland Fire Rescue Authority
PRESENTER: Randy Mirowski, Fire Chief

TITLE:
A Resolution Approving an Intergovernmental Automatic Mutual Aid Agreement Between the Loveland Fire Rescue Authority and the Estes Valley Fire Protection District

RECOMMENDED CITY COUNCIL ACTION:
Adopt the resolution.

OPTIONS:
1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

SUMMARY:
This is an administrative action. The resolution approves an intergovernmental automatic mutual aid agreement between the Loveland Fire Rescue Authority (LFRA) and the Estes Valley Fire Protection District. The agreement was approved by the LFRA Board on July 11, 2013. The intergovernmental agreement that established the LFRA requires that auto and mutual aid agreements be approved by the City.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible

BACKGROUND:
An automatic aid agreement provides that both LFRA and the Estes Valley Fire Protection District will be dispatched to an emergency response within a particular response area. It is a standard agreement necessary to ensure that there are policies and procedures in place for automatic response from each organization within a designated a response area presented in a color-coded map (Exhibit A of the agreement).

This agreement:

- Clarifies the area of auto response;
- Establishes roles and responsibilities;
- Establishes procedures for cooperation and coordination;
- States liability & workers compensation coverage;
- Provides no compensation for services;
- Provides for response determination in terms of availability;
- Sets the term for one year renewable annually; and
- Sets procedures for termination of the agreement by either party.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

Resolution
Agreement

RESOLUTION # R-56-2013

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AUTOMATIC RESPONSE AGREEMENT BETWEEN THE LOVELAND FIRE RESCUE AUTHORITY AND THE ESTES VALLEY FIRE DISTRICT

WHEREAS, in accordance with section §29-1-203 of the Colorado Revised Statutes, governments may cooperate or contract one with another to provide any function, service or facility lawfully authorized to each of the respective units of governments; and

WHEREAS, in accordance with C.R.S. §29-1 -201, governments are permitted and encouraged to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other governments; and

WHEREAS, the Estes Valley Fire District (“EVFD”) and Loveland Fire Rescue Authority (“LFRA”) are independent governmental entities duly organized and existing in accordance with Colorado law are called upon to respond to emergency areas contained within their respective jurisdictions; and

WHEREAS, EVFD and LFRA (collectively, the "Participating Agencies") are called upon to respond to emergencies occurring in areas contained within their respective jurisdictions; and

WHEREAS, the Participating Agencies strive to improve the emergency services provided within their respective jurisdictions through automatic mutual aid responses; and

WHEREAS, the Participating Agencies have defined an area within which they will provide automatic responses to one another, said area is delineated on Exhibit A; and

WHEREAS, notice to the Participating Agencies of fire emergencies in the designated area is made by and through the Participating Agencies' Emergency Communications Centers ("Comm. Centers"); and

WHEREAS, it is the intent and desire of the Participating Agencies to provide an emergency fire response system that meets the health, safety and welfare needs of the affected residents; and

WHEREAS, by the terms Section 1.9 of Article I of that certain Intergovernmental Agreement for the Establishment and Operation of the Loveland Fire Rescue Authority as a Separate Governmental Entity dated August 19, 2011, such agreements must be presented to and approved by the Loveland City Council and the Loveland Rural Fire Protection district; and

WHEREAS, the City Council finds that it is in the best interests of the Fire

Authority to adopt the "Intergovernmental Automatic Response Agreement" attached hereto as **Exhibit A** and incorporated by reference (the "Agreement").

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LOVELAND, AS FOLLOWS:

Section 1. That the Agreement is hereby approved.

Section 2. That the Loveland Fire Authority is hereby authorized and directed to execute the Agreement, subject to such modifications in form or substance as the Fire Chief in consultation with the City Attorney, may deem necessary to effectuate the purposes of this Resolution.

Section 3. That this Resolution shall go into effect as of the date and time of its adoption.

ADOPTED this _____ day of _____, 2013.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

Approved as to form:

Teresa Ablao
Assistant City Attorney

INTERGOVERNMENTAL AUTOMATIC MUTUAL AID AGREEMENT BETWEEN THE LOVELAND FIRE RESCUE AUTHORITY AND THE ESTES VALLEY FIRE PROTECTION DISTRICT

THIS AGREEMENT is made and entered into this 12 day of June 2013, by and between the Estes Valley Fire Protection District, ("EVFPD"), and the Loveland Fire Rescue Authority, ("LFRA"), concerning response to a designated area.

RECITALS

WHEREAS, in accordance with C.R.S. § 29-1-203, governments may cooperate or contract one with another to provide any function, service or facility lawfully authorized to each of the respective units of governments; and

WHEREAS, in accordance with C.R.S. § 29-1-201, governments are permitted and encouraged to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other governments; and

WHEREAS, EVFPD and LFRA (collectively, the "Participating Agencies") are called upon to respond to emergencies occurring in areas contained within their respective jurisdictions; and

WHEREAS, the Participating Agencies strive to improve the emergency services provided within their respective jurisdictions through automatic mutual aid responses; and

WHEREAS, the Participating Agencies have defined an area within which they will provide automatic responses to one another, said area being delineated in Exhibit A; and

WHEREAS, notice to the Participating Agencies of fire and rescue emergencies in the designated area is made by and through the Participating Agencies' Emergency Communications Centers ("Comm, Centers"); and

WHEREAS, it is the intent and desire of the Participating Agencies to provide an emergency fire and rescue response system that meets the health, safety and welfare needs of the affected residents.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the sufficiency of which is hereby acknowledged, the Participating Agencies agree as follows:

AGREEMENT

1. Automatic Response.

a. The Participating Agencies shall provide response to each other for emergencies located in the response area described in Exhibit A, Auto Aid Response Zones, attached hereto and incorporated herein by this reference, upon notification thereof and dispatch thereto by the

Comm. Center receiving the emergency call. The response described herein shall be automatic in nature. The Comm. Centers shall make initial and contemporaneous notification of emergency dispatch to both the fire authority/department within which the emergency has occurred and the fire authority/department responding pursuant to this Agreement.

b. Cancellation of any Participating Agency's unit response shall occur only after coordinated communication between the Participating Agencies on an assigned frequency. The first arriving Participating Agency shall determine whether to cancel the response of the other Participating Agency, or, when all units from a Participating Agency are en route to an emergency call, the Participating Agency having geographic jurisdiction may cancel the response of the other Participating Agency.

2. Purpose. The purpose for such dispatch and the responsibility of the Participating Agency is limited to certain call types and the apparatus response guide shown in Exhibits B, Auto Aid Apparatus Response by EVFPD to LFRA, and C, Auto Aid Apparatus Response by LFRA to EVFPD, attached hereto and incorporated herein by this reference. Response by a Participating Agency to any call type not listed on the attached Exhibits B and C shall be pursuant to additional mutual aid agreements between the Participating Agencies.

3. Good Faith Discussion. In the event the responses outside a Participating Agency's jurisdiction that occur pursuant to this Agreement become a burden, the Participating Agencies agree to discuss, in good faith, amendments to this Agreement and/or other possible resolutions, but in no case shall the proposed resolution be onerous, as determined by the Participating Agencies in their sole subjective discretion, to the respective Participating Agencies.

4. Command. The first arriving EVFPD or LFRA officer-in-charge shall assume command of the incident. The incident commander shall provide in-coming responders with an arrival report and shall instruct them to begin operations. Upon arrival of an officer from the Participating
Agency having jurisdiction, incident command shall be passed to such officer.

5. Liability. The Participating Agencies hereto agree, notwithstanding the provisions of C.R.S. §29-5-108, that during the time that a responding Participating Agency's employees are traveling to the requesting Participating Agency's staging area or command post, any liability which accrues under the provision of the Colorado Governmental Immunity Act, C.R.S. §24-10101, et seq., (the "Act") as a result of a negligent act or omission of any of the responding Participating Agency's employees shall be imposed upon the responding Participating Agency and not the requesting Participating Agency. However, once the responding Participating Agency's employees physically arrive at the requesting Participating Agency's staging area or command post, then, in accordance with the provisions of C.R.S. §29-5-108, any liability which accrues, under the provisions of the Act as a result of a negligent act or omission of the responding Participating Agency's employees while performing duties at that time and thereafter, shall be imposed upon the requesting Participating Agency, not the responding Participating Agency. In addition, the requesting Participating Agency, to the extent permitted by law, agrees to indemnify, defend and hold harmless the responding Participating Agency against any and all judgments, costs, expenses and attorney's fees incurred by the responding Participating Agency

related to its performance under this Agreement that may result from any negligent act or omission by the requesting Participating Agency or by its employees. However, nothing herein shall be deemed a waiver of the notice requirements, defenses, immunities and limitations of liability that any of the Participating Agencies and their respective officers and employees may have under the Act and under any other law,.

6. Benefits. Pursuant to C.R.S. §§29-5-109 and 29-5-110, if any firefighter or other personnel of the responding Participating Agency is injured, disabled or dies as a result of performing services within the boundaries of the requesting Participating Agency, said individual shall remain covered by, and eligible for, the workers compensation and firefighters pension benefits which said individual would otherwise be entitled if the injury, disability or death had occurred within the boundaries of the responding Participating Agency.

7. Compensation. No Participating Agency shall be required to pay any compensation to any other Participating Agency for any services rendered hereunder, the automatic mutual aid and assistance to be afforded under this Agreement being adequate compensation to the Participating Agencies, This Agreement shall not be construed as to limit reasonable compensation as defined in C.R.S. §29-22-104 in response to hazardous materials incidents. The requesting Participating Agency agrees that it will reasonably pursue any legal reimbursement possible, pursuant to state and federal laws and that, upon receipt of any such reimbursement (after subtracting the reasonable costs of pursuing and collecting the reimbursement), will distribute the received funds in a fair and equitable manner to the responding Participating Agencies based upon a pro rata share of their documented expenses.

8. Response Determination. Obligations of the Participating Agencies to respond pursuant to the provisions of this Agreement shall be contingent upon each Participating Agency's determination that the specified equipment and personnel are available for response and that such equipment and personnel are not needed in its own jurisdictions. The responding Participating Agency shall communicate its determination regarding the availability of equipment and personnel to the requesting Participating Agency through the Comm. Center at the time of the request.

9. Term. The terms of this agreement shall continue for a period of one year from the date hereof, and shall be automatically renewed for successive one year periods unless terminated by any Participating Agency with respect to itself.

10. Severability. If any provision of this Agreement, or the application of such provision to any person, entity or circumstance, shall be held invalid, the remainder of this Agreement shall not be affected thereby.

11. Entire Agreement. This Agreement shall not invalidate or otherwise affect any other agreement presently in effect. This Agreement represents the entire agreement of the Participating Agencies with respect to automatic mutual aid and any amendment to this agreement shall be in writing and executed by all the Participating Agencies hereto.

12. 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 Larimer.

13. Assignment. This Agreement shall not be assigned by any of the Participating Agencies hereto.

14. Relationship of Participating Agencies. The Participating Agencies enter into this Agreement as separate and independent governmental entities and each shall maintain such status throughout the term of this Agreement.

15. Effect of Agreement. This Agreement is not intended to, nor should it be construed to, effect or extend the legal responsibilities of any of the Participating Agencies hereto; create or modify any preexisting legal obligations, if any; or create for or extend any of the legal rights to any person. This Agreement shall not be construed as or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action hereunder for any cause whatsoever. Any services performed or expenditures made in connection with furnishing mutual aid under this Agreement by any of the Participating Agencies hereto shall be deemed conclusively to be for the direct protection and benefit of the inhabitants and property of such Participating Agency.

16. Counterparts. This Agreement may be executed in any number of original counterparts, all of which evidence only one agreement. The Participating Agencies agree that counterpart signatures of this Agreement shall be acceptable and that execution of this Agreement in the same form by each and every Participating Agency shall be deemed to constitute full and final execution of this Agreement.

17. Headings. Paragraph headings in this Agreement are for convenience of reference only and shall in no way define, limit or prescribe the scope or intent of any provision of this Agreement,

18. Construction of Agreement. This Agreement shall be construed according to its fair meaning as if it was prepared by all of the Participating Agencies hereto and shall be deemed to be and contain the entire Agreement between the Participating Agencies hereto. There shall be deemed to be no other terms, conditions, promises, understandings, statements or representations, expressed or implied, concerning this Agreement, unless set forth in writing and signed by all of the Participating Agencies hereto,

19. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Participating Agencies hereto and the respective successors and permitted assigns,

20. Termination. Any Participating Agency may terminate this Agreement, with or without cause, upon thirty days prior written notice to all other Participating Agencies to this Agreement.

21. Notices. Any notice under this Agreement to a Participating Agency shall be effective upon receipt at the addresses set forth below.

Loveland Fire Rescue Authority: Fire Chief
410 East Fifth Street
Loveland, Colorado 80537

and

City Attorney's Office
500 East Third Street, Suite 330
Loveland, Colorado 80537

Estes Valley Fire Protection District: Fire Chief
901 North Saint Vrain Ave.
Estes Park, Colorado 80517

IN WITNESS WHEREOF, the Participating Agencies have executed this Agreement the day and year first above written.

LOVELAND FIRE RESCUE AUTHORITY:

_____
By: Board Chair

ATTEST:

_____
Board Secretary

Approved as to Form:

_____
Assistant City Attorney

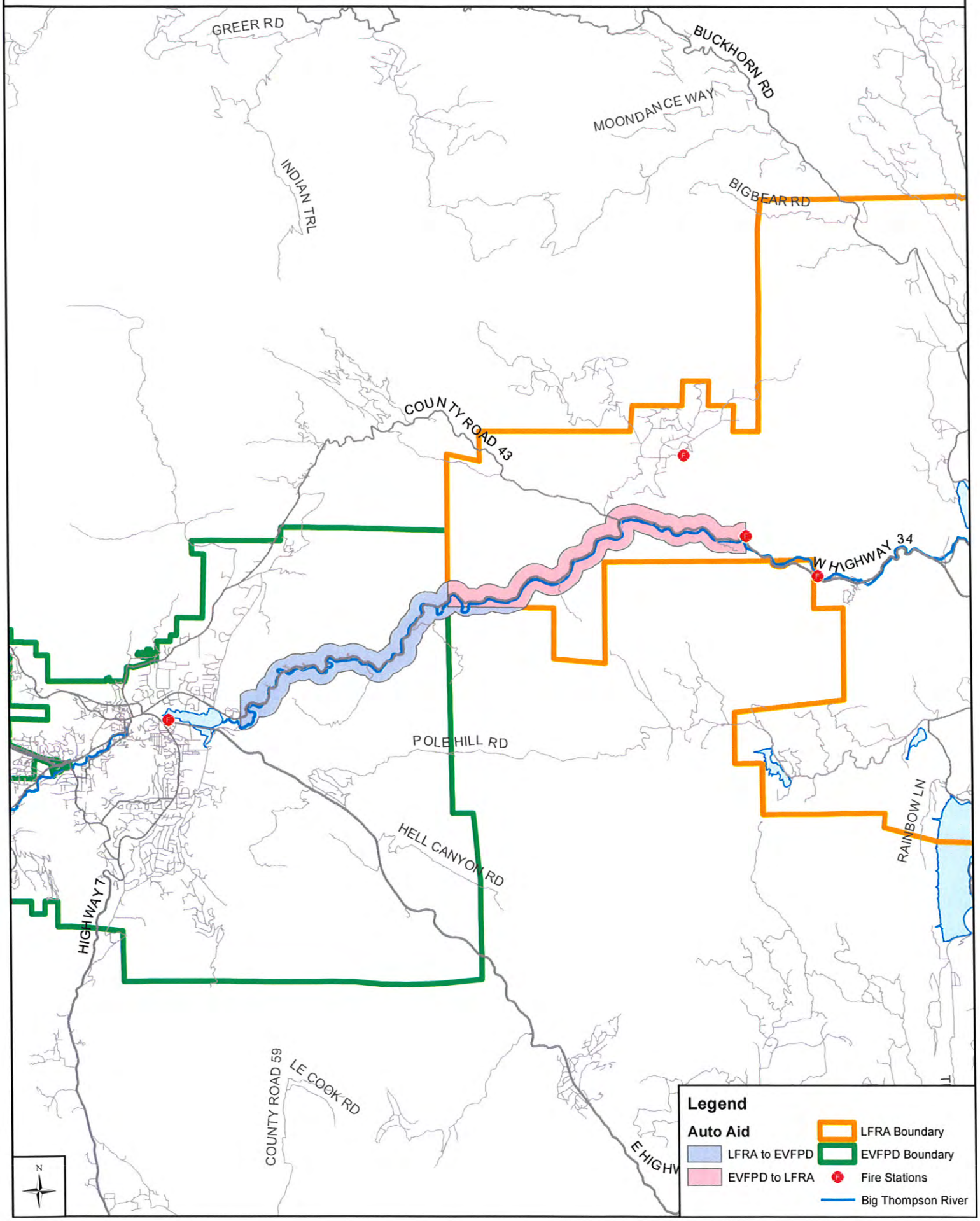
ESTES VALLEY FIRE PROTECTION DISTRICT:

_____
By: Board President

ATTEST:

_____
Board Secretary

Auto aid to Estes Valley Fire Protection District from Loveland Fire Rescue Authority



Estes Valley Fire District – Loveland Fire Rescue Authority Automatic Aid Agreement

Exhibits B and C

Responses covered in the Automatic Aid Agreement include;

- Structure Fires
- Wildland Fires
- Dive Rescue Incidents

Estes Valley Fire District responding to Loveland Fire Rescue Authority – Apparatus Response

- Structure Fire – One Type 1 Engine Company
- Wildland Fire – One Type 3 or Type 6 Engine Company
- Dive Rescue Incident – Dive Rescue Truck and Dive Rescue Personnel

Loveland Fire Rescue Authority responding to Estes Valley Fire District - Apparatus Response

- Structure Fire – One Loveland Type 1 Engine Company, one Loveland Battalion Chief and Page sent to the Big Thompson Canyon VFD for response *
- Wildland Fire – One Loveland Type 6 Engine Company, one Loveland Battalion Chief and page sent to the Big Thompson Canyon VFD for response *
- Dive Rescue Incident - Loveland Dive Rescue Truck, Loveland Special Operations Personnel, one Loveland Battalion Chief and a page sent to the Big Thompson Canyon VFD for response

* Loveland apparatus may cancel response if the Big Thompson Canyon VFD responds with adequate resources; this determination will be made by the Incident Commander, Loveland Battalion Chief or responding Estes Valley Fire Officer.

CITY OF LOVELAND
LOVELAND FIRE RESCUE AUTHORITY
Administration Offices • 410 East Fifth Street • Loveland, Colorado 80537
(970) 962-2471 • FAX (970) 962-2922 • TDD (970) 962-2620

AGENDA ITEM: **11**
MEETING DATE: 8/6/2013
TO: City Council
FROM: Randy Mirowski, Loveland Fire Rescue Authority
PRESENTER: Randy Mirowski, Fire Chief

TITLE:
A Resolution Approving an Intergovernmental Automatic Mutual Aid Agreement Between the Loveland Fire Rescue Authority and the Johnstown Fire Protection District

RECOMMENDED CITY COUNCIL ACTION:
Adopt the resolution.

OPTIONS:
1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

SUMMARY:
This is an administrative action. The resolution would approve an intergovernmental automatic mutual aid agreement between the Loveland Fire Rescue Authority (LFRA) and the Johnstown Fire Protection District. The agreement was approved by the LFRA Board on July 11, 2013. The intergovernmental agreement that established the LFRA requires that auto and mutual aid agreements be approved by the City.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible

BACKGROUND:
An automatic aid agreement provides that both LFRA and the Johnstown Fire Protection District will be dispatched to an emergency response within a particular response area. It is a standard agreement necessary to ensure that there are policies and procedures in place for automatic response from each organization within a designated response area presented in a color-coded map (Exhibit A of the agreement).

This agreement:

- Clarifies the area of auto response;
- Establishes roles and responsibilities;
- Establishes procedures for cooperation and coordination;
- States liability and workers compensation coverage;
- Provides no compensation for services;
- Provides for response determination in terms of availability;
- Sets the term for one year renewable annually; and
- Sets procedures for termination of the agreement by either party.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

Resolution
Agreement

RESOLUTION # R-57-2013

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AUTOMATIC MUTUAL AID AGREEMENT BETWEEN THE LOVELAND FIRE RESCUE AUTHORITY AND THE JOHNSTOWN FIRE PROTECTION DISTRICT

WHEREAS, in accordance with section §29-1-203 of the Colorado Revised Statutes, governments may cooperate or contract one with another to provide any function, service or facility lawfully authorized to each of the respective units of governments; and

WHEREAS, in accordance with C.R.S. §29-1 -201, governments are permitted and encouraged to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other governments; and

WHEREAS, the Johnstown Fire Protection District (“JFPD”) and Loveland Fire Rescue Authority (“LFRA”) are independent governmental entities duly organized and existing in accordance with Colorado law are called upon to respond to emergency areas contained within their respective jurisdictions; and

WHEREAS, JFPD and LFRA (collectively, the "Participating Agencies") are called upon to respond to emergencies occurring in areas contained within their respective jurisdictions; and

WHEREAS, the Participating Agencies strive to improve the emergency services provided within their respective jurisdictions through automatic mutual aid responses; and

WHEREAS, the Participating Agencies have defined an area within which they will provide automatic responses to one another, said area is delineated on Exhibit A; and

WHEREAS, notice to the Participating Agencies of fire emergencies in the designated area is made by and through the Participating Agencies' Emergency Communications Centers ("Comm. Centers"); and

WHEREAS, it is the intent and desire of the Participating Agencies to provide an emergency fire response system that meets the health, safety and welfare needs of the affected residents; and

WHEREAS, by the terms Section 1.9 of Article I of that certain Intergovernmental Agreement for the Establishment and Operation of the Loveland Fire Rescue Authority as a Separate Governmental Entity dated August 19, 2011, such agreements must be presented to and approved by the Loveland City Council and the Loveland Rural Fire Protection district; and

WHEREAS, the City Council finds that it is in the best interests of the Fire

Authority to adopt the "Intergovernmental Automatic Mutual Aid Agreement" attached hereto as **Exhibit A** and incorporated by reference (the "Agreement").

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF LOVELAND, AS FOLLOWS:

Section 1. That the Agreement is hereby approved.

Section 2. That the Loveland Fire Authority is hereby authorized and directed to execute the Agreement, subject to such modifications in form or substance as the Fire Chief in consultation with the City Attorney, may deem necessary to effectuate the purposes of this Resolution.

Section 3. That this Resolution shall go into effect as of the date and time of its adoption.

ADOPTED this _____ day of _____, 2013.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

Approved as to form:

Teresa Ablao
Assistant City Attorney

INTERGOVERNMENTAL AUTOMATIC MUTUAL AID AGREEMENT BETWEEN THE LOVELAND FIRE RESCUE AUTHORITY AND THE JOHNSTOWN FIRE PROTECTION DISTRICT

THIS AGREEMENT is made and entered into this _____day of _____ 2013, by and between the Johnstown Fire Protection District ("JFPD") and the Loveland Fire Rescue Authority, ("LFRA"), concerning response to a designated area.

RECITALS

WHEREAS, in accordance with C.R.S. § 29-1-203, governments may cooperate or contract one with another to provide any function, service or facility lawfully authorized to each of the respective units of governments; and

WHEREAS, in accordance with C.R.S. § 29-1-201, governments are permitted and encouraged to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other governments; and

WHEREAS, JFPD and LFRA (collectively, the "Participating Agencies") are called upon to respond to emergencies occurring in areas contained within their respective jurisdictions; and

WHEREAS, the Participating Agencies strive to improve the emergency services provided within their respective jurisdictions through automatic mutual aid responses; and

WHEREAS, the Participating Agencies have defined an area within which they will provide automatic responses to one another, said area being delineated in Exhibit A; and

WHEREAS, notice to the Participating Agencies of fire and rescue emergencies in the designated area is made by and through the Participating Agencies' Emergency Communications Centers ("Comm, Centers"); and

WHEREAS, it is the intent and desire of the Participating Agencies to provide an emergency fire and rescue response system that meets the health, safety and welfare needs of the affected residents.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the sufficiency of which is hereby acknowledged, the Participating Agencies agree as follows:

AGREEMENT

1. Automatic Response.

a. The Participating Agencies shall provide response to each other for emergencies located in the response area described in Exhibit A, Auto Aid Response Zones, attached hereto

and incorporated herein by this reference, upon notification thereof and dispatch thereto by the Comm. Center receiving the emergency call. The response described herein shall be automatic in nature. The Comm. Centers shall make initial and contemporaneous notification of emergency dispatch to both the fire authority/department within which the emergency has occurred and the fire authority/department responding pursuant to this Agreement.

b. Cancellation of any Participating Agency's unit response shall occur only after coordinated communication between the Participating Agencies on an assigned frequency. The first arriving Participating Agency shall determine whether to cancel the response of the other Participating Agency, or, when all units from a Participating Agency are en route to an emergency call, the Participating Agency having geographic jurisdiction may cancel the response of the other Participating Agency.

2. Purpose. The purpose for such dispatch and the responsibility of the Participating Agency is limited to certain call types and the apparatus response guide shown in Exhibits B, Auto Aid Apparatus Response by JFPD to LFRA, and C, Auto Aid Apparatus Response by LFRA to JFPD, attached hereto and incorporated herein by this reference. Response by a Participating Agency to any call type not listed on the attached Exhibits B and C shall be pursuant to additional mutual aid agreements between the Participating Agencies.

3. Good Faith Discussion. In the event the responses outside a Participating Agency's jurisdiction that occur pursuant to this Agreement become a burden, the Participating Agencies agree to discuss, in good faith, amendments to this Agreement and/or other possible resolutions, but in no case shall the proposed resolution be onerous, as determined by the Participating Agencies in their sole subjective discretion, to the respective Participating Agencies.

4. Command. The first arriving JFPD or LFRA officer-in-charge shall assume command of the incident. The incident commander shall provide in-coming responders with an arrival report and shall instruct them to begin operations. Upon arrival of an officer from the Participating Agency having jurisdiction, incident command shall be passed to such officer.

5. Liability. The Participating Agencies hereto agree, notwithstanding the provisions of C.R.S. §29-5-108, that during the time that a responding Participating Agency's employees are traveling to the requesting Participating Agency's staging area or command post, any liability which accrues under the provision of the Colorado Governmental Immunity Act, C.R.S. §24-10101, et seq., (the "Act") as a result of a negligent act or omission of any of the responding Participating Agency's employees shall be imposed upon the responding Participating Agency and not the requesting Participating Agency. However, once the responding Participating Agency's employees physically arrive at the requesting Participating Agency's staging area or command post, then, in accordance with the provisions of C.R.S. §29-5-108, any liability which accrues, under the provisions of the Act as a result of a negligent act or omission of the responding Participating Agency's employees while performing duties at that time and thereafter, shall be imposed upon the requesting Participating Agency, not the responding Participating Agency. In addition, the requesting Participating Agency, to the extent permitted by law, agrees to indemnify, defend and hold harmless the responding Participating Agency against any and all judgments, costs, expenses and attorney's fees incurred by the responding Participating Agency

related to its performance under this Agreement that may result from any negligent act or omission by the requesting Participating Agency or by its employees. However, nothing herein shall be deemed a waiver of the notice requirements, defenses, immunities and limitations of liability that any of the Participating Agencies and their respective officers and employees may have under the Act and under any other law,.

6. Benefits. Pursuant to C.R.S. §§29-5-109 and 29-5-110, if any firefighter or other personnel of the responding Participating Agency is injured, disabled or dies as a result of performing services within the boundaries of the requesting Participating Agency, said individual shall remain covered by, and eligible for, the workers compensation and firefighters pension benefits which said individual would otherwise be entitled if the injury, disability or death had occurred within the boundaries of the responding Participating Agency.

7. Compensation. No Participating Agency shall be required to pay any compensation to any other Participating Agency for any services rendered hereunder, the automatic mutual aid and assistance to be afforded under this Agreement being adequate compensation to the Participating Agencies, this Agreement shall not be construed as to limit reasonable compensation, as defined in C.R.S. §29-22-104, in response to hazardous materials incidents. The requesting Participating Agency agrees that it will reasonably pursue any legal reimbursement possible, pursuant to state and federal laws and that, upon receipt of any such reimbursement (after subtracting the reasonable costs of pursuing and collecting the reimbursement), will distribute the received funds in a fair and equitable manner to the responding Participating Agencies based upon a pro rata share of their documented expenses.

8. Response Determination. Obligations of the Participating Agencies to respond pursuant to the provisions of this Agreement shall be contingent upon each Participating Agency's determination that the specified equipment and personnel are available for response and that such equipment and personnel are not needed in its own jurisdictions. The responding Participating Agency shall communicate its determination regarding the availability of equipment and personnel to the requesting Participating Agency through the Comm. Center at the time of the request.

9. Term. The terms of this agreement shall continue for a period of one year from the date hereof, and shall be automatically renewed for successive one year periods unless terminated by any Participating Agency with respect to itself.

10. Severability. If any provision of this Agreement, or the application of such provision to any person, entity or circumstance, shall be held invalid, the remainder of this Agreement shall not be affected thereby.

11. Entire Agreement. This Agreement shall not invalidate or otherwise affect any other agreement presently in effect. This Agreement represents the entire agreement of the Participating Agencies with respect to automatic mutual aid and any amendment to this agreement shall be in writing and executed by all the Participating Agencies hereto.

12. 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 Larimer.

13. Assignment. This Agreement shall not be assigned by any of the Participating Agencies hereto.

14. Relationship of Participating Agencies. The Participating Agencies enter into this Agreement as separate and independent governmental entities and each shall maintain such status throughout the term of this Agreement.

15. Effect of Agreement. This Agreement is not intended to, nor should it be construed to, effect or extend the legal responsibilities of any of the Participating Agencies hereto; create or modify any preexisting legal obligations, if any; or create for or extend any of the legal rights to any person. This Agreement shall not be construed as or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action hereunder for any cause whatsoever. Any services performed or expenditures made in connection with furnishing mutual aid under this Agreement by any of the Participating Agencies hereto shall be deemed conclusively to be for the direct protection and benefit of the inhabitants and property of such Participating Agency.

16. Counterparts. This Agreement may be executed in any number of original counterparts, all of which evidence only one agreement. The Participating Agencies agree that counterpart signatures of this Agreement shall be acceptable and that execution of this Agreement in the same form by each and every Participating Agency shall be deemed to constitute full and final execution of this Agreement.

17. Headings. Paragraph headings in this Agreement are for convenience of reference only and shall in no way define, limit or prescribe the scope or intent of any provision of this Agreement,

18. Construction of Agreement. This Agreement shall be construed according to its fair meaning as if it was prepared by all of the Participating Agencies hereto and shall be deemed to be and contain the entire Agreement between the Participating Agencies hereto. There shall be deemed to be no other terms, conditions, promises, understandings, statements or representations, expressed or implied, concerning this Agreement, unless set forth in writing and signed by all of the Participating Agencies hereto.

19. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Participating Agencies hereto and the respective successors and permitted assigns.

20. Termination. Any Participating Agency may terminate this Agreement, with or without cause, upon thirty days prior written notice to all other Participating Agencies to this Agreement.

21. Notices. Any notice under this Agreement to a Participating Agency shall be effective upon receipt at the addresses set forth below.

Loveland Fire Rescue Authority: Fire Chief
410 East Fifth Street
Loveland, Colorado 80537

and

City Attorney's Office
500 East Third Street, Suite 330
Loveland, Colorado 80537

Johnstown Fire Protection District: Fire Chief
100 Telep Avenue
Johnstown, CO 80534

IN WITNESS WHEREOF, the Participating Agencies have executed this Agreement the day and year first above written.

LOVELAND FIRE RESCUE AUTHORITY:

_____
By: Board Chair

ATTEST:

_____
Board Secretary

Approved as to Form:

_____
Assistant City Attorney

JOHNSTOWN FIRE PROTECTION DISTRICT:

_____
By: Board Chair

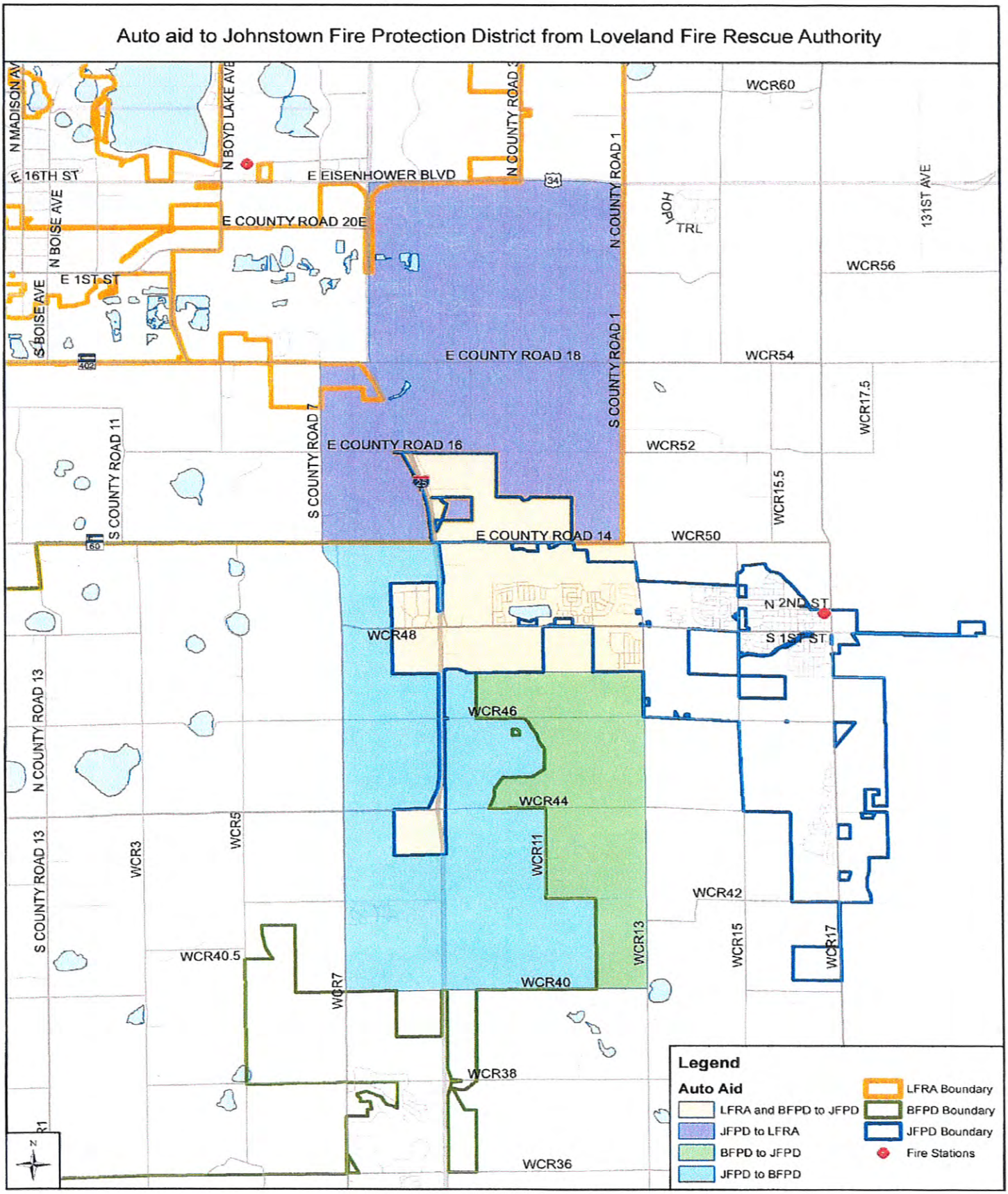
ATTEST:

_____
Board Secretary

Approved as to Form:

_____
Assistant City Attorney

"JFPD-LFRA Auto Aid Response Area"



EHIBIT "A" Auto Aid Response Zones

Boundaries North to Hwy 34, West to Interstate 25, until Hwy 402, (aka E Country Road 18), West to S. County Road 7, at E County Road 14 East to Interstate 25, including the Gateway Commercial Development on the West Side of I-25, South to Weld County Road 46, East to Weld County Road 13 are depicted on the map entitled **"JFPD-LFRA Auto Aid Response Area"**, a copy of which is held on file at the Administrative offices of Loveland Fire Rescue Authority and the Johnstown Fire Protection District and is available for inspection by any party at any time during normal business hours.

EXIBIT "B" Auto Aid Apparatus Response by LFRA to JFPD

Structure Fire or Structures Threatened	1-Engine emergent response

EXIBIT "C" Auto Aid Apparatus Response by JFPD to LFRA

Structure Fire or Structures Threatened	1-Engine emergent response

Any aid requested other than the call type listed above must be done through a mutual aid agreement process.

CITY OF LOVELAND
PARKS & RECREATION DEPARTMENT
Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2303 • FAX (970) 962-2903 • TDD (970) 962-2620

AGENDA ITEM: **12**
MEETING DATE: 8/6/2013
TO: City Council
FROM: Gary Havener, Parks and Recreation Department
PRESENTER: Janet Meisel-Burns, Project Manager

TITLE:

1. Motion to Approve An Amendment to the Services Contract with Logan Simpson Design, Inc., to Increase the Fees for Mehaffey Park Design and Engineering Services from a "not to Exceed Amount of $714,000" to a "not to Exceed Amount of $769,623" and to Authorize the City Manager to Execute the Contract Amendment on Behalf of the City

2. Motion to Authorize the City Manager to Amend the Contract with Environmental Concerns, Inc., Site Construction Management, Inc. as the Construction Manager/General Contractor (CM/GC) for the Guaranteed Maximum Price (GMP #1) of $2.9 Million for Site Work and to Initiate Construction of the Mehaffey Park Project

RECOMMENDED CITY COUNCIL ACTION:

Approve the motions.

OPTIONS:

1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (as outlined below)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

SUMMARY:

1. This is an administrative action. Logan Simpson Design, Inc. has completed the Mehaffey Park Design & Master Plan and had to re-design and modify plans outside of their original scope. The amended contract will address the fee increases and set aside an allowance for construction administration during the yearlong construction process. These fees are typical for similar park construction projects. Staff feels additional administrative fees will be needed to complete the construction of the park. These fees will be billed on a time and materials basis.

2. This is an administrative action. Environmental Concerns, Inc., Site Construction Management, Inc. has completed the competitive bidding process to determine the Guaranteed Maximum Price for the construction of Mehaffey Park. The recommended

action includes initiating construction of site work including: over lot grading, erosion control, primary and partial electric, all wet utilities and mobilization. This will be GMP #1 with a second GMP to be considered upon completion of an additional bid review.

BUDGET IMPACT:

☐ Positive

☐ Negative

☒ Neutral or negligible

No supplemental funding is required for the design fee increases or GMP #1 Award Construction. The Mehaffey Park Project has a current budget of $7,669,500 sufficient for both administrative actions.

BACKGROUND:

Mehaffey Park was envisioned over 16 years ago and is budgeted for construction this year. An additional land purchase delayed the project by six months and with the addition of the new parcel, it required a partial redesign of the Master Plan. Tremendous community involvement in workshops and interest in what amenities were to be included in the park has also added to the scope and need for additional design, engineering, and development review changes.

Funding to address the increase in design fees can be accommodated in the 2013 appropriated budget for the project. The percentage of fees has increased from 6.75% of the estimated cost of construction to 7.32%, which is still under the industry standard of 8-10% based on the cost of construction.

The current appropriated budget available for construction of the park is $7.6 million. After recently receiving bids, staff and the consultant team determined that additional time is needed to completely analyze quotes and availability of the different contractors to meet schedule needs for the project. GMP #1 covers the over lot grading and utilities installation for the park, which is needed for either a phased or full-build out of the park. The sub-contractor for the site work is local and can start construction immediately, which will give the consultant team time to evaluate the other bids and sub-contractor schedules without delaying the yearlong park construction. Initiating site work, as early as possible, is very important to complete much of the site work prior to winter weather delays and allows other construction trade work to begin at the park.

Based on preliminary bid tabulation, the Mehaffey Park project budget is underfunded to complete full build out of the master plan as designed and bid. Staff will present an option to continue with construction as a multi-year phased construction concept or appropriate additional funds for full-build out for Council consideration at a future Council meeting.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:
None

CITY OF LOVELAND
CITY CLERKS OFFICE
Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2322 • FAX (970) 962-2901 • TDD (970) 962-2620

AGENDA ITEM: **13**
MEETING DATE: 8/6/2013
TO: City Council
FROM: Terry Andrews, City Clerk
PRESENTER: Terry Andrews

TITLE:
An Emergency Ordinance of the City Council of the City of Loveland Authorizing the City Clerk to Issue Temporary Vendors Licenses Under Code Chapter 12.30 To Persons Operating Ice Cream Trucks

RECOMMENDED CITY COUNCIL ACTION:
Conduct a public hearing and approve the ordinance.

SUMMARY:
This is a legislative action. The ordinance will authorize the City Clerk to issue to ice cream truck operators a temporary license to sell their products from the City's streets. The licensees will not be allowed to sell product within City parks or on roads adjacent to City parks. Licensees will be subject to all other restrictions in Code Chapter 12.30 for vendors, as well as, additional restrictions in the ordinance.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible

BACKGROUND:
At Council's direction, staff is presenting an emergency ordinance regarding mobile vendors, specifically ice cream trucks. The ordinance defines an "ice cream truck" and contains some additional conditions and restrictions, such as serving only from a legally parked vehicle to customers on the sidewalk. The ordinance allows the issuance of a non-transferrable license to ice cream truck operators that would expire on January 1, 2014. The ordinance also directs staff to review Chapter 12.30 and bring back to Council proposed amendments that would allow ice cream trucks and other mobile food trucks to conduct their businesses on the street portion of the City's public rights-of-way in 2014 and thereafter.

This ordinance is being presented to Council as an emergency ordinance and would take effect immediately upon adoption by a vote of six or more councilmembers.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

Emergency Ordinance

FIRST AND ONLY READING: August 6, 2013

ORDINANCE #_____

AN EMERGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOVELAND AUTHORIZING THE CITY CLERK TO ISSUE TEMPORARY VENDORS LICENSES UNDER CODE CHAPTER 12.30 TO PERSONS OPERATING ICE CREAM TRUCKS

WHEREAS, under City Code Chapter 12.30, persons desiring to sell goods and services within and on the City's public rights-of-way are currently required to obtain a vendors license from the City Clerk before doing so; and

WHEREAS, Code Section 12.30.090 places several restrictions on licensed vendors selling within the City's public rights-of-way, including the prohibition in paragraph C. of that section on conducting "any business out of any motor vehicle, stand, cart or otherwise upon the street portion of any public right-of-way"; and

WHEREAS, this prohibition currently prevents operators of ice cream trucks who desire to sell their products from their vehicles within and on the street portion of the City's public rights-of-way from obtaining a vendors license under Chapter 12.30; and

WHEREAS, the City Council desires to see this restriction temporarily lifted for the remainder of 2013 pending an evaluation and review of Chapter 12.30 by the City Manager and the City Attorney to determine and make recommendations to the Council by the end of this year whether changes should be made to Chapter 12.30 to allow, beginning in 2014, the operators of ice cream trucks and the operators of other motor vehicles and towed vehicles selling food products to operate within and on the street portion of the City's public rights-of-way; and

WHEREAS, the purposes and intent of this Ordinance are therefore the following: (1) to authorize the City Clerk to issue operators of ice cream trucks temporary vendors licenses under Chapter 12.30 that would be valid through December 31, 2013, subject to all applicable requirements and restrictions in Chapter 12.30, except as otherwise provided in this Ordinance; (2) to suspend through December 31, 2013, the application and enforcement of Code Section 12.30.090.C. to licensed vendors operating ice cream trucks on the street portion of the City's public rights-of-way subject to all applicable restrictions in Chapter 12.30 and this Ordinance; and (3) to direct the City Manager and City Attorney to evaluate and review Chapter 12.30 and report back to Council by the end of this year with possible amendments to Chapter 12.30 that in 2014 and thereafter would allow the issuance of vendors licenses to operators of ice cream trucks and other mobile vendors selling food products and to allow them to conduct their businesses on the street portion of the City's public rights-of-way; and

WHEREAS, Loveland Charter Section 4-10 authorizes the City Council adopt emergency ordinances at one reading that go into effect immediately upon an affirmative vote of at least six (6) members of the Council; and

WHEREAS, the City Council hereby finds and determines that an emergency exists requiring immediate passage of this Ordinance in order to allow ice cream trucks to be operated on the street portion of the City's public rights-of-way during what remains of this summer season as an amenity to Loveland's residents.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO, as follows:

Section 1. That the recitals of this Ordinance are hereby adopted as the City Council's findings.

Section 2. That the words, terms and phrases used in this Ordinance shall have the meaning given to them in Code Chapter 12.30. In addition, the following words and terms shall have following meanings:

A. "Food" shall mean any item intended for human consumption, including beverages.

B. "City park" shall mean any area, field, trail, open land, golf course, or any other recreational facility operated, managed and supervised by the City's Parks and Recreation Department.

C. "Ice cream truck" shall mean any motor vehicle or towed vehicle designed to be operated on a public street and used to sell primarily ice cream and similar frozen foods and novelties to the public, such as shaved ice and snow cones, but shall not include any vehicle used to sell to the public food cooked on the vehicle.

D. "Mobile food truck" shall mean any motor vehicle or towed vehicle designed to be operated on a public street and used to sell to the public any kind of food, whether cooked on the vehicle or not.

Section 3. Notwithstanding any provision in Chapter 12.30 to the contrary, any person desiring to operate an ice cream truck on the street portion of the City's public rights-of-way may apply to the City Clerk for a vendor's license under Chapter 12.30 and under this Ordinance and, if the application requirements of Chapter 12.30 and this Ordinance are satisfied as determined by the City Clerk, the City Clerk shall issue a vendors license to that applicant. Once licensed, a vendor may operate an ice cream truck on the street portion of the City's public rights-of-way provided the vendor does so in compliance with and subject to all of the following conditions and restrictions:

A. All licenses issued under this Ordinance shall expire on January 1, 2014.

B. Licenses issued under this Ordinance need not specify a specific location or locations of operation as required in Chapter 12.30.

C. A vendor licensed under this Ordinance shall operate under that license in full compliance with all applicable provisions of Chapter 12.30.

D. A license issued under this Ordinance may not be transferred by the vendor to another person.

E. A vendor shall not operate an ice cream truck within a city park or sell from a city street directly abutting a city park unless the vendor is doing so under a concessionaire agreement with the City.

F. Vendors shall only serve their products from an ice cream truck to customers located on an immediately adjacent sidewalk and shall not serve customers located in the street portion of the City's public rights-of-way or in adjacent public parking spaces.

G. When a vendor is serving customers from an ice cream truck, the vehicle must be at a complete stop, the transmission must be in park or the engine must be turned off and the transmission in gear if the truck has a standard transmission, the emergency brake must engaged, and the vehicle must be legally parked.

H. Any license issued under this Ordinance may be suspended or revoked by the City Clerk in accordance with City Code Section 12. 30.110 as a result of the vendor's violation of any provision of Chapter 12.30 or of this Ordinance. Any such violation by a vendor may also be enforced and punished in accordance with the provisions of City Code Chapter 1.12

Section 4. That the City Manager and City Attorney are hereby directed to evaluate and review Chapter 12.30 for possible amendments that would allow in 2014 and thereafter the issuance of vendors licenses to operators of ice cream trucks and mobile food trucks and allow them to conduct their businesses on the street portion of the City's public rights-of-way. The City Manager and City Attorney are to report back to Council with their proposed amendments to Chapter 12.30 by the end of this year.

Section 5. That pursuant to City Charter Section 4-10(b), this Ordinance shall become effective immediately upon its adoption by the City Council. The City Clerk shall publish this Ordinance in full after its adoption.

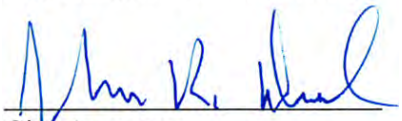
Adopted this 6th day of August, 2013.

_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:



City Attorney

CITY OF LOVELAND
WATER & POWER DEPARTMENT
200 North Wilson • Loveland, Colorado 80537
(970) 962-3000 • FAX (970) 962-3400 • TDD (970) 962-2620

AGENDA ITEM: **14**
MEETING DATE: 8/6/2013
TO: City Council
FROM: Russel Jentges, Water & Power Department
PRESENTER: Russel Jentges

TITLE:
A Resolution Approving a Wheeling Agreement Among the City of Loveland, Public Service Company of Colorado, and Platte River Power Authority

RECOMMENDED CITY COUNCIL ACTION:
Adopt the resolution on first reading.

OPTIONS:
1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

SUMMARY:
This is an administrative action. The resolution would approve a new Wheeling Agreement among the City, Public Service Company of Colorado (PSCo), and Platte River Power Authority (Platte River). This Wheeling Agreement will replace the existing agreement among the parties dated June 20, 2005. Both PSCo and Platte River have approved and signed the Wheeling Agreement.

BUDGET IMPACT:
☒ Positive
☐ Negative
☐ Neutral or negligible

The Power Enterprise will benefit from this approval of the wheeling agreement by updating the rates and fees charged to PSCo for the use of our equipment and services.

BACKGROUND:

For decades, the City, PSCo, and Platte River have been parties to an agreement whereby the City delivers power and energy to PSCo from certain delivery points on the City's distribution system so that PSCo can serve its customers located near to but outside of the City of Loveland. The current Wheeling Agreement was entered into on June 20, 2005. The new Wheeling Agreement would replace the 2005 agreement and make the following major changes: (i) update the service points and load required at each point; (ii) update the rates; and (ii) change the conditions related to the provision of service under emergency conditions. The Loveland Utilities Commission considered this item on June 19, 2013, and unanimously recommended that City Council approve the new Wheeling Agreement.

Pursuant to City Code, all utility rates, charges, and fees must be approved by City Council upon two readings of the resolution. Because the Wheeling Agreement sets an electric rate for PSCo, this resolution is being presented to City Council for two readings.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

Resolution
Wheeling Agreement (Exhibit A to the Resolution)

FIRST READING August 6, 2013

SECOND READING _____

RESOLUTION #R-58-2013

A RESOLUTION APPROVING A WHEELING AGREEMENT AMONG THE CITY OF LOVELAND, COLORADO, PUBLIC SERVICE COMPANY OF COLORADO, AND PLATTE RIVER POWER AUTHORITY

WHEREAS, the City of Loveland, Colorado ("City"), Public Service Company of Colorado ("PSCo"), and Platte River Power Authority desire to contract with one another to provide for delivery of power and energy by the City to PSCo at 12.47 from certain delivery points on the City's distribution system subject to the terms and conditions set forth in the Wheeling Agreement attached hereto as Exhibit A and incorporated herein by reference ("Wheeling Agreement"); and

WHEREAS, the Wheeling Agreement establishes a rate to be paid by PSCo for use of the City's distribution system thereunder; and

WHEREAS, governmental entities are authorized, pursuant to C.R.S. § 29-1-203, to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each.

WHEREAS, the City Council desires to approve the Wheeling Agreement on behalf of the City; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That the Wheeling Agreement is hereby approved.

Section 2. That the City Manager is hereby authorized, following consultation with the City Attorney, to modify the Wheeling Agreement in form or substance as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

Section 3. That the City Manager and the City Clerk are hereby authorized and directed to execute the Wheeling Agreement on behalf of the City.

Section 4. That this Resolution shall be effective as of the date of its adoption on second reading.

ADOPTED this ___ day of August, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

WHEELING AGREEMENT

THIS WHEELING AGREEMENT ("**Agreement**") is entered into this _____ day of _____, 2013, by and among the **City of Loveland, Colorado** ("**City**"), **Public Service Company of Colorado** ("**PSCo**"), and **Platte River Power Authority** ("**Platte River**") (collectively, the "**Parties**"). This Agreement generally provides for the delivery of power and energy by the City to PSCo at 12.47 kV from certain delivery points on the City's distribution system. The City simultaneously receives such power and energy from Platte River's 115 kV system. Transmission wheeling arrangements between Platte River and PSCo are set forth in the Network Integration Transmission Service Agreement effective April 12, 2007. This Agreement replaces in its entirety the Wheeling Agreement between the Parties dated June 20, 2005.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Delivery Points:**

   a. Delivery Points from the City to PSCo shall be designated and maintained by the Parties as set forth on **Exhibit A**, attached hereto and incorporated herein by reference.

   b. Delivery Points may be removed or added, and the maximum kW levels may be modified by PSCo and the City upon written agreement. For the purposes of this Section, written agreement shall mean execution by PSCo and the City of a revised Exhibit A. PSCo shall provide the City with a list of all proposed changes to Exhibit A on or before March 1 of each year, and PSCo and the City shall meet within thirty (30) days following such submission to review the proposed changes. Notwithstanding the foregoing, PSCo and the City may approve changes to Exhibit A at any time by written agreement. The City expressly delegates authority to its Director of Water and Power to approve any such changes on behalf of the City.

2. **Services and Facilities Provided by PSCo:**

   a. PSCo owns and shall operate and maintain, at no expense to the City, all of the necessary facilities (including, but not limited to, voltage regulators, switches, protective devices, metering equipment, telemetry systems, and its own distribution lines) to establish the Delivery Points and from the Delivery Points to PSCo's customers. PSCo's equipment shall be capable of converting a nominal 7200/12470 grounded wye voltage to PSCo's utilization voltage. PSCo shall own, operate, and maintain the billing meters that measure the power and energy delivered by the City to the Delivery Points.

   b. Metering equipment shall be suitable for remote reading via a telemetry and Supervisory Control and Data Acquisition ("**SCADA**") system that meets the

approval of the City and Platte River. The installed cost of the metering equipment and SCADA system shall be borne by PSCo.

c. PSCo shall be solely responsible for delivering power of the proper voltage, phase, and quality to its customers.

d. PSCo shall be responsible for maintaining a power factor greater than 0.95 lagging or leading at each Delivery Point, as measured by PSCo's meters. During the months of July and August of each year, power registering at PSCo's meters at a power factor of less than 0.95 lagging or leading will be billed as outlined in **Exhibit B**, attached hereto and incorporated herein by reference.

e. PSCo shall be responsible for balancing its customer load between phases at all Delivery Points. Current balance shall be calculated by dividing the maximum deviation between phases by the average of the three phases. The current balance shall not exceed twenty percent (20%). Current balance shall be measured monthly by the City's meters. The City may elect to measure current balance at other Delivery Points. If the City does measure current balance at other Delivery Points, PSCo shall be responsible for maintaining a current balance that does not exceed Twenty percent (20%) as measured in accord with this paragraph.

3. Services and Facilities Provided By the City:

a. The City grants to PSCo a license for the term of this Agreement for the joint use of the City's electric distribution line right-of-way and poles for PSCo's SCADA/telemetry circuits.

b. The City grants to PSCo a license for the term of this Agreement for the joint use of the City's electric distribution right-of-way and 22 kV distribution line poles for the underbuild of a 13.2 kV three phase circuit from the West Delivery Point to the west side of Namaqua Road complete with placement of delivery tap structures and equipment within the first 100 feet west of the West Substation fence. The City further grants to PSCo a license for the term of this Agreement to construct, install, and maintain PSCo facilities on City property necessary to serve the PSCo customers that are accessed from the Delivery Points on Exhibit A, subject to the maximum kW for each Delivery Point on Exhibit A.

c. The City grants to PSCo a license for the term of this Agreement to operate and maintain PSCo's existing telecommunication facilities in the City's substations. PSCo's crews or contractors will only be allowed access to the substations with prior City approval.

d. The City shall deliver to PSCo power and energy of the same phase and frequency supplied to the City by Platte River at the Delivery Points as set forth in Exhibit A. The City will provide service at its nominal voltage, plus or minus three

percent (3%), provided that PSCo complies with the current balance requirements in Paragraph 2.e.

e. The City shall continue to furnish, install, operate, and maintain its distribution facilities so that it can reliably deliver to PSCo at the Delivery Points firm power and energy at the maximum monthly kW levels set forth on Exhibit A. The sum of the maximum monthly kW demands of all Delivery Points will not exceed the total of the amounts set forth on Exhibit A. The maximum kW for each Delivery Point is considered to be firm capacity at that Delivery Point. Firm capacity shall mean that the City will reserve capacity in its distribution system to serve PSCo's maximum demand under normal operating conditions. It does not include abnormal operating conditions such as system disturbances, natural disasters, or other emergencies. All Delivery Points are subject to underfrequency load shedding schemes, which shall apply on a non-discriminatory basis across the City's distribution system, such that PSCo's customers are treated in the same manner as the City's customers under the City's underfrequency load shedding scheme.

f. The Parties acknowledge and agree that the City and PSCo facilities at each Delivery Point are capable of delivering the maximum amount of kW listed for each Delivery Point on Exhibit A. However, these facilities may not be able to accommodate substantial demands above the maximum KW amounts set forth on Exhibit A. The City may take immediate remedial action and notify PSCo of such action in the event any delivery point exceeds 500 kW over the capacity set forth in Exhibit A for that specific delivery point.

g. If PSCo requires increases in the maximum kW at any Delivery Point, PSCo shall notify the City of its increased needs in accordance with Paragraph 1. If such increases are approved by the City, the City shall use good faith efforts to provide for increased deliveries within a reasonable period of time. PSCo shall be responsible for its pro rata share of the cost of any City facility upgrades necessary to accommodate increased deliveries above the maximum kW levels set forth on Exhibit A.

4. **Services Provided By Platte River:**

a. Platte River shall coordinate with the City and PSCo to ensure that billing metering and telemetering equipment are compatible and meet the needs of all Parties.

b. Platte River shall read or cause to be read the billing meters at the end of each month. The readings shall be provided to the City and PSCo.

c. Platte River shall account for the billing of all deliveries of power and energy to the Delivery Points specified herein. The accounting shall be done in such a

manner so that the City is not charged for the power and energy delivered to PSCo.

d. Upon thirty (30) business days written notice, Platte River shall afford PSCo and the City, or their respective representatives, reasonable access to the records utilized in calculating any charge or credit hereunder and Platte River's books of account for the prior twenty-four (24) month period.

5. Rates and Billing:

a. For service during the months of July and August of each year, PSCo agrees to pay the City for the Total Reserved Demand. Total Reserved Demand means the sum of the maximum kW load figures set forth in Exhibit A. For all other months of the year, PSCo agrees to pay the City for PSCo's actual maximum kW load metered at each Delivery Point. The rate per kW is set forth on line a. of Exhibit B. PSCo further agrees to pay the City an additional charge per kW as set forth on line b. of Exhibit B for all kW that exceed the maximum kW amount at a specific Delivery Point as set forth on Exhibit A. During the months of July and August only, PSCo also agrees to pay a charge for power factors that are less than .95 lagging or leading as set forth by the formula on line c. of Exhibit B. All payments shall be due within thirty (30) calendar days following receipt by PSCo of the City's invoice.

b. The City may adjust the rates set forth on Exhibit B as provided in Article 13 of the Loveland Charter. The City will notify PSCo of the proposed adjustment as soon as practical. Said rate adjustments shall be deemed amendments to Exhibit B of this Agreement.

6. Emergency Conditions:

a. It is mutually understood that this Agreement only covers normal operating conditions as indicated in Paragraph 3.e. of this Agreement. PSCo is not paying for reserved backup capacity under emergency conditions, and the City is not required to provide backup capacity.

b. When restoring the system to normal after an outage, the City shall give restoration of service to the Delivery Points the same priority as restoring its own load.

c. Underfrequency load shedding may be automatically initiated to maintain system integrity. Such load shedding schemes will include PSCo's Delivery Points on a non-discriminatory basis with the shedding of City load.

d. If the failure of a protective device on PSCo's facilities causes a failure or operation of a City protective device, PSCo agrees to pay for all expenses,

including, but not limited to, labor, equipment, and administrative costs, incurred by the City for restoration of service to its customers.

e. In the event that, during planned or emergency conditions at the City's West or Horseshoe Substations, the City requests PSCo to take an outage, the City will allow PSCo to serve the combined West and Northwest Delivery Points loads from either West or Northwest Delivery Point. Under these conditions, PSCo will not be charged the higher rate set forth in line b of Exhibit B due to demand being in excess of the capacity set forth in Exhibit A for that specific delivery point.

7. **Metering:**

a. Meters used for measurement of power and energy deliveries hereunder shall be sealed, and the seals shall be broken only when the meters are to be inspected, tested, or adjusted. Authorized representatives of each Party shall be afforded a minimum ten (10) business days advance notice to be present upon these occasions.

b. Metering equipment shall be inspected and tested at least once each year by the Party that provides the equipment and at any reasonable time upon request by any Party. Upon request, copies of completed test reports shall be provided to any Party within thirty (30) calendar days of the completion of the test. Any metering equipment found to be defective or inaccurate shall be repaired, adjusted, or replaced by the providing Party.

c. Should any meter fail to register, the power and energy delivered during such period of failure shall be estimated for billing purposes by the authorized representatives of the Parties using the best information available.

d. If any test or inspection reveals an error of two percent (2%) or greater, a correction will be made in the billing for the time period in error not to exceed six (6) months. All such corrections shall be made on the next monthly billing. This procedure shall constitute adjustment of the claims of any Party arising out of the inaccuracy of the metering equipment.

8. **Uncontrollable Forces:**

A Party to this Agreement shall not be considered to be in default in the performance of any obligation hereunder if failure of performance shall be due to uncontrollable forces. The term "uncontrollable forces," as used herein, means any cause beyond the control of the Party affected, including, but not limited to, failure of facilities, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, labor disturbance or strike, sabotage, and restraint by court or public authority which, by the exercise of due diligence, it shall be unable to overcome. However, no Party shall be relieved of liability for failure of performance if such failure is due to causes arising out of its own

negligence or due to removable or remediable causes which it fails to remove or remedy within a reasonable time.

9. **Term of Contract and Termination:**

a. Except as provided in Paragraph 9.b., this Agreement shall become effective on the date of its execution and shall remain in effect until midnight December 31, 2020; provided that this Agreement shall remain in effect from year-to-year thereafter until it is terminated by any Party by giving written notice to the other Parties at least two (2) years prior to the date of intended termination. In the event that this Agreement has not been terminated by any party prior to December 31, 2025, it shall automatically terminate at midnight on said date.

b. PSCo may terminate this Agreement, upon two (2) years notice to the City, whenever the City makes an adjustment to the rates under Paragraph 5.b. that is not acceptable to PSCo.

c. Upon termination of this Agreement, the Parties shall be individually responsible for removal of their own equipment. Equipment shall be dismantled and removed from the site within ninety (90) calendar days of the termination of this Agreement.

d. In the event that the City continues to provide power to PSCo's Delivery Points beyond the term or termination of this Agreement, PSCo shall continue to pay the City as set forth in Paragraph 5., above.

10. **Miscellaneous:**

a. This Agreement shall be governed by the laws of the State of Colorado, and venue shall be in the County of Larimer, State of Colorado. In addition, the Parties recognize the legal constraints imposed upon them by the constitutions, statutes, and regulations of the State of Colorado and of the United States, and imposed upon the City by its Charter and Municipal Code and, subject to such constraints, the Parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any other provision in this Agreement to the contrary, in no event shall any of the Parties hereto exercise any power or take any action which shall be prohibited by applicable law.

b. No Party shall assign its rights or obligations under this Agreement without the other Parties' prior written consent, which consent shall not be unreasonably withheld.

c. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors and assigns.

d. This Agreement, together with the Network Integration Transmission Service Agreement effective April 12, 2007 between PSCo and Platte River, contain the entire agreement of the Parties relating to the subject matter hereof and may not be modified or amended except by written agreement of the Parties.

e. In the event a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Agreement. In such event, the Parties agree to use their best efforts to replace the invalid or unenforceable provision with a valid and enforceable provision to the extent possible to preserve the intended bargain negotiated under this Agreement.

f. Paragraph headings used in this Agreement are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this Agreement.

g. The authorized representatives of the Parties will meet once each calendar year during the term of this Agreement, or at other times as requested by any Party, to discuss any matter set forth in this Agreement.

h. Written notices required under this Agreement and all other correspondence between the Parties shall be directed to the authorized representatives of the Parties. All notices shall be delivered by email and by either hand-delivery or by certified mail and shall be deemed received when hand-delivered or three (3) calendar days after being sent by certified mail, return receipt requested. The initial authorized representatives of the Parties are set forth below. Any Party may change its authorized representative by providing written notice to the other Parties.

Authorized Representatives:

For the City:	Steve Adams Director of Water & Power City of Loveland 200 North Wilson Avenue Loveland, CO 80537 Email: Steve.Adams@cityofloveland.org
With a copy to:	John Duval City Attorney 500 East Third Street Loveland, CO 80537 Email: John.Duval@cityofloveland.org
For PSCo:	Lynn Worrell 1123 W. 3rd Ave.

Denver, CO 80223
Email: Lynn.Worrell@xcelenergy.com

For Platte River: Jackie Sargent
General Manager
2000 East Horsetooth
Fort Collins, CO 80525
Email: sargentj@prpa.org

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

CITY OF LOVELAND, COLORADO

By: _____
William D. Cahill, City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Assistant City Attorney

(Additional signatures on following pages.)

PUBLIC SERVICE COMPANY OF COLORADO

By: XCEL ENERGY SERVICES, INC.,
as Agent for Public Service Company of Colorado

By: _____
Director, Market Operations

(Additional signature on following page.)

PLATTE RIVER POWER AUTHORITY

By: Jackie A. Sargent
Jackie A. Sargent, General Manager

APPROVED AS TO FORM:

BW 7/1/13
General Counsel

EXHIBIT A

Delivery Points and Reserved Demand

Delivery Point	Substation	Location	Maximum kW
West	West	West Substation	2500
WAPA	Airport/Crossroads	City vault near the intersection of County Road 7 and County Road 26	1000
Northwest	Horseshoe	Horseshoe Substation, east side of railroad tracks and 550 feet north of 57th Street	5000
Madison	East #2	West side of Madison Avenue, approximately 350 feet south of the intersection of 11th Street and Madison Avenue	500

Total Reserved Demand: 9,000 kW

Accepted and agreed to this _____ day of _____, 2013.

Public Service Company of Colorado

By: _____

Name: _____

Title: _____

City of Loveland, Colorado

By: _____

Name: _____

Title: _____

EXHIBIT B

City of Loveland Rates as of _____, 2013

a.	Charge per kW per month	$ 4.07
b.	Charge per kW for exceeding amount set forth in Exhibit A for a specific delivery point	$ 5.34
c.	Charge for power factor below .95	For the months of July and August only: the metered kW shall be multiplied by .95 and then divided by the metered power factor. Subtract from this quotient the metered kW. The difference shall be added to the metered kW and charged at the rate set forth in a. above.

CITY OF LOVELAND
PUBLIC WORKS DEPARTMENT
Administration Offices • 410 East Fifth Street • Loveland, Colorado 80537
(970) 962-2555 • FAX (970) 962-2908 • TDD (970) 962-2620

AGENDA ITEM: **15**
MEETING DATE: 8/6/2013
TO: City Council
FROM: Keith Reester, Public Works Department
PRESENTER: Ken Cooper

TITLE:
An Ordinance on First Reading Enacting a Supplemental Budget and Appropriation to the 2013 City of Loveland Budget for the Service Center Phase III Expansion Project

RECOMMENDED CITY COUNCIL ACTION:
Conduct a public hearing and approve the ordinance on first reading.

OPTIONS:
1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

SUMMARY:
This is an administrative action. The ordinance appropriates funds to complete the project at the amount of the bid price. Total project cost is expected to be $14,912,060. City Council previously appropriated project funding of $11,017,540, so an additional $3,894,520 is now required to complete the project. Public Works enterprise funds and general government capital expansion fees may be used for this additional appropriation request.

BUDGET IMPACT:
☐ Positive
☒ Negative
☐ Neutral or negligible

The funding for the project is from reserves of $3,499,520 from the General Government CEF Fund and $395,000 from the Solid Waste Enterprise Fund and reduces the flexibility to complete other projects.

BACKGROUND:
At the City Council Study Session on November 13, 2012, Council gave its full support to move forward with the project to expand and remodel the Service Center. RNL Design completed construction drawings and documents in June, 2013. Following a pre-qualification process for general contractors, the City selected eight contractors to bid the project.

The City received four bids from general contractors on July 11, 2013, and Golden Triangle Construction submitted the winning bid at $12,723,060.

The project will primarily provide crew, office, and support space for the Public Works Department. Features of the project include:

- A large stormwater channel through the Service Center Campus to meet requirements of a 100-year flood event
- Increased capacity for personnel, heavy equipment, and general storage
    - Expanded office space
    - Welcoming office main entrance, with security for City personnel and property
    - A large 100-person multi-purpose training space
    - New vehicle wash
    - New and upgraded storage facilities
    - An opportunity to improve existing layout and workflow in the yard areas
- Space flexibility
- Blending the expansion with the built environment (existing buildings and neighborhood campus)
- Technological capacity/flexibility – includes a fiber loop to provide data redundancy to the entire Service Center campus
- Environmental responsibility – still expect the project to achieve LEED certification

With Council approval, project construction will begin as soon as possible. Staff expects about 12 months of construction, with a completion date in the latter part of 2014.

REVIEWED BY CITY MANAGER:

William D. Cahill

LIST OF ATTACHMENTS:
Ordinance
PowerPoint Presentation

FIRST READING August 6, 2013

SECOND READING _____

ORDINANCE NO. _____

AN ORDINANCE ENACTING A SUPPLEMENTAL BUDGET AND APPROPRIATION TO THE 2013 CITY OF LOVELAND BUDGET FOR THE SERVICE CENTER PHASE III EXPANSION PROJECT

WHEREAS, the City has reserved funds not anticipated or appropriated at the time of the adoption of the City budget for 2013; and

WHEREAS, the City Council desires to authorize the expenditure of these funds by enacting a supplemental budget and appropriation to the City budget for 2013, as authorized by Section 11-6(a) of the Loveland City Charter.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That reserves in the amount of $3,499,520 from fund balance in the General Government Capital Expansion Fee Fund 268 and $395,000 from fund balance in the Solid Waste Enterprise Fund are available for appropriation. Revenues in the total amount of $3,894,520 are hereby appropriated for Service Center Phase III Expansion Project. The spending agencies and funds that shall be spending the monies supplementally budgeted and appropriated are as follows:

Supplemental Budget
Capital Projects Fund 120

Revenues		
120-00-0000-37268-GF1107	Transfer from General Governement CEF	3,499,520
120-00-0000-37361-GF1107	Transfer from Solid Waste	395,000
Total Revenue		**3,894,520**
Appropriations		
120-23-250-1799-48247-GF1107	Furniture and Equipment	720,000
120-23-250-1799-47205-GF1107	Transfer to Art in Public Places Fund	124,000
120-23-250-1799-49355-GF1107	Engineering	1,315,000
120-23-250-1799-49360-GF1107	Construction	1,735,520
Total Appropriations		**3,894,520**

Supplemental Budget
General Government CEF Fund 268

Revenues		
Fund balance		3,499,520
Total Revenue		**3,499,520**
Appropriations		
268-91-902-0000-47120-GF1107	Transfer to Capital Projects Fund	3,499,520
Total Appropriations		**3,499,520**

Supplemental Budget
Solid Waste Enterprise Fund

Revenues		
Fund balance		395,000
Total Revenue		**395,000**
Appropriations		
360-23-270-0000-47120-GF1107	Transfer to Capital Projects Fund	395,000
Total Appropriations		**395,000**

Section 2. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect upon final adoption, as provided in City Charter Section 11-5(d).

ADOPTED this ___ day of August, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Deputy City Attorney

SERVICE CENTER EXPANSION – PROJECT UPDATE & APPROPRIATION REQUEST

CITY COUNCIL MEETING

AUGUST 6, 2013

QUICK HISTORY

- RNL Design selected in May, 2012
- Heavy programming through summer & fall of 2012
- City Council update in November, 2012
  - Project focus & preliminary pricing estimates
  - Campus-wide opportunities & needs
  - $11.5M for Streets, Solid Waste, Stormwater needs
  - $13.5M to include office wing for PW-Engineering & PW-Admin
- Direction from Council to design & bid entire project

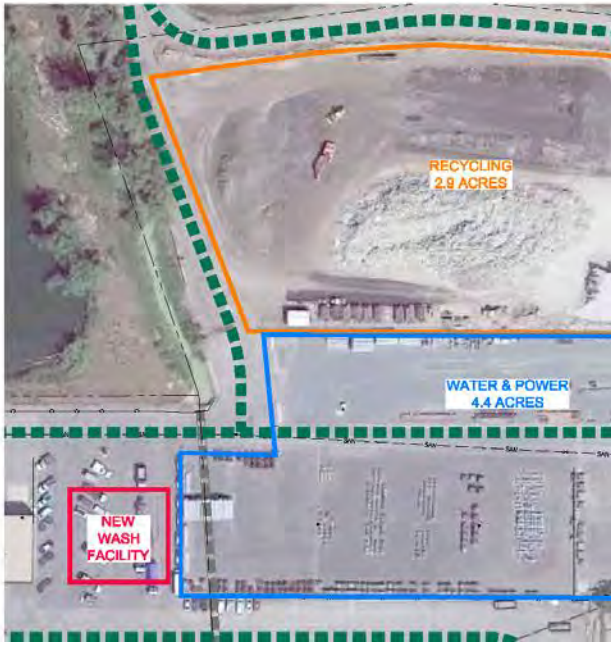
RECENT PROGRESS

- Design Development completed in spring of 2013
- 60% Drawings – Pricing estimates were problematic
  - VE/Adjustment efforts removed over $2M
  - Heavy use of bid alternates
  - Changing bid climate for construction
- Pre-qualified eight general contractors
- Project bid in June, received four bids on July 11
- Golden Triangle Construction winning bid at $12.7M

CITY-WIDE BENEFITS

- Comprehensive project focus goes beyond Public Works
  - 100-year flood event solved – Fancher & Home Supply agreements
  - Improved usage & flow of entire campus yard areas
  - Fiber loop for campus data redundancy
  - Large meeting space upstairs for City use
  - Upgrade to existing heated storage units
  - Snowmelt on Fleet building's perimeter
  - Vacated space for up to 40 City staff on FAB's main level
  - Doubled capacity & improved safety for Ranch Water customers
  - Doubled capacity & efficiencies from new vehicle wash

IMPROVED CAMPUS FLOW



AERIAL LOOKING NORTH

LOOKING N. FROM W. 1ST ST.

LOOKING NW FROM W. 1ST ST.

UPPER LEVEL MEETING SPACES

INTERIOR OFFICE AREA

UPPER LEVEL CORRIDOR

CONSTRUCTION BID

- Golden Triangle Construction – strong working relationship
  - Rialto Bridge project
  - Fire Station 6 build-out & recent expansion
- Total Construction Bid of $12.7M
  - Base bid of $12.1M
  - Add-alternate for canopy work - $200K
  - Add-alternate for cart wash - $400K
  - Did not accept $700K deduct for west wing offices
  - Including FFE, $1M provides office space for 40 persons

TOTAL PROJECT

- Golden Triangle Contract - $12.7M
- Non-Construction Costs of $2.2M
  - Design & Engineering - $1.2M
  - FFE - $720K
  - Public Art - $124K
  - Testing & Inspections - $65K
  - Channel Easements - $55K
  - Other - $40K
- Total Estimated Project Cost - $14.9M
- Today's Appropriation Request - $3,894,520

GOING FORWARD

- With Council support, move ahead with appropriation to support the total project cost of $14.9M
- Work already underway on construction pre-planning, submittals, etc.
- Building permit process continues – construction contract award to Council on August 20
- Anticipate ground-breaking in September, 2013
- Roughly 12-month construction schedule - completion in Fall 2014
- Staff office moves to follow, including changes at FAB & MOC
- Special thanks for your consideration & continued support

Mayor Gutierrez called the Study Session of the Loveland City Council to order at 6:30 p.m. on the above date. Councilors present: Gutierrez, Clark, Farley, McKean, Trenary, Taylor, Shaffer, and Klassen. Councilor Fogle was absent. City Manager Bill Cahill was also present.

1. PUBLIC WORKS

Centerra Master Financing and Intergovernmental Agreement Overview and Transportation Discussion

City Engineer, Dave Klockeman introduced this item to Council. City Attorney John Duval was also present to answer questions. Mr. Klockeman gave a brief overview of the history and components of the Centerra Master Financing and Intergovernmental Agreement (MFA & IGA). The review also covered the development, history, and changes to the agreements since approval in January 2004, specifically related to transportation projects and planning. Alan Poag and Jay Hardy from Centerra Metropolitan District No. 1 were available to address Council and answer questions. Discussion ensued relating to future project planning, key futurescape elements, and likely scenarios available for regional improvements. City Manager, Bill Cahill clarified that staff is seeking direction on not when to build each area, but in order to make the area eligible, it needs to be put on the list. Council directed staff to move forward with adding two projects, the Kendall Parkway underpass of I-25 and Boyd Lake Avenue North of U.S. 34, to the list. An amendment to the MFA will be brought to a regular meeting for formal Council consideration. Council also requested additional information on these project costs for review.

The study session was adjourned at 8:28 p.m.

Respectfully Submitted,

_____ _____

Jeannie M. Weaver, Deputy City Clerk Cecil A. Gutierrez, Mayor

MINUTES
LOVELAND CITY COUNCIL MEETING
TUESDAY, JULY 16, 2013
CITY COUNCIL CHAMBERS
500 EAST THIRD STREET
LOVELAND, COLORADO

6:30 P.M. REGULAR MEETING - City Council Chambers

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL
Roll was called and the following responded: Councilors Farley, Klassen, Shaffer, Fogle, Taylor, Clark, Trenary, and Mayor Gutierrez. Councilor McKean was absent.

PROCLAMATION DECLARING JULY 24, 2013 AS "WOMEN OF VISION DAY". Councilor Shaffer read the proclamation for the record which was accepted by Ann Clarke, Linda Hughey, and Diana McKinney.

PRESENTATION OF THE DISTINGUISHED BUDGET PRESENTATION AWARD FOR THE 2013 BUDGET. Mayor Gutierrez presented the award to Brent Worthington, John Hartman, and Adam Dorritie.

Mayor Gutierrez made the following procedural announcement:

Anyone in the audience will be given time to speak to any item on the Consent Agenda. Please ask for that item to be removed from the Consent Agenda. Items pulled will be heard at the beginning of the Regular Agenda. You will be given an opportunity to speak to the item before the Council acts upon it.

Public hearings remaining on the Consent Agenda are considered to have been opened and closed, with the information furnished in connection with these items considered as the only evidence presented. Adoption of the items remaining on the Consent Agenda is considered as adoption of the staff recommendation for those items.

Anyone making a comment during any portion of tonight's meeting should come forward to a microphone and identify yourself before being recognized by the Mayor. Please do not interrupt other speakers. Side conversations should be moved outside the Council Chambers. Please limit your comments to no more than three minutes.

CONSENT AGENDA
Mayor Gutierrez asked if anyone in the audience, Council or staff wished to remove any of the items or public hearings listed on the Consent Agenda. Councilor Klassen asked that Item #8 be removed from the Consent Agenda**. Councilor Shaffer moved to approve the Consent Agenda with the exception of Item #8. Councilor Farley seconded the motion, which was carried with all councilors voting in favor thereof.**

1. <u>CITY MANAGER</u> (presenter: Bill Cahill)

BOARDS & COMMISSION APPOINTMENTS

A motion appointing recommended members to the Housing Authority, Historic Preservation Commission and Loveland Utilities Commission

This is an administrative action recommending the appointment of members to the Housing Authority, Historic Preservation Commission and the Loveland Utilities Commission.

- **Motion to reappoint Sherry Anderson and David Eikner to the Housing Authority, each for a full term effective until June 30, 2018.**
- **Motion to reappoint Jim Cox and David Berglund to the Historic Preservation Commission, each for terms effective until June 30, 2016.**
- **Motion to appoint Larry Roos to the Loveland Utilities Commission for a partial term effective until June 30, 2014.**
- **Motion to appoint C. Daniel Greenidge as an Alternate member on the Loveland Utilities Commission for a term effective until June 30, 2014.**

2. CITY CLERK (presenter: Terry Andrews)

NOTIFICATION OF PARTICIPATION IN STATEWIDE SPECIAL ELECTION

Ordinance #5789

A motion to approve and order published on second reading an Ordinance Providing That the City of Loveland's Regular Election to be Held on November 5, 2013, Shall be Conducted as a Coordinated Election With the Larimer County Clerk and Recorder and, to the Extent Necessary to so Conduct That Election as a Coordinated Election, the Colorado Uniform Election Code of 1992 Shall Govern

This is a legislative action needed to allow the City's regular election on November 5, 2013, to be so conducted on November 5, 2013, as a coordinated election with the Larimer County Clerk and Recorder. The ordinance was approved unanimously by Council at the July 2, 2013 regular meeting.

3. DEVELOPMENT SERVICES (presenter: Troy Bliss)

MILLENNIUM SOUTHWEST FIFTH SUBDIVISION PUBLIC RIGHT-OF-WAY VACATION

Ordinance #5790

A motion to approve and order published on second reading an Ordinance Vacating a Public Right-Of-Way for Oberon Drive and a Portion of a Public Right-Of-Way for Janus Drive Located in the Millennium Southwest Fifth Subdivision, City of Loveland, Larimer County, Colorado

This is a legislative action for the adoption of an ordinance on second reading to vacate a public right-of-way for Oberon Drive and a portion of a public right-of-way for Janus Drive, located within the Millennium Southwest Fifth Subdivision. The ordinance was approved unanimously by Council at the July 2, 2013 regular meeting.

4. DEVELOPMENT SERVICES (presenter: Noreen Smyth)

PUBLIC HEARING

GATEWAY PLANNED UNIT DEVELOPMENT GENERAL DEVELOPMENT PLAN AMENDMENT

A motion to approve and order published on first reading an Ordinance Amending the Gateway Planned Unit Development General Development Plan, City of Loveland

This is a quasi-judicial action to adopt an ordinance on first reading amending the Gateway General Development Plan (GDP). This will allow an increase in maximum density on Gateway Parcel A-1 from 16 units/acre to 22 units/acre and will increase the

overall maximum number of multifamily residential units allowed in the GDP from 500 to 586.

5. DEVELOPMENT SERVICES (presenter: Kerri Burchett)
PUBLIC HEARING
DAKOTA GLEN PUD - FIRST AMENDMENT (#P-98)
A motion to approve and order published on first reading an Ordinance Amending Section 18.04.040 of the Loveland Municipal Code, the Same Relating to Zoning Regulations for "Dakota Glen PUD - First Amendment (#P-98)", Approving the First Amendment to the Preliminary Development Plan for the Dakota Glen PUD
This is a quasi-judicial action to amend the Dakota Glen PUD Preliminary Development Plan. The amendment would allow the construction of an above ground public utility facility and natural gas pipeline within the PUD boundaries. The property is located north of and adjacent to 14th Street SW and west of South Wilson Avenue. The applicant is Public Service Company of Colorado.

6. DEVELOPMENT SERVICES (presenter: Troy Bliss)
PUBLIC HEARING
AIRPARK NORTH ADDITION AMENDMENT
A motion to approve and order published on first reading an Ordinance Amending Ordinances 3380 and 3381 to Modify a Condition Set Forth Therein Pertaining to the Annexation and Zoning of the Airpark North Addition to the City of Loveland, Larimer County, Colorado
This is a legislative action to adopt an ordinance on first reading modifying a condition on the annexation and zoning of the Airpark North Addition.

7. DEVELOPMENT SERVICES (presenter: Bethany Clark)
PUBLIC HEARING
SUPPLEMENTAL APPROPRIATION FOR CONSULTING SERVICES FOR HIGHWAY 287 BUSINESS DEVELOPMENT CORRIDOR
A motion to approve and order published on first reading an Ordinance Enacting a Supplemental Budget and Appropriation to the 2013 City of Loveland Budget for Consulting Services to Develop the Highway 287 Business Development Corridor Plan
This is an administrative action to appropriate $150,000 for consulting services to assist in developing a Highway 287 Business Development Corridor Plan. In January of 2012, City Council held their annual Council Advance to set the priorities for the year. One of the goals the Council set as a priority was to "Develop a Highway 287 Business Development Plan" to guide its development and improve the quality of development along the corridor. This goal was carried through as a priority in the 2013 annual Council Advance. As one of the main corridors into Loveland's downtown, the Highway 287 corridor has great potential for redevelopment and becoming a gateway to Downtown Loveland. The plan will serve as a guide for residents, property owners, developers, City staff, and elected officials in making good land use, design, and development decisions in the corridor. Funding is from reserves, which reduces the flexibility for funding other potential needs.

8. PUBLIC WORKS (presenter: Ken Cooper)
PUBLIC HEARING
SUPPLEMENTAL APPROPRIATION FOR PRELIMINARY PROGRAMMING AND DESIGN OF THE PUBLIC SAFETY TRAINING CAMPUS

This item was removed from the Consent Agenda and was considered on the Regular Agenda.

9. PUBLIC WORKS (presenter: Dave Klockeman)
PUBLIC HEARING
SUPPLEMENTAL APPROPRIATION FOR SIGN AND SIGNAL MAINTENANCE
A motion to approve and order published on first reading an Ordinance Enacting a Supplemental Budget And Appropriation to the 2013 City of Loveland Budget for Sign and Signal Maintenance on State Highways
This is an administrative action to appropriate $36,720. The ordinance appropriates additional revenue from a contract increase with the Colorado Department of Transportation (CDOT) for sign and signal maintenance on State highways within the City. Outside revenue from CDOT increasing the contract by $36,720 funds the appropriation.

END OF CONSENT AGENDA

CITY CLERK READS TITLES OF ORDINANCES ON THE CONSENT AGENDA

CITY COUNCIL

a. Citizens' Report

1. Les Bogunovich, partner in Lakeview, asked Council for an update.
2. Kathy Hartman, 945 East 6th Street, informed Council of the submitted initiative petition and invited everyone to an Oil & Gas informational meeting on July 21st.

b. Business from Council

Fogle: Attended Loveland Loves BBQ Bands and Brews with over 25,000 people participating.

Taylor: Congratulated 2013 Corn Roast Parade Marshals: Annie Hall, Elizabeth, and Bill Markheim.

Shaffer: Announced Loveland Housing Authority received $2 million grant for "The Greenhouse Project"; Attended Metropolitan Planning Organization (MPO) meeting and discussed Impact 64 Transportation Potential Ballot Initiative; On July 29, 2013 at 2:30 pm: A follow-up meeting at the CDOT Office (Highway 402) will be held.

Trenary: Congratulated the Patriarchal Award Winners: Nancy Madden and Jane Sharpe; Expressed Appreciation for the Police Department, Fire Department, and other staff regarding Independence Day events. Announced event for Saturday, July 20, 2013: The 2013 Cherry Pie Festival.

Clark: Announced event for Saturday, August 24, 2013: The 2013 Corn Roast Festival and the Pro Cycling Challenge.

Farley: Announced event for Wednesday, July 17, 2013 at 1pm: Don Pettit, NASA Astronaut, and Techno-stories From Space in the Garden Room, at 969 N. Denver Avenue; Announced Visual Arts Committee reviewed

models of sculptures for the 1-25 & Hwy 34 area, available for public review at the Museum.

Mayor Gutierrez:

Announced event for Thursday evenings at 7 pm. (through August 8, 2013): Foote Lagoon Concert Series; Announced event for Saturday, July 20, 2013: Dedication for 3 additional sculptures at Benson Sculpture Park; Announced Food Service of America (FSA,) which moved to Loveland in 2003, has increased employee numbers from 180 to 295.

c. City Manager Report:

No Study Session next Tuesday, July 23, 2013.

d. City Attorney Report

None.

PROCEDURAL INFORMATION

Anyone who wishes to address the Council on any item on this part of the agenda may do so when the Mayor calls for public comment. All public hearings are conducted in accordance with Council Policy. When Council is considering adoption of an ordinance on first reading, Loveland's Charter only requires that a majority of the Council quorum present vote in favor of the ordinance for it to be adopted on first reading. However, when an ordinance is being considered on second or final reading, at least five of the nine members of Council must vote in favor of the ordinance for it to become law.

REGULAR AGENDA

CONSIDERATION OF ITEMS REMOVED FROM CONSENT AGENDA

8. PUBLIC WORKS (presenter: Ken Cooper)

PUBLIC HEARING

SUPPLEMENTAL APPROPRIATION FOR PRELIMINARY PROGRAMMING AND DESIGN OF THE PUBLIC SAFETY TRAINING CAMPUS

This is an administrative action to appropriate $310,000. Facilities Operations Manager, Ken Cooper, introduced this item to Council. The ordinance appropriates funding from reserve funds for preliminary program and design of the Police Training Facility. Full design and construction of the facility are programmed in 2016-2019 in three phases in the 2014 Capital Program. The project is funded with reserves in the Police Capital Expansion Fee Fund that reduce the flexibility for use on other projects. Mayor Gutierrez opened up the public hearing at 7:30 pm. Dianna McKinney suggested the new facility be used strictly for agency purposes. With no further public comment, Mayor Gutierrez closed the public hearing at 7:31pm. **Councilor Shaffer moved to approve and order published on first reading "An Ordinance Enacting a Supplemental Budget and Appropriation to the 2013 City of Loveland Budget for Preliminary Programming and Design of the Public Safety Training Campus." Councilor Klassen seconded the motion, which carried with all councilors present voting in favor thereof.**

10. CITY CLERK (presenter: Terry Andrews)

APPROVAL OF CITY COUNCIL MEETING MINUTES

1. This is an administrative action to approve the June 25, 2013 meeting minutes. Mayor Gutierrez was absent. **Councilor Shaffer moved to approve the June 25,**

2013 meeting minutes. Councilor Klassen seconded the motion, which carried with all councilors present voting in favor thereof and Mayor Gutierrez abstaining.

2. This is an administrative action to approve the July 2, 2013 meeting minutes. Councilor Clark was absent. **Councilor Shaffer moved to approve the July 2, 2013 meeting minutes. Councilor Klassen seconded the motion, which carried with all councilors present voting in favor thereof and Councilor Clark abstaining.**

11. WATER & POWER (presenter: Steve Adams)
INTERFUND LOAN FROM THE POWER ENTERPRISE TO THE WATER ENTERPRISE
Ordinance #5791

This is an administrative action. Utility Accounting Manager, Jim Lees, introduced this item to Council. The ordinance implements an interfund loan from the Power Enterprise to the Water Enterprise to fund a portion of the Water Capital Improvement Program to replace aging infrastructure. The loan will provide the resources necessary to begin the replacement of aging infrastructure in the Water Enterprise. The fund balance is available in the Power Enterprise and will not be required for Power Capital improvements until after the annual loan repayments have been made. Budgetary impact is therefore positive for the Water Enterprise, and is not damaging to the Power Enterprise. This ordinance was approved by Council at the July 2, 2013 regular meeting with a vote of 7-1. **Councilor Shaffer moved to approve and order published on second reading "An Ordinance Enacting a Supplemental Budget and Appropriation to the 2013 City of Loveland Budget for an Interfund Loan from the Power Enterprise to the Water Enterprise for Infrastructure Improvements." Councilor Klassen seconded the motion, which carried with seven councilors voting in favor and Councilor Trenary voting against.**

12. ECONOMIC DEVELOPMENT (presenter: Betsey Hale)
MADWIRE MEDIA ECONOMIC DEVELOPMENT INCENTIVE REQUEST

This is an information only item. Economic Development Manager, Betsey Hale introduced this item to Council. City Council policy requires any incentive request over $20,000 come to council at a study session for consideration, discussion, and direction. Madwire Media is requesting Council consider an incentive package of $47,600 in use tax and fee waivers and $250,000 cash for the job retention of 150 jobs and the creation of 100 new jobs by 2016. Council approval of this request would decrease the Council Incentive Fund by $250,000. Kelly Peter, Joe Kellog, and Jerry Kelly from Madwire Media were part of the presentation. **Consensus of Council was to direct staff to bring this item for consideration as soon as possible.**

ADJOURNMENT

Having no further business to come before Council, the July 16, 2013 Regular Meeting was adjourned at 9:14 pm.

Respectfully Submitted,

Teresa G. Andrews, City Clerk

Cecil A. Gutierrez, Mayor

CITY OF LOVELAND
ECONOMIC DEVELOPMENT OFFICE
Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2304 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: **17**
MEETING DATE: 8/6/2013
TO: City Council
FROM: Marcie Erion, Economic Development Department
PRESENTERS: Marcie Erion and Carla Schlosser, Owner

TITLE:
A Resolution Approving an Incentive Agreement for Schlosser Signs, Inc.

RECOMMENDED CITY COUNCIL ACTION:
Adopt the resolution.

OPTIONS:
1. Adopt the action as recommended
2. Deny the motion
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

SUMMARY:
This is an administrative action. Schlosser Signs is requesting an incentive, not to exceed $15,000, to upgrade electrical service at their new branch location, 418 E. 3rd Street. This includes a new transformer bank, frame, new pole, and installation of a new secondary cable. These expenditures will arise as part of their company expansion downtown. In the City's Economic Incentive Policy, any agreement that does not exceed $20,000 can come to Council without a prior informational meeting.

BUDGET IMPACT:
☐ Positive
☒ Negative
☐ Neutral or negligible

The City of Loveland will fund no more than $15,000 from the Economic Development Incentive Fund contingent upon the purchase of the new facility.

BACKGROUND:
Schlosser Signs is requesting City Council to approve assistance, not to exceed $15,000, to upgrade electrical service. The incentive request will allow the business owner to fill the budget gap created by the need for these upgrades. The company must submit invoices for the expenditures to the Economic Development Department for reimbursement. Based on the Economic Impact Analysis run by Alan Krcmarik, the City of Loveland will receive their return of investment by year five. The business expansion will also provide the addition of new jobs, the purchase of an underused downtown building that was going into foreclosure, use of local contractor and subcontractors in renovations and assistance in the revitalization of downtown with an overall investment of nearly $400,000.

Support for this incentive is consistent with the City Economic Development Strategy
Goal #3 – "Make the Right Investment Easy to Come, Stay and Grow".
Action- "Continue the use the City of Loveland Incentive Policy".

Given that the improvements will significantly improve the functionality of an older building, it is also consistent with the Downtown Strategic Plan:
"Identify funding gaps to project development and structure tools to fill the gaps and achieve development."

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:
Resolution (Exhibit A Agreement)
Council Memo
Project Checklist
Letter of Request from Schlosser Signs
Economic Impact Analysis
Company Information http://www.coloradosigncompany.com

RESOLUTION #R-59-2013

A RESOLUTION APPROVING AN INCENTIVE AGREEMENT FOR SCHLOSSER SIGNS, INC.

WHEREAS, Schlosser Signs, Inc., a Colorado corporation ("Schlosser Signs") provides custom design, fabrication, installation and maintenance of signs in Colorado, Wyoming and Nebraska from its location in Loveland; and

WHEREAS, Schlosser Signs has an on-call contract valued at $1.5 million to produce signs, and the contract is dependent upon Schlosser Signs' ability to expand its current production facilities and operations; and

WHEREAS, Schlosser Signs intends to purchase and renovate the building at 418 E. 3rd Street (the "**Premises**") for the purposes of housing a portion of its production facilities and operations; and

WHEREAS, Schlosser Signs will bring three (3) employees to the Premises and have a fourth employee alternating between Schlosser Signs' existing Loveland location and the Premises; and

WHEREAS, Schlosser Signs is investing a total of One Hundred Fifteen Thousand Dollars ($115,000) in the Premises, excluding the cost of acquisition; and

WHEREAS, Schlosser Signs has requested from the City certain economic incentives to help defray some of its costs to modify the Premises to house a portion of its production facilities and operations, specifically Fifteen Thousand Dollars ($15,000) to be used to purchase and install certain electrical upgrades in the form of a new transformer bank at the Premises; and

WHEREAS, the City Council has believes that the terms of the Schlosser Signs, Inc. Economic Incentive Agreement attached hereto as **"Exhibit A"** and incorporated herein by reference (the **"Agreement")** and the assistance in the form of an incentive payment to defray some of the costs to modify the Premises as set forth therein is in the best interests of the City and serves the public purposes of improving a downtown property to house a portion of Schlosser Signs production facilities and operations, thereby producing significant economic, cultural and social benefits to the citizens of Loveland, primarily in the form of increased assessed values for property tax purposes, jobs, and economic development in the downtown area.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That the City Council hereby finds that providing assistance to Schlosser Signs in the form of an incentive payment to defray some of the costs to modify the Premises to house a portion of its production facilities and operations serves a public purpose because Schlosser Signs' renovation and improvement of the Premises, and operation of its business in

downtown Loveland will provide significant social, cultural and economic benefits to the citizens of Loveland, primarily in the form of jobs, economic development, and increased property tax revenues to the City.

Section 2. That the Agreement attached hereto as "**Exhibit A"** and incorporated by reference is hereby approved.

Section 3. That the City Manager is authorized, following consultation with the City Attorney, to modify the Agreement in form or substance as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the City.

Section 4. That the City Manager and the City Clerk are hereby authorized and directed to execute the Agreement on behalf of the City of Loveland.

Section 5. That this Resolution shall be effective as of the date of its adoption.

ADOPTED this ____ day of ____, 2013.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt
Deputy City Attorney

SCHLOSSER SIGNS, INC. ECONOMIC INCENTIVE AGREEMENT

THIS SCHLOSSER SIGNS, INC. ECONOMIC INCENTIVE AGREEMENT ("**Agreement**") is made and entered into this ____ day of _____, 2013, by and between the **CITY OF LOVELAND**, a Colorado municipal corporation (the "**City**"), and **SCHLOSSER SIGNS, INC.**, a Colorado corporation ("**Schlosser Signs**").

WHEREAS, Schlosser Signs provides custom design, fabrication, installation and maintenance of signs in Colorado, Wyoming and Nebraska from its location in Loveland; and

WHEREAS, Schlosser Signs has an on-call signage contract valued at $1.5 million to produce signs, and the contract is dependent upon Schlosser Signs' ability to expand its current production facilities and operations; and

WHEREAS, Schlosser Signs intends to purchase and renovate the building at 418 E. 3rd Street (the "**Premises**") for the purposes of housing a portion of its production facilities and operations; and

WHEREAS, Schlosser Signs will bring three (3) employees to the Premises and have a fourth employee alternating between Schlosser Signs' existing Loveland location and the Premises; and

WHEREAS, Schlosser Signs is investing a total of One Hundred Fifteen Thousand Dollars ($115,000) in the Premises, excluding the cost of acquisition; and

WHEREAS, Schlosser Signs has requested from the City certain economic incentives to help defray some of its costs to modify the Premises to house a portion of its production facilities and operations, specifically Fifteen Thousand Dollars ($15,000) to be used to purchase and install certain electrical upgrades in the form of a new transformer bank at the Premises; and

WHEREAS, by the adoption of Resolution #R-___-2013, the City Council made a finding that the expansion and relocation of Schlosser Signs' production facilities and operations to the Premises will serve the public purposes of providing significant social and economic benefits to the citizens of Loveland, primarily in the form of jobs, economic development, and increased tax revenues and, therefore, the monetary incentives granted in this Agreement are in the best interests of the public and the City.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Economic Incentive Payment

The City agrees, as an economic incentive for Schlosser Signs' relocation of its production facilities and operations to the Premises, to reimburse Schlosser Signs for a portion of the reasonable costs it incurs to renovate and relocate to the Premises in a total amount not-to-exceed

Fifteen Thousand Dollars ($15,000). This reimbursement obligation shall be subject to all of the following terms and conditions:

A. The following costs incurred by Schlosser Signs to renovate and relocate to the Premises shall be eligible for reimbursement under this Agreement: costs to obtain and install a new transformer bank, frame, pole, and secondary cable (including parts and installation).

B. Before the City shall be obligated to reimburse Schlosser Signs for its eligible costs under this Agreement, Schlosser Signs must: (i) obtain the necessary building permit(s) to renovate the Premises to house a portion of its production facilities and operations; (ii) complete the improvements and obtain a certificate of occupancy no later than July 31, 2014; and (iii) submit to the City Manager such documentation as may be required by the City Manager to determine that Schlosser Signs has incurred and paid, prior to July 31, 2014, costs eligible for reimbursement under this Agreement. Schlosser Signs shall submit such documentation and request for reimbursement, along with W-9 or such other documentation necessary to complete the payment, to the City Manager no later than August 31, 2014.

C. If Schlosser Signs fails to complete the improvements and obtain a temporary or permanent certificate of occupancy for the Premises on or before July 31, 2014, then the City's obligation to reimburse Schlosser Signs for its eligible costs under this Agreement shall expire at that time and the City shall have no further obligation to make any payment to Schlosser Signs. Schlosser Signs may request an extension of the July 31, 2014 completion deadline, for good cause shown, and the City Manager may extend that date by written notice to Schlosser Signs.

D. Once the City Manager has received from Schlosser Signs documentation establishing that the cost is eligible for reimbursement under this Agreement and such other documentation as may be required by the City Manager, the City shall reimburse Schlosser Signs for such costs within thirty (30) days after receiving the documentation.

E. In no event shall the City be obligated under this Agreement to reimburse Schlosser Signs for a total cumulative amount of more than Fifteen Thousand Dollars ($15,000).

F. The City shall have the right to have its representatives physically inspect the Premises to confirm that the reimbursement amounts paid under this Agreement have in fact been used for eligible expenses as set forth in this Agreement. Schlosser Signs' failure to allow such inspection or its use of any of the reimbursement funds for any purpose not authorized under this Agreement, shall each be deemed a material default under this Agreement.

2. **Remedies upon Default**

Schlosser Signs shall be deemed in default under this Agreement as a result of any material breach of any term or condition of this Agreement including, without limitation, the following:

A. Schlosser Signs' use of any of the reimbursement funds for any purpose not authorized under this Agreement;

B. The failure to allow the City's inspection of Schlosser Signs' Premises as required under Section 1.E;

C. Schlosser Signs' transfer of its interests under this Agreement without the prior written consent of the City as required in Section 7.

Upon the occurrence of any one or more of these above-listed events of default and the failure by Schlosser Signs to cure such default within thirty (30) days of receiving written notice from the City of the default, the City may pursue any and all remedies available to it under the law or in equity to collect any or all of the amounts owed to it under this Agreement, which may include, without limitation, the right to recover all or part of the Fifteen Thousand Dollars ($15,000) paid to Schlosser Signs under this Agreement.

3. **Expenses and Costs of Collection**

In the event that Schlosser Signs is in default under this Agreement and, as a result, the City pursues collection efforts through suit or otherwise, Schlosser Signs agrees to pay all reasonable expenses and costs of collection incurred by the City in connection with any such collection efforts and/or suit, in addition to any other amounts owed under this Agreement, which expenses and costs of collection shall include, without limitation, the following: attorneys' fees; receiver's fees and costs; expert witness fees; deposition costs; filing fees; the cost of mailing notices and other documents; the cost of serving process, notice and other documents; and copy costs.

4. **Default Interest**

Upon Schlosser Signs' default under this Agreement to timely pay any or all of the amounts owed to the City under this Agreement, which amounts shall include, without limitation, the costs and expenses of collection as described in Section 3 above, such amounts in default shall bear interest at the default rate of eight percent (8%) per annum compounded annually from the date of default until paid in full.

5. **Applicable Law and Venue**

This Agreement shall be governed by and enforced in accordance with the laws of the State of Colorado. In addition, the hereto acknowledge that there are legal constraints imposed upon the City by the constitutions, statutes, and rules and regulations of the State of Colorado and of the United States, and imposed upon the City by its Charter and Code, and that, subject to such constraints, the parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any other provisions of this Agreement to the contrary, in no event shall any of the parties hereto exercise any power or take any action which shall be prohibited by applicable

law. Whenever possible, each provision of this Agreement shall be interpreted in such a manner so as to be effective and valid under applicable law. Venue for any judicial proceeding concerning this Agreement shall be in the District Court for Larimer County, Colorado.

6. Time is of the Essence

Time shall be of the essence for the performance of all obligations under this Agreement.

7. Assignment

Schlosser Signs shall not assign or transfer any or all of its interests, rights, or obligations under this Agreement without the prior written consent of the City Council. Any such assignment or transfer without the City Council's prior written consent shall be deemed null and void and of no effect.

8. Construction

This Agreement shall be construed according to its fair meaning and as if it was prepared by both of the parties hereto and shall be deemed to be and contain the entire Agreement between the parties hereto. There shall be deemed to be no other terms, conditions, promises, understandings, statements, or representations, expressed or implied, concerning this Agreement, unless set forth in writing and signed by the City and Schlosser Signs.

9. Headings

Paragraph headings used in this Agreement are used for convenience of reference only and shall in no way define, limit, control, or affect the meaning or interpretation of any provision of this Agreement.

10. Notices

Any written notice given under this Agreement and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested, to the following addresses:

If to the City:
William D. Cahill
City Manager
City of Loveland
500 East Third Street, Suite 330
Loveland, CO 80537

With Copy to:
John R. Duval
City Attorney
City of Loveland
500 East Third Street, Suite 330
Loveland, CO 80537

If to Schlosser Signs:

Schlosser Signs, Inc.
3597 Draft Horse Dr.
Loveland, CO 80538

Any party hereto may at any time designate a different address or person receiving notice by so informing the other party in writing.

11. Binding Effect

This Agreement shall be binding upon and, except as otherwise provided in this Agreement, shall inure to the benefit of the personal representatives, estates, heirs, successors and assigns of the respective parties hereto.

12. Severability

If any provision of this Agreement, or the application of such provision to any person, entity or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons, entities or circumstances other than those in which it was held invalid, shall not be affected.

13. No Waiver

In the event the City waives any breach of this Agreement, no such waiver shall be held or construed to be a waiver of any subsequent breach hereof.

14. Multi-Year Fiscal Obligation

The City's obligations to reimburse Schlosser Signs provided in this Agreement may extend beyond December 31, 2013 and is therefore considered a multi-year fiscal obligation under Article X, Section 20 of the Colorado Constitution and the City's Charter Section 11-6, subject to annual appropriation by the Loveland City Council. The City shall have no obligation to reimburse Schlosser Signs as provided in this Agreement if the reimbursement is being sought or is to be paid on or after December 31, 2013 unless the necessary appropriation has been made by the City Council to authorize such payment. However, the City agrees that the Economic Development Director shall include in the proposed 2014 annual budget for the City Council's consideration the necessary appropriation to pay up to a total of Fifteen Thousand Dollars ($15,000) for the reimbursement as provided in Section 1 above.

15. Right to Offset

Schlosser Signs agrees that the City shall have the right to withhold from and set off against any amounts which may become payable to Schlosser Signs by the City under this Agreement any amounts which Schlosser Signs may owe to the City, whether arising under this Agreement or otherwise. For example, but not by way of limitation, if Schlosser Signs fails to pay any amounts due to the City but not related to this Agreement, such as amounts due for utility or

other services, the City shall have the right to withhold payment of and set off against any amounts that may be due by the City to Schlosser Signs under this Agreement, any amounts that may due to the City by Schlosser Signs for such utility or other services.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

SCHLOSSER SIGNS, INC.,
a Colorado corporation

By: Carla Schlosser

Title: CEO

CITY OF LOVELAND,
a Colorado municipal corporation

By: _____
William D. Cahill, City Manger

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Deputy City Attorney

CITY OF LOVELAND
ECONOMIC DEVELOPMENT OFFICE
Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2304 • FAX (970) 962-2900 • TDD (970) 962-2620

Memorandum

To: City Council, Bill Cahill, City Manager and Betsey Hale, Economic Development Director

From: Marcie Erion, Economic Development Department

Date: August 1, 2013

RE: Incentive Request- Schlosser Signs

Schlosser Signs is a local business started in 1999. They currently have 32 employees based out of their headquarters at Crossroads and I-25. Schlosser produces a variety of business signs, pole signs, awning signs etc. They have experienced steady growth in the 14 years of operation. They plan to keep their current location and the downtown building would represent an expansion of their production. They will add three new employees at the new location and add a fourth who will float between the downtown and Crossroads facilities.

Schlosser Signs have a $1.5 million contract with the Denver Tech Center to produce signs that is contingent on having sufficient production capacity to meet the contract requirements. Thus, Schlosser Signs is purchasing a vacant building in downtown and plans to invest approximately $130,000 towards improvements, excluding the cost of the new transformer and electrical upgrades.

The cost and installation of the transformer have been reviewed by the City's Water and Power staff. The improvements will greatly improve the functionality of the building and allow Schlosser Signs to fulfill the Denver Tech Center contract as well as others coming online as their business continues to expand.

http://coloradosigncompany.com/

- Currently operating at Crossroads and I-25
- Looking to add a new location in a vacant building going into foreclosure in downtown
- Including purchase price of the new building, an investment of $400,000 in downtown
- Plans to grow staff in the next three years
- Consistent revenue growth over the last 14 years

Staff is proposing:

- Up to $15,000 in reimbursement to offset upgrade of electrical equipment at the new location including a new transformer bank and pole in the alley behind the building.

The incentive request is consistent with the City of Loveland Economic Development Strategic Plan:

- Goal #3 – Make the Right Investment Easy to Come, Stay and Grow.
- Given that the improvements will significantly improve the functionality of an older building, it is also consistent with the Downtown Strategic Plan: "Identify funding gaps to project development and structure tools to fill the gaps and achieve development."

City of Loveland Economic Development Policy Project Checklist		Jul-13	
Primary Employer Guidelines			
Company Name :Schlosser Signs			
Requirement	**Completed**	**Date**	**Details**
Meeting with the Business Development Staff	**Yes**	**Jun-13**	
Letter of Intent/Request	**Yes**	**Jul-13**	
Economic Impact Analysis Data Submitted	**Yes**	**Jul-13**	
Impact Analysis shows Positive Net New Revenue	**Yes**	**Jul-13**	
Pays 80% of Employee Health Ins. Premium	**Yes**	**Jul-13**	
Offers Group Health Ins. Coverage to Dependents	**Yes**	**Jul-13**	
Performance Agreement	**Yes**		**Purchase of new building**
Minimum investment of $500,000	**No**		**$400,000.00**
Net New Jobs to Loveland	**Yes**		**3**
Project Budget Submitted	**Yes**	**Jul-13**	
Study Session		**N/A**	**Council Memo**
Council Meeting and Approval		**Aug-13**	
Average Annual Wages Company wide	**Meets**		**Details**
110% of Larimer County Ave Annual Wage			
120% of Larimer County Ave Annual Wage			
130% of Larimer County Ave Annual Wage			
140% of Larimer County Ave Annual Wage			
150% or > Larimer County Ave Annual Wage			
Encouraged but not required	**Meets**		**Details**
Located in an Enterprise Zone	**x**		
Located in Downtown Loveland	**x**		**418 E. 3rd Street (second location)**
Reuse of an existing vacant facility	**x**		
Clean Energy Company			
Health Care			
Aerospace/Aviation			
Bio-Science			
Creative Sector	**x**		
Rocky Mountain Innovation Intiative Client			
Proposed Incentive			
			$15,000

SCHLOSSER SIGNS, INC. 3597 Draft Horse Ct. Loveland, CO 80538
Design · Manufacture · Installation · Service

Loveland City Council and
Bill Cahill, City Manager
500 E. 3rd Street, Suite 330
Loveland, CO 80537

Dear Bill,

This letter is to officially request financial assistance for the electrical service update at our new facility for Schlosser Signs, Inc., located in downtown Loveland at 418 E. 3rd Street.

Schlosser Signs, Inc. has been in business since 1999 and located in Loveland all these years. We are a full service custom manufacturing business providing site identification to new and existing businesses. Our clients include contractors, developers, property managers, investors, city and county municipalities, and business owners. In 1999 the company was started with (3) employees and today we have grown to 31 employees. We anticipate adding (3) additional employees for the new location initially. Most of our staff lives in Loveland and Fort Collins. We mainly service the Front Range; however, our service area covers all of CO and WY and reaches as far as southwestern NE. Our main facility is located at 3597 Draft Horse CT, Loveland. We needed a second facility to help in our growth and expansion efforts. We CHOSE downtown Loveland because we have a passion for the vision and goals of this beautiful city.

We respectfully request business assistance in the amount of $15,000 to help offset the cost to update and increase the electric power at this location. This upgrade was necessary to run the equipment needed for production of signs and to meet the increased requirements as we add more equipment and people.

We sincerely appreciate the consideration of this request by the City of Loveland council members and City Manager's staff.

Respectfully submitted,

Carla Schlosser, CEO
Schlosser Signs, Inc.

Economic Impact of a Small Downtown Manufacturing Project

			Year 1	2	3	4	5	5 year Total
Project Driven Revenue Estimates								
1 Remodel and increase in City property tax			$ 220	$ 222	$ 225	$ 227	$ 229	**$ 1,123**
2 Increase due to personal property			139	141	142	144	145	**712**
Equipment								
Computer Equipment	total	$178,400						
Manufacturing Equipment								
Furniture								
3 Sales Tax one time			440					**440**
4 Use tax (a maximum that depends on nexus)			2,000					**2,000**
Wages driven **sales tax** per employee			404					
5 Five employees at this site, assume 2 live local			162	166	171	177	182	**858**
Visitor spending estimates	Assumes they stay in Loveland							
6 Sales tax			546	551	557	563	568	**2,785**
7 Lodging tax			357	361	364	368	371	**1,821**
Operations								
Cost of Materials			750,000	1,000,000				
8 Estimate % subject to sales tax		15%	3,375	4,500				**7,875**
9 Annual Total			$ 7,239	$ 5,942	$ 1,459	$ 1,477	$ 1,496	**$ 17,613**

CITY OF LOVELAND
DEVELOPMENT SERVICES DEPARTMENT
Civic Center • 500 East 3rd Street • Loveland, Colorado 80537
(970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

AGENDA ITEM: **18**
MEETING DATE: 8/6/2013
TO: City Council
FROM: Greg George, Development Services Director
PRESENTER: Greg George

TITLE:
A Resolution Amending Resolution #R-68-2012 and the 2013 Schedule of Rates, Charges and Fees for City Services, Other Than Services Provided by the Water and Power Department and the Stormwater Enterprise

RECOMMENDED CITY COUNCIL ACTION:
Approve the resolution.

OPTIONS:
1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

SUMMARY:
This is an administrative action to adopt a resolution creating a new fee for processing planning applications and issuing permits for oil and gas facilities. The proposed fees are as follows:
1. Planning Commission Review Process - $4,370
2. Administrative Review Process - $1,738

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible

BACKGROUND:
The proposed fees were developed by comparing the cost to the City of processing similar types of applications. Application types included in the analysis were Special Reviews, Site Development Plans and an amendment to a PUD. For the Planning Commission Review Process, applications types used for comparison were those that required a neighborhood meeting and were either approved by the Planning Commission and/or City Council or the DRT felt were of a level of complexity comparable to an application for oil and gas development.

For the Administrative Review Process, application types used for comparison were those that required only a neighborhood meeting and were approved at an administrative level with no appeal to Planning Commission or City Council. The costs estimates (see ***Exhibit 2***) were derived from time recording data being recorded by all members of the Development Review Team for each type of application.

The estimated average total cost of services for the Planning Commission Review Process was $4,370 and for the Administrative Review Process it is $1,738. The intent is that the application fees recover 100% of the total personnel cost to the City for processing the applications to be consistent with the Statement of Direction approved by City Council in August 2012 (see ***Exhibit 3***). If a Planning Commission decision is appealed to City Council the current fee schedule would require an additional fee of $180.00.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:
Resolution, including exhibits
Time recording data
Statement of Direction

RESOLUTION # R-60-2013

A RESOLUTION AMENDING RESOLUTION #R-68-2012 AND THE 2013 SCHEDULE OF RATES, CHARGES AND FEES FOR CITY SERVICES, OTHER THAN SERVICES PROVIDED BY THE WATER AND POWER DEPARTMENT AND THE STORMWATER ENTERPRISE

WHEREAS, on October 2, 2012, City Council adopted Resolution #R-68-2012 setting the rates, charges and fees for services provided by the City of Loveland (the "City"), other than fees imposed for services of the Water and Power Department and Storm Water Enterprise, for calendar year 2013; and

WHEREAS, the after adoption of Resolution #R-68-2012 setting the rates, charges and fees for City service, the City adopted Ordinance #5753 regulating oil and gas facilities within the City of Loveland and authorized fees in connection with various types of applications that may be filed for review pursuant to Chapter 18.77 of the Loveland Municipal Code (the "Code"); and

WHEREAS, this Resolution is intended amend Resolution #R-68-2012 to add new fees related to applications for review of oil and gas facilities pursuant to Code Section 18.77.095.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO AS FOLLOWS:

Section 1. That the 2013 schedule of rates, charges and fees for City services, other than services of the Water and Power Department and the Storm Water Enterprise, adopted by Resolution #R-68-2013 is hereby amended by the addition of the new rates, charges and fees as shown below:

Under the heading Development Services Department, under Planning Filing Fees the following shall be added:

Oil and Gas Facility – Planning Commission Review Process - $4,370
Oil and Gas Facility – Administrative Review Process - $1,738

Section 2. This Resolution amends the rates, charges, and fees for 2013 adopted by Resolution R#-68-2012 for all City services, other than services of the Water and Power Department and the Storm Water Enterprise, provided on or after January 1, 2013.

Section 3. This Resolution shall take effect as of the date of its adoption.

ADOPTED 6th day of August, 2013.

Cecil A. Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Deputy City Attorney

Planning Application Fee PC Review Process				
#	Project	Type	Hours spent by Reviewers	Multiplied by *$48.00 per hour equals
1	Major City Project	SR	120	$5,760
2	Major Parks Project	SR/SDP	98	$4,704
3	Residential PUD	PUD Amend	59	$2,832
4	Major Downtown Project	SDP	160	$7,692
5	Major Industrial Expansion Project	SDP	65	$3,120
6	Major Public Service Project	SDP	44	$2,112
Totals			**546**	**$26,220**
Averages			**91**	**$4,370**

Planning Application Fee Administrative Review Process				
#	Project	Type	Hours spent by Reviewers	Multiplied by *$48.00 per hour equals
1	Bank Project	SDP	24	$1,152
2	Vehicle Dealership Remodel Project	SDP	26	$1,248
3	Minor Manufacturing Reuse Project	SDP	52	$2,496
4	Food Distribution Expansion Project	SDP	41	$1,968
5	Health Clinic Reuse Project	SDP	38	$1,824
Totals			**181**	**$8,688**
Averages			**36**	**$1,738**

*$48 per hour rounded from 47.94 per hour: $35.51 per hour is the average hourly rate of the reviewers. $12.43 (35%) was added to cover benefits to reflect the true average of the cost to the City.

Exhibit 2

Statement of Direction for the
Development of Regulations on Oil and Gas Development in the City of Loveland

Generally

City staff will promptly develop an approach to oil and gas regulation which includes regulation by ordinance, and also incorporates operating agreements to be negotiated with oil and gas companies. Care will be taken in the drafting of the ordinance to ensure critical health and safety concerns and minimize impacts of oil and gas on neighbors, while at the same time providing for access to mineral rights and harmonizing with state law and regulation. The draft ordinance will draw upon the successful experience of other jurisdictions, and avoid conflicts with state law or regulation that would draw legal challenge from the State of Colorado.

Regulations by Ordinance

Method: Oil and gas development shall be listed in all City zoning districts as a special review use. This process requires notification of affected property owners and a neighborhood meeting. The current provisions for obtaining a special review permit, which provide for ultimate denial of the permit, will be amended to avoid legal preemption based on an operational conflict.

Standards: The City staff will explore and develop standards in the draft ordinance to address the following areas:

1. Closed loop/pitless wastewater disposal systems
2. Hazardous materials disclosure
3. Road damage/repair
4. Odor
5. Visual Screening
6. Setbacks (not in excess of those allowable by State law and regulation)
7. Construction traffic and routing
8. Safety and spill prevention
9. Emergency preparedness plan
10. Fire inspections

Fees: The draft ordinance shall include the development of a fee structure for permitting to recover City costs of service, to the extent not in conflict with State law and regulation. These will include System Impact Fees as well.

Use of Operator Agreements

The City will incorporate into its practice the use of individually negotiated agreements with individual oil and gas companies, as recommended by the Colorado Oil and Gas Association. These agreements can result in the application of more stringent standards than might otherwise be preempted by state law, in addition to the minimum standards mentioned above. The Colorado Oil and Gas Commission will typically include the requirements of any such agreement as conditions on permits it issues.

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AGENDA ITEM: **19**
MEETING DATE: 8/6/2013
TO: City Council
FROM: Greg George, Development Services Director
PRESENTER: Greg George

TITLE:
A Resolution Amending Resolution #R-81-2012 Adopting the 2013 Schedule of Capital Expansion Fees for Fire and Rescue, Law Enforcement and General Government and Resolution #R97-2012 Adopting the 2013 Schedule of Street Capital Expansion Fees to Include New Capital Expansion Fees for Oil and Gas Facilities Pursuant to Section Chapter 16.38 of the Loveland Municipal Code

RECOMMENDED CITY COUNCIL ACTION:
Approve the resolution.

OPTIONS:
1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

SUMMARY:
This is an administrative action. This resolution establishes capital expansions fees (CEFs) for oil and gas development within the city limits of the City of Loveland. The fees for law enforcement and general government would be based on the same fee rate as currently applied to other types of industrial development within the City. However, it's proposed that the fee rate for fire protection be increased over that for law enforcement to reflect the likelihood that there would be a greater impact in emergency response and capital needs for fire protection than for law enforcement. The street CEF would also be based on the same rate currently being charged for other new development, which is $238.21 per trip end.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible

BACKGROUND:
Currently, the rates for fire protection, law enforcement and general government CEFs are applied to new building square footage. Since permanent buildings are not constructed as part of an oil and gas facility, the proposal is to apply the existing rates for law enforcement and general government, and a new rate for fire protection, to the land area identified on the application submitted to the Colorado Oil and Gas Conservation Commission (COGCC) as the size of the disturbed area after interim reclamation. This area is the size of the site after it is under production and is generally less than the size of the site during development.

The current CEF rate per square foot for general government is $0.04 and for law enforcement it's $0.05.

The current CEF rate for fire protection is $0.03 per square foot. Based on research of the Colorado Code and the Fort Collins Municipal Code for assessing fees for capital improvements and expansion, Randy Mirowski, Fire Chief, Loveland Fire Rescue Authority, is recommending a new fee rate of $0.075 per square foot to be consistent with research indicating that fire protection fees should be approximately 50% higher than law enforcement fees for oil and gas facilities (see Exhibit 2).

Current applications pending review by the COGCC indicate that the size of the disturbed area after interim reclamation typically ranges from 3 to 5 acres, meaning that the typical CEFs for these three service areas would be in the range of $21,562 to $35,937.

The current rate for street CEFs is $238.21 per trip end. City staff estimates that 4 trip ends per day per wellhead would result from vehicles accessing the site to either remove oil and gas, for routine inspections or for ordinary maintenance and repair. At this rate the street CEF would be $952.84 per wellhead ($238.21/trip end x 4 trip ends/wellhead). A typical oil and gas facility may have from 4 -10 wellheads, which would result in a street CEF of $3,811.36 to $9,528.40.

REVIEWED BY CITY MANAGER:

William D. Cahill

LIST OF ATTACHMENTS:
Resolution, including exhibits
Memo from Randy Mirowski
CEF Summary Table

RESOLUTION # R-61-2013

A RESOLUTION AMENDING RESOLUTION #R-81-2012 ADOPTING THE 2013 SCHEDULE OF CAPITAL EXPANSION FEES FOR FIRE AND RESCUE, LAW ENFORCEMENT AND GENERAL GOVERNMENT AND RESOLUTION #R97-2012 ADOPTING THE 2013 SCHEDULE OF STREET CAPITAL EXPANSION FEES TO INCLUDE NEW CAPITAL EXPANSION FEES FOR OIL AND GAS FACILITIES PURSUANT TO SECTION CHAPTER 16.38 OF THE LOVELAND MUNICIPAL CODE

WHEREAS, on November 20, 2012, Loveland City Council ("Council") adopted Resolution #R-81-2012 (the "2013 CEF Resolution") adopting a new schedule of capital expansion fees for calendar year 2013, pursuant to Loveland Municipal Code (the "Code") Chapter 16.38; and

WHEREAS, on December 18, 2012, Council adopted Resolution #R-97-2012 (the "2013 Streets CEF Resolution") adopting a new schedule of streets capital expansion fees for calendar year 2013, pursuant to Code Chapter 16.38; and

WHEREAS, the after adoption of the 2013 CEF Resolution and the 2013 Streets CEF Resolution, the City adopted Ordinance #5753 regulating oil and gas facilities within the City of Loveland and authorized Council to adopt capital expansion fees for oil and gas facilities by resolution, pursuant to Code Section 18.77.100; and

WHEREAS, this Resolution is intended amend the 2013 CEF Resolution and the 2013 Streets CEF Resolution to add new capital expansion fees related for oil and gas facilities pursuant to Code Section 18.77.100.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO AS FOLLOWS:

Section 1. That Exhibit A to the 2013 CEF Resolution is hereby amended by the addition of the capital expansion fees for oil and gas facilities as set forth on the "**New 2013 CEF Exhibit A"** attached hereto and incorporated herein by this reference.

Section 2. That Exhibit A to the 2013 Streets CEF Resolution is hereby amended by the addition of the streets capital expansion fees for oil and gas facilities as set forth on the **"New 2013 Streets CEF Exhibit A"** attached hereto and incorporated herein by this reference.

Section 3. This Resolution amends the 2013 capital expansion fees adopted by the 2013 CEF Resolution and the 2013 streets capital expansion fees adopted by the 2013 Streets CEF Resolution, for all oil and gas facilities permit applications received after January 1, 2013.

Section 3. This Resolution shall take effect as of the date of its adoption.

ADOPTED 6th day of August, 2013.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

J. Yost Schmidt
_____
Deputy City Attorney

"New 2013 CEF Exhibit A "

Exhibit A Capital Expansion Fees for 2013

Residential Single Family	**Fee Level**
Per unit of housing	
Fire and Rescue	$ 888
Law Enforcement	874
General Government	1,083
Library	722
Cultural Services / Museum	602
Parks	3,528
Recreation	1,572
Trails	527
Open Lands	884
Residential Multi-family	
per unit of housing	
Fire and Rescue	$ 617
Law Enforcement	608
General Government	753
Library	502
Cultural Services / Museum	419
Parks	2,452
Recreation	1,092
Trails	366
Open Lands	614
Commercial	
Per square foot	
Fire and Rescue	$ 0.31
Law Enforcement	0.41
General Government	0.44
Industrial	
Per square foot	
Fire and Rescue	$ 0.03
Law Enforcement	0.05
General Government	0.06

Oil and Gas Facility

Per square foot of the land area identified on the applicable application submitted to the Colorado Oil and Gas Conservation Commission as the "disturbed area" after interim reclamation

Fire and Rescue	$ 0.03
Law Enforcement	0.04
General Government	0.05

~~**Note:** The review process for the street capital expansion fees are not yet completed. When the process has been completed, a revised fee schedule will be presented to Council.~~

"NEW 2013 STREETS CEF EXHIBIT A"

Exhibit A

Schedule of Street Capital Expansion Fees for 2013

Land Use Category	Street CEF Amount
Residential (per dwelling unit or room)	
Single Family Detached	$ 2,279.61
Attached Single Family Dwelling	$ 1,383.97
Multi-Family Dwelling (with 4 or more units) per unit	$ 1,584.06
Assisted Living (per bed)	$ 633.62
Nursing Home (per bed)	$ 564.54
Mobile Home	$ 1,188.64
Hotel (per room)	$ 1,946.13
Commercial (per square foot)	
Retail Shopping Center*	
25,000 square foot or less	$ 11.30
50,000 square foot	$ 8.87
100,000 square foot	$ 6.96
200,000 square foot	$ 5.45
Bank with Drive Up	$ 9.53
Free-standing Discount Store	$ 6.55
Fast Food Restaurant with Drive Thru	$ 35.45
High Turnover Sit-down Restaurant	$ 10.91
Coffee/Donut Shop w/o drive-thru	$ 32.16
Coffee/Donut Shop w/ drive-thru	$ 58.49
New Car Sales	$ 6.36
Auto – Oil Change & Emissions Service per bay	$ 7,622.68
Quick Lube Vehicle Shop (per bay)	$ 7,622.53
Convenience Store/Gas Station	$ 32.22
Gas Station per pump	$ 7,226.71
Car Wash (Automated) per SF	$ 16.82
Car Wash (Self-Serve) per Wash Stall	$ 12,863.03
Supermarket	$ 8.28
Furniture Store	$ 0.24
Health Club	$ 6.27
Specialty Retail	$ 5.27

Office (per square foot)		
General Office Building*		
25,000 square feet or less	$	4.37
50,000 square feet	$	3.73
100,000 square feet	$	3.17
200,000 square feet	$	2.71
Medical/Dental Office Building	$	8.61
Hospital	$	3.93
Place of Worship	$	2.17
Industrial (per square foot)		
Manufacturing	$	0.91
Warehousing	$	0.85
General Light Industrial	$	1.66
Mini-warehouse	$	0.60
Oil and Gas Facility (per wellhead)	**$**	**952.84**

Street Capital Expansion Fees are determined by multiplying the number of weekday trips for the proposed specific use(s) as defined and reported in the current edition of the Institute of Transportation Engineers' *Trip Generation Manual* (ITE Manual) and handbook by the percentage of primary trips for that use (per current ITE Manual and handbook) and by $238.21 (cost per trip end for 2013). Please refer to the ITE Manual for specific information related to the categories listed above as well as for those not listed, as this Schedule is not intended to be all inclusive. Traffic data used for CEF calculation must be found reliable by Public Works Department Transportation Development Review Division (TDR) Staff and final CEF determination will be made only in conjunction with a complete building permit submittal. These fees are based per square foot of floor area or dwelling unit (unless otherwise noted). For purposes of calculating the Street CEF for oil and gas facilities, the number of trip ends per wellhead used is 4.0 trip ends.

* The fees listed for these uses are size-specific and are provided for reference only. The actual Street Capital Expansion Fees will be established based on the total square footage of the structure, inclusive of any additions, in conjunction with trip information from the ITE Manual, as deemed reliable by City TDR Staff.

Loveland Fire Rescue Authority

Memo

To: Greg George, Development Services Director, City of Loveland

From: Randy Mirowski, Fire Chief Loveland Fire Rescue Authority *rm*

Date: 19 July, 2013

Re: Gas and oil CEFs for hydraulic fracturing installations

Greg I am offering some observations and some supporting data, for a rationale charge structure for impact and capital expansion fees for oil and gas installations. I could find little in the way of empirical data to assist me for exact comparisons or information specific for the appropriate amount for fees. However, there is some information that I gathered (generic) from the Colorado Code and the Fort Collins Municipal Code for assessing fees for capital improvement and expansion. Thus, here is my take on this matter based on what I found.

The "Code" seems to suggest that when assessing such fees that ***Fire Fees*** are approximately 50% more than what ***Police Fees*** are listed. I'm certain that the rationale for this is that the expected impact will likely be greater in emergency response and in capital expansion for Fire than for Police. This projected impact is consistent with what we have heard from other Fire Chiefs and from our discussions between Chief Hecker and me.

Thus, assuming the Police numbers you listed are correct, at .050, Fire Fees would need to go to. 075 to achieve the level of what the code suggests (based on a ratio of 50% greater than what Police Fees are).

Greg, a specific assessment that I would suggest using, can be found in the City of Fort Collins Municipal Code for expansion improvement fees. They (Fort Collins) have a similar situation as us with the fire authority and police services, so it would seem reasonable that this ratio could be used with an assurance of it being comparative and accurate to Loveland.

I will provide the link for the Code below so that you can review it for yourself. http://www.colocode.com/ftcollins/municipal/chapter7-5.htm#sec7d5d30

Exhibit 2

Please see Section 7.5-29 and Sections 7.5-30 for the comparisons. Thanks for the opportunity to weigh in on this, Greg.

City of Loveland

Oil & Gas Site Capital Expansion Fees

Type of Fee	Unit cost	Units		Cost	Basis
1) Streets Capital Expansion Fee	$238.21	4	trip ends per day	$952.84	per well drilled
2) Fire Protection Capital Expansion Fee	$0.075	130,680	square feet	$9,801.00	for the site one time
3) Law Enforcement Capital Expansion Fee	$0.05	130,680	square feet	$6,534.00	for the site one time
4) General Government Capital Expansion Fee	$0.04	130,680	square feet	$5,227.20	for the site one time
				$22,515.04	CEF total

Notes:

The Streets Capital Expansion Fee is based on four trip end per day over the whole life of the drilling site.

- During construction the daily trips might be much higher, but the average trips over the life of of the well site are estimates to be four over the life of the drilling site.

The example above assumes a 10 acre gross development area site with a 3 acre site size after Interim Reclamation.

Exhibit 3

CITY OF LOVELAND
DEVELOPMENT SERVICES DEPARTMENT
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AGENDA ITEM: **20**
MEETING DATE: 8/6/2013
TO: City Council
FROM: Greg George, Development Services Director
PRESENTER: Greg George

TITLE:
An Ordinance of the City Council of the City of Loveland Making Technical Amendments to Code Chapter 18.77 Relating to the Regulation of Oil and Gas Operations and Repealing and Reenacting Code Chapter 18.78 to Establish Overlay Zoning Districts for Development Setbacks from Existing Oil and Gas Facilities

RECOMMENDED CITY COUNCIL ACTION:
Conduct a public hearing and approve the ordinance.

OPTIONS:
1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

SUMMARY:
This is a legislative action. Approval of this ordinance amends certain provisions in the oil and gas ordinance adopted on March 18, 2013. The amendments would revise the existing restrictions in Chapter 18.78 on new development within the setbacks for oil and gas facilities by creating three overlay zoning districts. The existing provisions in Chapter 18.78 would be revised to require variances from the restrictions established in the proposed overlay zoning district to be processed in accordance with the existing provisions of Chapter 18.60 governing zoning variances. Technical and procedural revisions would be made to Chapter 18.77, including notification of the director's decision in the administrative review process and who has standing to appeal that decision.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible

BACKGROUND:

1. **Overlay zoning districts:** The three overlay zoning districts proposed in Chapter 18.78 have been designed to allow limited and compatible land uses within the setbacks for oil and gas facilities in order to avoid creating large, undeveloped areas within the City without allowances for reasonable uses.
   a) The Critical Zone district would still limit uses within 200 feet of an existing oil and gas facility to restricted open space.
   b) The Restricted Zone district would allow certain industrial uses, as special review uses, within 500 feet, but beyond 200 feet, from an existing oil and gas facility, with the additional restriction that no building or parking lot be located within this zone district. All land uses allowed in this district would be subject to the special review use provisions in Section 18.40. Special review uses can be approved only if it is determined that any such use is compatible with uses in the vicinity. If approved through the special review process, land uses in this district would be allowed even if such uses were not allowed in the underlying zoning district.
   c) The High Occupancy Building district would allow uses within 1,000 feet, but beyond 500 feet from an existing oil and gas facility in accordance with the existing underlying zoning district, except that high occupancy buildings and outdoor activity areas would have to be located at least a 1,000 feet from an existing oil and gas facility. High occupancy buildings and outdoor activity areas are facilities designed to accommodate 50 persons or more.
2. **Variances:** The provisions for obtaining a variance to the proposed zoning regulations in Chapter 18.78 would be processed in accordance with Chapter 18.60 of the zoning code (see Exhibit E).
3. **Director's decision:** Under the provisions for the administrative review process, Section 18.77.050 would be amended to require that the Director's written decision be mailed to the applicant and all persons required to receive notice of the neighborhood meeting and to clarify that those persons have standing to appeal the Director's decision to Larimer County District Court.
4. **Setback distances:** A table would be inserted in Section 18.77.065.A to make it easier to determine and measure setback distances for oil and gas facilities. No setback distances would be changed.
5. **Other revisions:** A couple definitions would be revised, one added and one deleted and a few other minor wording changes made in Chapter 18.77.

For more detail on the proposed amendments please review the Planning Commission staff report included as ***Exhibit C***.

The Planning Commission considered the proposed amendments at a public hearing on July 22, 2013 and voted 7-1 to recommend that City Council adopt the proposed amendments as presented at that meeting. The amendments recommended by Planning Commission are shown in "blue font" in the ordinance included as ***Exhibit B***. The amendments shown in "red font" in ***Exhibit B*** are additional technical changes developed after the Planning Commission meeting and recommended by City staff.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

Ordinance
Original Oil and Gas ordinance (showing proposed amendments in redlines and bluelines)
Planning Commission Staff Report
Draft Planning Commission 7/22/13 meeting minutes
Chapter 18.60 - Variances
Zoning Overlay Districts Illustration

FIRST READING: August 6, 2013

SECOND READING: _____

ORDINANCE #_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOVELAND MAKING TECHNICAL AMENDMENTS TO CODE CHAPTER 18.77 RELATING TO THE REGULATION OF OIL AND GAS OPERATIONS AND REPEALING AND REENACTING CODE CHAPTER 18.78 TO ESTABLISH OVERLAY ZONING DISTRICTS FOR DEVELOPMENT SETBACKS FROM EXISING OIL AND GAS FACILITIES

WHEREAS, on March 19, 2013, the City Council adopted Ordinance #5753 adding two new Chapters to the City Code, Chapters 18.77 and 18.78; and

WHEREAS, Chapter 18.77, titled "Oil and Gas Regulations," is a comprehensive codification of the City's requirements, restrictions, and standards for the permitting, regulation and operation of oil and gas operations within the City; and

WHEREAS, Chapter 18.78, titled "Building Setbacks from Oil and Gas Facilities", establishes for new land use development within the City certain setbacks from existing and abandoned oil and gas facilities; and

WHEREAS, based on City staff's further review of Chapter 18.77 in anticipation of receiving in the near future the City's first applications for oil and gas permits, staff is recommending the following technical amendments to Chapter 18.77:

(1) Amend Section 18.77.025 to add a definition for the term "high occupancy building", revise the definitions for the terms "oil and gas facility" and "outdoor assembly area", and delete the definition for the word "setback";

(2) Revise some of the time periods related to the conceptual review process under Section 18.77.040;

(3) Amend Section 18.77.050 to require that the Director's final written decision in the Administrative Review Process be mailed to the applicant and all persons required to receive notice of the neighborhood meeting and to clarify that those persons required to receive notice of the neighborhood meeting have standing to appeal the Director's final written decision to Larimer County District Court;

(4) Revise Section 18.77.065 to create a table for ease of reference in determining and measuring setback distances under the enhanced standards of the Administrative Review Process without changing the previously approved setback distances; and

Exhibit A

(5) Amend Section 18.77.065 to change the reference to "Table 1" to "Table B" in paragraph C. and in paragraph F. add the paragraph heading "Sound Limitations"; and

WHEREAS, City staff has also reviewed Chapter 18.78 and is recommending that it be significantly rewritten to allow, through the creation of overlay zoning districts, certain limited and compatible land uses to occur within the setbacks currently imposed in Chapter 18.78 that govern the location of new development near existing oil and gas facilities in order to avoid creating large, undeveloped areas within the City without any available and reasonable land uses; and

WHEREAS, in the exercise of the City's legal authority to enact its own oil and gas regulations so long as they are not in "operational conflict" with state law and in the exercise of the City's general police powers and its home rule authority to regulate zoning and land use, the City Council hereby finds that this Ordinance is an appropriate and necessary exercise of that authority for the protection of the public's health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO, as follows:

Section 1. That Code Section 18.77.025 is hereby amended to read in full and as follows:

18.77.025 Rules of Construction and Definitions

A. The words, terms and phrases expressly defined in this section shall have the meaning hereafter given them, unless the context requires otherwise. The words, terms and phrases used in this chapter not defined in this section shall have the meaning given to them in the OGC Act, the COG regulations or in chapter 18.04 of this code, and where there is more than one definition, the controlling definition shall be the one that is most consistent with the city's authority described in Section 18.77.010 and with the city's purposes for enacting this chapter as described in Section 18.77.015. Words, terms and phrases not defined in this section, the Act, the COG regulations or chapter 18.04, shall be given their commonly accepted meaning unless they are technical in nature, in which case they should be given their technical meaning generally accepted by the industry in which they are used. Therefore, for those words, terms and phrases peculiar to the oil and gas industry, they shall be given that meaning which is generally accepted in the oil and gas industry. Words, terms and phrases of a legal nature shall be given their generally accepted legal meaning.

B. When determining the end date of a time period under this chapter, the day on which the time period begins shall not be counted and the last day shall be included in the count. If the last day is a Saturday, Sunday or federal or state legal holiday, that day shall be excluded in the count.

C. "Abandonment" shall mean the plugging process of cementing a well, the removal of its associated production facilities, the removal or abandonment in-place of its flowline, and the remediation and reclamation of the wellsite.

D. “Act” or “OGC Act” shall mean the Colorado Oil and Gas Conservation Act as found in Title 34, Article 60 of the Colorado Revised Statutes, as amended.

E. “Adverse effect” or “adverse impact” shall mean the impact of an action that is considerable or substantial and unfavorable or harmful. The term includes social, economic, physical, health, aesthetic, historical impact, and/or biological impacts, including but not limited to, effects on natural resources or the structure or function of affected ecosystems.

F. “Administrative review process” shall mean the expedited and enhanced review process set out in section 18.77.050.

G. “Applicant” shall mean any person possessing the legal right to develop oil or gas underlying land located within the city’s boundaries and who has applied for an oil and gas permit under this chapter.

H. “Application” shall mean an application filed with the city by any person requesting an oil and gas permit under this chapter.

I. “Baseline standards” shall mean those review standards and operation requirements set out in sections 18.77.055 and 18.77.060.

J. “Best management practices” shall mean the best proven and commercially practicable techniques, technologies and practices that are designed to prevent or minimize adverse impacts caused by oil and gas operations to the public health, safety or welfare, including the environment and wildlife resources.

K. “Building” shall mean any residential or non-residential structure designed and permitted to be occupied by natural persons.

L. “City manager” shall mean the city’s duly appointed city manager or his or her designee.

M. “Code” shall mean the duly adopted ordinances of the city including, without limitation, the Loveland Municipal Code, as amended.

N. “COG permit” shall mean a permit issued by the commission to drill, deepen, re-enter or recomplete and conduct any other oil and gas operation as allowed under the COG regulations.

O. “COG rule” or “COG regulations” shall mean the Colorado oil and gas rules and regulations duly adopted by the commission, as amended, including 2 Colo. Code Regs. 400; et seq.

P. “Commission” shall mean the Oil and Gas Conservation Commission of the State of Colorado.

Q. “Completion” shall mean, for the completion of an oil well, that the first new oil is produced through wellhead equipment into leased tanks from the ultimate producing interval after the production string has been run. A gas well shall be considered completed when the well is capable of producing gas through wellhead equipment from the ultimate producing zone after the production string has been run. A dry hole shall be considered completed when all provisions of plugging are complied with as set out in the COG regulations. Any well not previously defined as an oil or gas well, shall be considered completed ninety (90) days after reaching total depth. If approved by the director of the commission, a well that requires extensive testing shall be considered completed when the drilling rig is released or six months after reaching total depth, whichever is later.

R. “Completion combustion device” shall mean any ignition device, installed horizontally or vertically used in exploration and production operations to combust otherwise vented emissions from completions.

S. “Current planning” shall mean the city’s current planning division.

T. “Day” shall mean a calendar day.

U. “Designated agent” shall mean the designated representative of any operator.

V. “Development review team” or “DRT” shall mean the city’s development review team.

W. “Director” shall mean the director of the city’s development services department or his or her designee.

X. “Enhanced standards” shall mean those review standards and best management practices set out in section 18.77.065.

Y. “Gas” shall mean all natural gases and all hydrocarbons not defined in this section as oil.

Z. “High occupancy building” shall mean any residential or non-residential structure design to be occupied by natural persons and permitted with an occupancy rating for fifty (50) persons or more.

AA. “Hydraulic fracturing” shall mean all the stages of the treatment of a well by the application of hydraulic fracturing fluid under pressure that is expressly designed to initiate or propagate fractures in a target geological formation to enhance production of oil and gas.

BB. “Inspector” shall mean any person designated by the city manager who shall have the authority to inspect a well site to determine compliance with this chapter and any other applicable city ordinances.

CC. “Minimize adverse impacts” shall mean, whenever reasonably practicable, to avoid significant adverse impacts to wildlife resources, the environment, or to the public’s health, safety or welfare from oil and gas operations, minimize the extent and severity of those impacts that cannot be avoided, mitigate the effects of unavoidable remaining impacts, and take into consideration cost-effectiveness and technical feasibility with regard to actions and decisions taken to minimize adverse impacts.

DD. “Natural area” shall mean those areas described or identified as natural areas in the City of Loveland Open Lands Plan, dated March 2003.

EE. “Oil” shall mean crude petroleum oil and any other hydrocarbons, regardless of gravities, which are produced at the well in liquid form by ordinary production methods, and which are not the result of condensation of gas before or after it leaves the reservoir.

FF. “Oil and gas facility” shall mean equipment or improvements used or installed at an oil and gas location for the exploration, production, withdrawal, gathering, treatment or processing of oil or gas, which shall include, without limitation, any and all storage, separation, treating, dehydration, artificial lift, power supply, compression, pumping, metering, monitoring, flowlines, and other equipment directly associated with oil wells, gas wells, or injection wells.

GG. “Oil and gas operations” or “operations” shall mean exploration for oil and gas, including the conduct of seismic operations and the drilling of test bores; the siting, drilling, deepening, re-entering, recompletion, reworking or abandonment of an oil and gas well, underground injection well or gas storage well; production operations related to any such well including the installation of flowlines and gathering lines; the generation, transportation, storage, treatment or disposal of exploration and production wastes; and any construction, site preparation or reclamation activities associated with such operations.

HH. “Operator” shall mean a person who has the legal right under a permit issued under this chapter 18.77 and under a COG permit issued by the commission to conduct oil and gas operations on the surface within the city’s boundaries by drilling into and producing from a pool and to appropriate the oil or gas produced therefrom either for the operator or for the operator and an owner.

II. “Outdoor assembly area” shall mean an improved facility, not within a building, designed to accommodate and provide a place for natural persons to congregate and is capable of being reasonably occupied by 50 or more natural persons at any one time.

JJ. “Owner” shall mean any person having an ownership interest in the oil and gas resources underlying land either as the owner of a corporeal estate in realty or as an owner of a leasehold interest therein.

KK. “Permit” or “oil and gas permit” shall mean a permit issued by the city to an applicant under this chapter.

LL. “Person” shall mean any natural person, corporation, association, partnership, limited liability company, receiver, trustee, executor, administrator, guardian, fiduciary or any other kind of entity or representative, and includes any department, agency or instrumentality of the state or any political subdivision thereof and any county, city and country, home rule municipality, statutory municipality, authority or special district.

MM. “Pit” shall mean any natural or man-made depression in the ground used for oil or gas exploration or production purposes. A pit does not include steel, fiberglass, concrete or other similar vessels which do not release their contents to surrounding soils. This shall include, without limitation and as applicable, “production pits,” “special purpose pits,” “reserve pits,” “multi-well pits” and “drilling pits,” as these are defined in the COG regulations.

NN. “Planning commission” shall mean the city’s planning commission as established in code section 2.60.210.

OO. “Planning commission review process” shall mean the review process set out in section 18.77.045.

PP. “Seismic operations” shall mean all activities associated with the acquisition of seismic data including, but not limited to, surveying, shothole drilling, recording, shothole plugging and reclamation.

QQ. “Significant degradation” shall mean any degradation to the environment that will require significant efforts and expense to reverse or otherwise mitigate that degradation.

RR. “State” shall mean the State of Colorado.

SS. “Surface water body” shall include, but not be limited to, rivers, streams, ditches, reservoirs, and lakes.

TT. “Surface owner” shall mean any person having title or right of ownership in the surface estate of real property or any leasehold interest therein.

UU. “VOCs” shall mean volatile organic compounds.

VV. “Well” shall mean an oil or gas well, a hole drilled for the purpose of producing oil or gas, or a well into which fluids are injected, a stratigraphic well, a gas storage well, or a well used for the purpose of monitoring or observing a reservoir.

WW. “Well blowdown” shall mean the maintenance activity designed to remove fluids from mature wells during which time gas is often vented to the atmosphere.

XX. “Well completion” shall mean the process that perforates well casing, stimulates the reservoir using various techniques including, but not limited to, acid treatment and hydraulic

fracturing, allows for the flowback of oil or natural gas from wells to expel drilling and reservoir fluids, and tests the reservoir flow characteristic, which may vent produced hydrocarbons to the atmosphere via an open pit or tank.

YY. "Wellhead" shall mean the equipment attached to the casinghead of an oil, gas or injection well above the surface of the ground.

ZZ. "Wetlands" shall have the same meaning as this word is defined in code section 18.41.110.

Section 2. That Code Section 18.77.040 is hereby amended to read in full as follows:

18.77.040 Conceptual Review.

Prior to any person submitting an application under this chapter, that person shall first schedule with current planning and attend a conceptual review meeting with the city's development review team. Current planning shall schedule such meeting within fifteen (15) days after a written request for the meeting has been received. At least fifteen (15) days before the scheduled conceptual review meeting, the person requesting the meeting shall submit to current planning in electronic form or one (1) hard-copy set of all applications, plans, studies and other documents that such person has filed or will be required to file with the commission under the COG regulations to obtain a COG permit for the oil and gas operations proposed to be conducted within the city. The purpose of the conceptual review meeting is to give the prospective applicant and the city's development review team the opportunity to discuss the proposed oil and gas operations and to discuss the city's application and review processes under this chapter. This will include a discussion as to whether the prospective applicant is interested in using the expedited and enhanced administrative review process rather than the planning commission review process. Within fifteen (15) days after the meeting, current planning shall provide the prospective applicant with the development review team's written comments and recommendations concerning the proposed oil and gas operations. When these comments and recommendations are sent to the prospective applicant by current planning, the prospective applicant shall have ninety (90) days thereafter in which to file with current planning an application for the proposed oil and gas operations. Failure to file that application within this time period will require the prospective applicant to schedule and conduct another conceptual review meeting under this section for those oil and gas operations. However, in the event current planning fails to timely provide DRT's written comments and recommendations to the prospective applicant, the prospective applicant may proceed to file its application with current planning within ninety (90) days thereafter.

Section 3. That paragraph G. of Code Section 18.77.050 is hereby amended to read in full and as follows:

18.77.050

G. *Director's Decision.* Within fifteen (15) days after the expiration of the negotiation period in paragraph F. of this section, the director shall issue his or her written findings and conclusion, granting, granting with conditions to the extent agreed by the applicant under paragraph F. of this section or denying the applicant's requested oil and gas permit. The director's written decision shall be mailed to the applicant and to all persons required in paragraph D. of this section to be mailed written notice of the neighborhood meeting. The record which the director must consider in issuing his or her written findings and conclusions shall consist solely of the application, the applicant's supplementals to the application, the DRT report and the public comments and information submitted under paragraph E. of this section. This record shall be used by the director to then determine the application's compliance or noncompliance with the applicable provisions of this chapter and any other applicable provisions in this code.

Section 4. That paragraph H. of Code Section 18.77.050 is hereby amended to read in full and as follows:

18.77.050

H. *Appeal of Director's Decision.* The director's decision as set out in his or her written findings and conclusions shall constitute the director's final decision. The director's final decision is not appealable to the planning commission or the city council. The director's final decision may only be appealed to the district court for Larimer County under Rule 106(a)(4) of the Colorado Rules of Civil Procedure by the applicant, by anyone required in paragraph D. of this section to be mailed written notice of the neighborhood meeting, and by any other person or persons considered a "party in interest" under section 18.80.020. The record to be considered in the appeal shall consist of the director's written findings and conclusion, the application, the applicant's supplementals to the application, the DRT report, all comments and information provided by the public under paragraph E. of this section and any other evidentiary information the district court orders to be included in the record.

Section 5. That paragraph A. of Code Section 18.77.065 is hereby amended to read in full as follows:

A. *Setbacks*. All oil and gas facilities shall comply with the setback distances set forth in Table A below or such greater distances as may be required by the commission. Setback distances shall be measured from the closest edge of any equipment included in the definition of oil and gas facility in Section 18.77.025.FF to the nearest part of the nearest feature associated with the sensitive area as described in Column C in Table A. For the purpose of measuring the setback from any sensitive area that does not have a defined property or boundary line, the director shall establish the boundary line for measurement purposes.

Table A – Setbacks for oil and gas facilities

Column A	Column B	Column C
Sensitive Area	Setback Distance (ft.)	Setback to be measured to the following nearest feature of sensitive area:
Building	500	Wall or corner of the building
Public road, major above-ground utility facility, or railroad tracks	200	Right-of-way or easement property line
Property on which the oil and gas facility is located	200	Property line
Lease area on which the oil and gas facility is located	200	Property line
Natural area or wetland	500	Property line
Property managed by the City's Parks and Recreation Department, any City park, or property subject to a conservation easement managed by a public or non-profit entity	500	Property line of property or easement
Surface water body	500	Operating high-water line
FEMA floodway zoning district	500	Boundary line as shown by the Flood Insurance Rate Map (FIRM) revised to reflect a Letter of Map Revision effective May 24, 2010, published by the FEMA
Domestic or commercial water well	500	Center of wellhead
Outdoor assembly area	1,000	Property line
High occupancy building	1,000	Wall or corner of the building

Section 6. That paragraph C. of Code Section 18.77.065 is hereby amended to read in full as follows:

C. *Bufferyards*. The bufferyards set forth in Table B below, shall be established once the well is in production around the entire perimeter of the oil and gas production site, excluding vehicular access points, and maintained until the site has been restored in accordance with the final reclamation plan approved by the city and the commission. Bufferyards shall not be required during drilling and well completion operations. The use of xeriscape plant types shall be used unless a permanent irrigation system is provided by the operator. A temporary irrigation system shall be provided, maintained and operated for xeriscape plant types for a period of two years from planting.

Table B - Bufferyards

Base Standard (plants per 100 linear feet)	Optional Width (feet)	Plant Multiplier	Option: add 6 foot opaque masonry wall
5 canopy trees	150	1.00	.85
6 evergreen trees	170	0.90	
4 large shrubs	190	0.80	
	210	0.70	
	230	0.60	
	250	0.50	

Section 7. That paragraph F. of Code Section 18.77.065 is hereby amended to read in full as follows:

F. *Sound Limitiations.* All oil and gas facilities shall comply with the sound limitation standards set forth in code chapter 7.32 after development of the well is complete, meaning while the well is in production. A noise mitigation study shall be submitted with the application to demonstrate compliance with said code chapter. If necessary to comply with said chapter, a noise screen shall be constructed along the edge of the oil and gas facility between the facility and existing residential development or land zoned for future residential development.

Section 8. That Code Chapter 18.78 is hereby repealed and reenacted to read in full as follows:

Chapter 18.78

Overlay Zoning Districts for Development Setbacks from Existing Oil and Gas Facilities

Sections:

18.78.010 Purpose

18.78.020 Definitions

18.78.030 Establishment of zoning overlay districts

18.78.040 Applicability

18.78.050 Overlay zoning district boundaries

18.78.060 Land use restrictions within zoning overlay districts

18.78.080 Variances

18.78.010 Purpose.

The purpose of this chapter is to establish overlay zoning districts in the vicinity of existing oil and gas facilities in order to allow certain land uses within these overlay zoning districts that are compatible with the industrial nature of oil and gas facilities, but yet are protective of the public's health, safety and welfare.

18.78.020 Definitions.

The following words, terms and phases shall have the meanings set forth below, unless the context requires otherwise:

A. "Critical zone" shall mean all land and water surface area less than two hundred (200) feet from an oil and gas facility, as measured in accordance with Section 18.78.050.

B. "High occupancy building zone" shall mean all land and water surface area five hundred (500) feet or greater but one thousand (1,000) feet or less from an oil and gas facility, as measured in accordance with Section 18.78.050.

C. "Oil and gas facility" shall have the meaning given to this term in section 18.77.025.FF and shall include, without limitation, operating, shut-in and abandoned wells. However, it shall not include an abandoned well that has been demonstrated, to the satisfaction of the Development Services Director, will not be reopened or reentered in the future for any type of oil and gas operation.

D. "Restricted zone" shall mean all land and water surface area two hundred (200) feet or greater but less than five hundred (500) feet from an oil and gas facility, as measured in accordance with Section 18.78.050.

18.78.030 Establishment of overlay zoning districts.

There are hereby created and established in the city as overlay zoning districts the critical zone, the restricted zone, and the high occupancy building zone.

18.78.040 Applicability.

Notwithstanding the land uses allowed by the underlying zoning districts established in this title for any land located in the critical zone, restricted zone, or high occupancy building zone, development of such land shall be subject to and shall comply with the applicable zoning restrictions set forth in this chapter.

18.78.050 Overlay zoning district boundaries.

The boundaries of the zoning overlay districts established in section 18.78.030 shall be measured from the closest edge of any oil and gas facility.

18.78.060 Land use restrictions within overlay zoning districts.

A. In the critical zone land uses shall be limited to any of the following:

1. Essential underground public utility facilities; and

2. Undeveloped and restricted open space designed and operated to discourage access and use by natural persons, but this shall not include “recreational open space” as defined in chapter 18.04 and any of the uses allowed in the public park zoning district under chapter 18.32, unless it is an open lands/natural area that is undeveloped and designed and operated to discourage access and use by natural persons.

B. In the restricted zone land uses shall be limited to any of the following, provided no outdoor assembly area (as defined in section 18.77.025.II), building, or parking lot is located within the restricted zone and the use is approved in accordance with the provisions in chapter 18.40 for uses permitted by special review.

1. Airports and heliports;

2. Attended recycling collection facility;

3. Commercial mineral deposit;

4. Composting facility;

5. Contractor’s storage yard;

6. Essential public utility uses, facilities, services and structures;

7. Heavy industrial uses;

8. Landfill area;

9. Landscaping;

10. Personal wireless service facilities;

11. Plant nursery;

12. Public service facility;

13. Recyclable materials processing;

14. Resource extraction, process and sales;

15. Self-service storage facility;

16. Street;

17. Truck terminal;

18. Unattended recycling collection facility;

19. Vehicle rentals of heavy equipment, large trucks and trailers;

20. Vehicle rentals of cars, light trucks and light equipment;

21. Vehicle sales and leasing of cars and light trucks; and

22. Vehicle sales and leasing of farm equipment, mobile homes, recreational vehicles, large trucks and boats with outdoor storage;

These land uses shall be permitted if approved as a special review under this paragraph B. notwithstanding the fact that the underlying zoning or approved development plan governing the subject property may prohibit such approved land use.

C. In the high occupancy building zone all land uses authorized for the affected land by the land's underlying zoning district as provided in this title shall be allowed subject to the requirements of that zoning district, except that high occupancy buildings and outdoor assembly areas shall not be allowed within this zoning overlay district.

18.78.070 Variances.

The owner of any real property subject to the requirements and limitations of this chapter may request a variance from those requirements and limitations using the variance procedures set out in chapter 18.60. The grounds for such variance shall be those set out in chapter 18.60 to the extent applicable and may also include the existence of a vested right under chapter 18.72 or Colorado law or on the grounds that application of chapter 18.78 would constitute a regulatory taking under Article II, Section 3 of the Colorado Constitution. However, any such variance approved must be in compliance with the underlying zoning or approved development plan governing the subject property.

Section 9. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

ADOPTED this ___ day of August, 2013.

_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

8-6-13 DRAFT

FIRST READING: ~~**March 5, 2013**~~

SECOND READING: ~~**March 19, 2013**~~

ORDINANCE #

AN ORDINANCE ADDING TO THE LOVELAND MUNICIPAL CODE CHAPTER 18.77 FOR THE REGULATION OF OIL AND GAS OPERATIONS AND CHAPTER 18.78 FOR SETBACKS FOR DEVELOPMENT FROM OIL AND GAS OPERATIONS WITHIN THE CITY OF LOVELAND

WHEREAS, on May 15, 2012, the City Council adopted Ordinance No. 5685 as an emergency ordinance; and

WHEREAS, Ordinance No. 5685 imposed a nine (9) month moratorium on the City's acceptance, processing and approval of all applications for City licenses, permits and any other approvals needed to conduct oil and gas operations within the City; and

WHEREAS, this moratorium began on May 16, 2012, and was set to expire on February 16, 2013; and

WHEREAS, on December 18, 2012, the City Council adopted Ordinance No. 5735 to extend the moratorium from February 16, 2013, to the earlier of April 15, 2013, or on the date that an ordinance adopted by City Council to enact local oil and gas regulations becomes law; and

WHEREAS, the primary purpose of the moratorium has been to give City staff and this Council a reasonable opportunity to investigate the extent of the City's legal authority to regulate oil and gas operations occurring within the City and to consider the adoption and implementation of local oil and gas regulations consistent with that authority in order to protect the environment, wildlife resources and the public's health, safety and welfare; and

WHEREAS, in that process it was determined that under Colorado law the regulation of oil and gas operations by home rule municipalities, such as Loveland, is a matter of mixed statewide and local concern and, as such, the City has the legal authority to enact its own oil and gas regulations so long as those regulations are not in "operational conflict" with state law, including the oil and gas regulations which have been adopted by the Colorado Oil and Gas Conservation Commission ("Commission"); and

WHEREAS, in the exercise of that legal authority, the Council finds that it is important for the City to have a role in minimizing the adverse impacts that oil and gas development within the City will likely have on the City's environment and on its residents' health, safety and welfare; and

WHEREAS, the Council therefore finds that this Ordinance is a proper and necessary exercise of the City's general police power and of its home rule authority to regulate zoning and land use, in order to regulate oil and gas operations and facilities within the City to the full extent permitted by law; and

WHEREAS, the development of oil and gas resources presents unique public health, safety and welfare issues that are inadequately addressed in the City's current zoning and land use regulations; and

WHEREAS, City staff has completed a review of applicable state law and of the Commission's regulations concerning oil and gas operations, a review of the oil and gas regulations adopted by other local governments throughout Colorado, and has received and considered input from the public, including from the Anadarko Petroleum Corporation, currently the only oil and gas operator known to have plans to begin new oil and gas operations within the City; and

WHEREAS, as a result of that process, the oil and gas regulations and the building setbacks from oil and gas activities as set out in this Ordinance are necessary to protect the City's environment and wildlife resources, and the public's health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO:

Section 1. That a new Chapter 18.77 is hereby added to the Loveland Municipal Code to read in full as follows:

Chapter 18.77

Oil and Gas Regulations

Sections:

18.77.010 Authority.
18.77.015 Purpose.
18.77.020 Applicability.
18.77.025 Rules of Construction and Definitions.
18.77.030 Zoning.
18.77.035 Alternative Permit Processes.
18.77.040 Conceptual Review.
18.77.045 Planning Commission Review Process.
18.77.050 Administrative Review Process.
18.77.055 Baseline Standards for Planning Commission Review Process.
18.77.060 Baseline Standards for Planning Commission and Administrative Review Processes.
18.77.065 Enhanced Standards for Administrative Review Process.
18.77.070 Application Requirements.
18.77.075 Variances.
18.77.080 Transfer of Permits.
18.77.085 Other Applicable Code Provisions.
18.77.090 Emergency Response Costs.

18.77.095 Application and Inspection Fees.
18.77.100 Capital Expansion Fees.
18.77.105 Reimbursement for Consultant Costs.
18.77.110 Adequate Transportation Facilities
18.77.115 Insurance and Performance Security.
18.77.120 Inspections, Right to Enter and Enforcement.
18.77.125 Violations, Suspension and Revocation of Permits, Civil Actions and Penalties.
18.77.130 Conflicting Provisions.

18.77.010 Authority.

This Chapter 18.77 is enacted pursuant to the city's police powers and land-use authority under Article XX of the Colorado Constitution, Title 31 of the Colorado Revised Statutes, the OGC Act, the COG regulations and under all other applicable laws, rules and regulations. It is the intent of this chapter that these powers and authority be exercised in a manner that will not create an operational conflict with the provisions of the OGC Act or the COG regulations, which conflict could arise if any application of this chapter has the effect of materially impeding or destroying a state interest as expressed in the OGC Act or the COG regulations. The provisions of this chapter are therefore to be interpreted and applied in a manner that is consistent and in harmony with any conflicting provisions of the OGC Act or the COG regulations, so as to avoid an operational conflict.

18.77.015 Purpose.

The purpose of this chapter is to generally protect the public's health, safety and welfare and the environment and more specifically to regulate oil and gas operations within the city so as to minimize the potential land use conflicts and other adverse impacts that may negatively affect existing and future land uses when oil and gas operations occur within the city near those uses. This purpose is intended to be achieved in a manner that recognizes the state's interests in oil and gas operations as expressed in C.R.S. § 34-60-102, which include: fostering the responsible and balanced development of the state's oil and gas resources in a manner consistent with the protection of the public's health, safety and welfare, including protection of the environment and wildlife resources; protecting public and private interests against waste in both the production and use of oil and gas; and allowing Colorado's oil and gas pools to produce up to their maximum efficient rate subject to the prevention of waste, protection of the public's health, safety and welfare, protection of the environment and wildlife resources, and the protection and enforcement of the rights of owners and producers to a common source of oil and gas so that each owner and producer obtains a just and equitable share of production from that source.

18.77.020 Applicability.

Except as otherwise provided in this section, the provisions of this chapter shall apply to all surface oil and gas operations occurring within the city's boundaries, which shall include, without limitation, any oil and gas operation requiring the commission's issuance or reissuance of a drilling permit or any other permit under the COG regulations. Prior to any person commencing any such operations within the city, that person shall apply for and receive an oil

and gas permit from the city in accordance with the provisions of this chapter. This chapter, however, shall not apply to those surface oil and gas operations for which a drilling permit was issued under the COG regulations prior to April 2, 2013, the effective date of this chapter, and under which permit the oil and gas operations were commenced before April 2, 2013. It shall also not apply to any surface oil and gas operations occurring on real property annexed into the city on or after April 2, 2013, provided those operations are occurring as of the effective date of the annexation pursuant to a drilling permit issued under the COG regulations. This chapter shall apply to all other surface oil and gas operations occurring within the city's boundaries after April 2, 2013.

18.77.025 Rules of Construction and Definitions.

A. The words, terms and phrases expressly defined in this section shall have the meaning hereafter given them, unless the context requires otherwise. The words, terms and phrases used in this chapter not defined in this section shall have the meaning given to them in the OGC Act, the COG regulations or in chapter 18.04 of this code, and where there is more than one definition, the controlling definition shall be the one that is most consistent with the city's authority described in Section 18.77.010 and with the city's purposes for enacting this chapter as described in Section 18.77.015. Words, terms and phrases not defined in this section, the Act, the COG regulations or chapter 18.04, shall be given their commonly accepted meaning unless they are technical in nature, in which case they should be given their technical meaning generally accepted by the industry in which they are used. Therefore, for those words, terms and phrases peculiar to the oil and gas industry, they shall be given that meaning which is generally accepted in the oil and gas industry. Words, terms and phrases of a legal nature shall be given their generally accepted legal meaning.

B. When determining the end date of a time period under this chapter, the day on which the time period begins shall not be counted and the last day shall be included in the count. If the last day is a Saturday, Sunday or federal or state legal holiday, that day shall be excluded in the count.

C. "Abandonment" shall mean the plugging process of cementing a well, the removal of its associated production facilities, the removal or abandonment in-place of its flowline, and the remediation and reclamation of the wellsite.

D. "Act" or "OGC Act" shall mean the Colorado Oil and Gas Conservation Act as found in Title 34, Article 60 of the Colorado Revised Statutes, as amended.

E. "Adverse effect" or "adverse impact" shall mean the impact of an action that is considerable or substantial and unfavorable or harmful. The term includes social, economic, physical, health, aesthetic, historical impact, and/or biological impacts, including but not limited to, effects on natural resources or the structure or function of affected ecosystems.

F. "Administrative review process" shall mean the expedited and enhanced review process set out in section 18.77.050.

G. "Applicant" shall mean any person possessing the legal right to develop oil or gas underlying land located within the city's boundaries and who has applied for an oil and gas permit under this chapter.

H. "Application" shall mean an application filed with the city by any person requesting an oil and gas permit under this chapter.

I. "Baseline standards" shall mean those review standards and operation requirements set out in sections 18.77.055 and 18.77.060.

J. "Best management practices" shall mean the best proven and commercially practicable techniques, technologies and practices that are designed to prevent or minimize adverse impacts caused by oil and gas operations to the public health, safety or welfare, including the environment and wildlife resources.

K. "Building" shall mean any residential or non-residential structure designed and permitted to be occupied by natural persons.

L. "City manager" shall mean the city's duly appointed city manager or his or her designee.

M. "Code" shall mean the duly adopted ordinances of the city including, without limitation, the Loveland Municipal Code, as amended.

N. "COG permit" shall mean a permit issued by the commission to drill, deepen, re-enter or recomplete and conduct any other oil and gas operation as allowed under the COG regulations.

O. "COG rule" or "COG regulations" shall mean the Colorado oil and gas rules and regulations duly adopted by the commission, as amended, including 2 Colo. Code Regs. 400; et seq.

P. "Commission" shall mean the Oil and Gas Conservation Commission of the State of Colorado.

Q. "Completion" shall mean, for the completion of an oil well, that the first new oil is produced through wellhead equipment into leased tanks from the ultimate producing interval after the production string has been run. A gas well shall be considered completed when the well is capable of producing gas through wellhead equipment from the ultimate producing zone after the production string has been run. A dry hole shall be considered completed when all provisions of plugging are complied with as set out in the COG regulations. Any well not previously defined as an oil or gas well, shall be considered completed ninety (90) days after reaching total depth. If approved by the director of the commission, a well that requires extensive testing shall be considered completed when the drilling rig is released or six months after reaching total depth, whichever is later.

R. "Completion combustion device" shall mean any ignition device, installed horizontally or vertically used in exploration and production operations to combust otherwise vented emissions from completions.

S. "Current planning" shall mean the city's current planning division.

T. "Day" shall mean a calendar day.

U. "Designated agent" shall mean the designated representative of any operator.

V. "Development review team" or "DRT" shall mean the city's development review team.

W. "Director" shall mean the director of the city's development services department or his or her designee.

X. "Enhanced standards" shall mean those review standards and best management practices set out in section 18.77.065.

Y. "Gas" shall mean all natural gases and all hydrocarbons not defined in this section as oil.

Z. "High occupancy building" shall mean any residential or non-residential structure design to be occupied by natural persons and permitted with an occupancy rating for fifty (50) persons or more.

AA~~Z~~. "Hydraulic fracturing" shall mean all the stages of the treatment of a well by the application of hydraulic fracturing fluid under pressure that is expressly designed to initiate or propagate fractures in a target geological formation to enhance production of oil and gas.

BB~~AA~~. "Inspector" shall mean any person designated by the city manager who shall have the authority to inspect a well site to determine compliance with this chapter and any other applicable city ordinances.

CC~~BB~~. "Minimize adverse impacts" shall mean, whenever reasonably practicable, to avoid significant adverse impacts to wildlife resources, the environment, or to the public's health, safety or welfare from oil and gas operations, minimize the extent and severity of those impacts that cannot be avoided, mitigate the effects of unavoidable remaining impacts, and take into consideration cost-effectiveness and technical feasibility with regard to actions and decisions taken to minimize adverse impacts.

DD~~CC~~. "Natural area" shall mean those areas described or identified as natural areas in the City of Loveland Open Lands Plan, dated March 2003.

EE~~DD~~. "Oil" shall mean crude petroleum oil and any other hydrocarbons, regardless of gravities, which are produced at the well in liquid form by ordinary production methods, and which are not the result of condensation of gas before or after it leaves the reservoir.

FF~~EE~~. "Oil and gas facility" shall mean equipment or improvements used or installed at an oil and gas location for the exploration, production, withdrawal, gathering, treatment or processing of oil or gas, which shall include, without limitation, any and all storage, separation, treating, dehydration, artificial lift, power supply, compression, pumping, metering, monitoring, flowlines, and other equipment directly associated with oil wells, gas wells, or injection wells.

GG~~FF~~. "Oil and gas operations" or "operations" shall mean exploration for oil and gas, including the conduct of seismic operations and the drilling of test bores; the siting, drilling, deepening, re-entering, recompletion, reworking or abandonment of an oil and gas well, underground injection well or gas storage well; production operations related to any such well including the installation of flowlines and gathering lines; the generation, transportation, storage, treatment or disposal of exploration and production wastes; and any construction, site preparation or reclamation activities associated with such operations.

HH~~GG~~. "Operator" shall mean a person who has the legal right under a permit issued under this chapter 18.77 and under a COG permit issued by the commission to conduct oil and gas operations on the surface within the city's boundaries by drilling into and producing from a pool and to appropriate the oil or gas produced therefrom either for the operator or for the operator and an owner.

II~~HH~~. "Outdoor assembly area" shall mean an improved facility, not within a building, designed to accommodate and provide a place for natural persons to congregate and is capable of being reasonably occupied by 50 or more natural persons at any one time. ~~but shall not include the backyards of residential buildings.~~

JJ~~II~~. "Owner" shall mean any person having an ownership interest in the oil and gas resources underlying land either as the owner of a corporeal estate in realty or as an owner of a leasehold interest therein.

KK~~JJ~~. "Permit" or "oil and gas permit" shall mean a permit issued by the city to an applicant under this chapter.

LL~~KK~~. "Person" shall mean any natural person, corporation, association, partnership, limited liability company, receiver, trustee, executor, administrator, guardian, fiduciary or any other kind of entity or representative, and includes any department, agency or instrumentality of the state or any political subdivision thereof and any county, city and country, home rule municipality, statutory municipality, authority or special district.

MM~~LL~~. "Pit" shall mean any natural or man-made depression in the ground used for oil or gas exploration or production purposes. A pit does not include steel, fiberglass, concrete or other similar vessels which do not release their contents to surrounding soils. This shall include, without limitation and as applicable, "production pits," "special purpose pits," "reserve pits," "multi-well pits" and "drilling pits," as these are defined in the COG regulations.

NN~~MM~~. "Planning commission" shall mean the city's planning commission as established in code section 2.60.210.

OONN. "Planning commission review process" shall mean the review process set out in section 18.77.045.

PPOO. "Seismic operations" shall mean all activities associated with the acquisition of seismic data including, but not limited to, surveying, shothole drilling, recording, shothole plugging and reclamation.

~~PP. "Setback" shall mean the distance on the surface estate between the following, as applicable: a wellhead, intermediate line, gathering line or oil and gas facility structure boundary and the closest projection of a building or structure, property line of a platted lot or unplatted tract of land or a permitted oil and gas operation.~~

QQ. "Significant degradation" shall mean any degradation to the environment that will require significant efforts and expense to reverse or otherwise mitigate that degradation.

RR. "State" shall mean the State of Colorado.

SS. "Surface water body" shall include, but not be limited to, rivers, streams, ditches, reservoirs, and lakes.

TT. "Surface owner" shall mean any person having title or right of ownership in the surface estate of real property or any leasehold interest therein.

UU. "VOCs" shall mean volatile organic compounds.

VV. "Well" shall mean an oil or gas well, a hole drilled for the purpose of producing oil or gas, or a well into which fluids are injected, a stratigraphic well, a gas storage well, or a well used for the purpose of monitoring or observing a reservoir.

WW. "Well blowdown" shall mean the maintenance activity designed to remove fluids from mature wells during which time gas is often vented to the atmosphere.

XX. "Well completion" shall mean the process that perforates well casing, stimulates the reservoir using various techniques including, but not limited to, acid treatment and hydraulic fracturing, allows for the flowback of oil or natural gas from wells to expel drilling and reservoir fluids, and tests the reservoir flow characteristic, which may vent produced hydrocarbons to the atmosphere via an open pit or tank.

YY. "Wellhead" shall mean the equipment attached to the casinghead of an oil, gas or injection well above the surface of the ground.

ZZ. "Wetlands" shall have the same meaning as this word is defined in code section 18.41.110.

18.77.030 Zoning.

Notwithstanding any provision in this code to the contrary, oil and gas operations shall be permitted in all of the city's zoning districts, planned unit developments, general development plans, unit developments and within any other city-approved land uses, but only if a permit has been issued to the extent required by this chapter and a COG permit has been issued by the commission for those oil and gas operations.

18.77.035 Alternative Permit Processes.

Any person applying for a permit under this chapter must proceed under the planning commission review process as provided in section 18.77.045, unless the applicant voluntarily chooses to proceed under and qualifies for the expedited and enhanced administrative review process as provided in section 18.77.050. The permit application under the planning commission review process shall be reviewed and granted or denied on the basis of the applicable baseline standards set out in sections 18.77.055 and 18.77.060 and any other applicable standards and requirements in this chapter and code. A permit application under the administrative review process shall be reviewed and granted or denied under the applicable baseline and enhanced standards set out in sections 18.77.060 and 18.77.065 and any other applicable standards and requirements in this chapter and code.

18.77.040 Conceptual Review.

Prior to any person submitting an application under this chapter, that person shall first schedule with current planning and attend a conceptual review meeting with the city's development review team. Current planning shall schedule such meeting within fifteen (15) days after a written request for the meeting has been received. At least fifteen (15) days before the scheduled conceptual review meeting, the person requesting the meeting shall submit to current planning in electronic form or one (1) hard-copy set of all applications, plans, studies and other documents that such person has filed or will be required to file with the commission under the COG regulations to obtain a COG permit for the oil and gas operations proposed to be conducted within the city. The purpose of the conceptual review meeting is to give the prospective applicant and the city's development review team the opportunity to discuss the proposed oil and gas operations and to discuss the city's application and review processes under this chapter. This will include a discussion as to whether the prospective applicant is interested in using the expedited and enhanced administrative review process rather than the planning commission review process. Within ~~ten (10)~~fifteen (15) days after the meeting, current planning shall provide the prospective applicant with the development review team's written comments and recommendations concerning the proposed oil and gas operations. When these comments and recommendations are sent to the prospective applicant by current planning, the prospective applicant shall have ~~three (3) months~~ninety (90) days thereafter in which to file with current planning an application for the proposed oil and gas operations. Failure to file that application within this time period will require the prospective applicant to schedule and conduct another conceptual review meeting under this section for those oil and gas operations. However, in the event current planning fails to timely provide DRT's written comments and recommendations to the prospective applicant, the prospective applicant may proceed to file its application with current planning within ~~three (3) months~~ninety (90) days thereafter.

18.77.045 Planning Commission Review Process.

A. *Application Completeness Review.* After an application has been filed with current planning, the director shall review the application for completeness to determine its compliance with the applicable requirements of section 18.77.070. If the director determines that any of those applicable requirements have not been satisfied, the director shall, within fifteen (15) days after the application is filed, notify the applicant in writing of any deficiencies in the application. This process of review and notice of deficiency shall continue until the director determines the application satisfies all applicable requirements of section 18.77.070 and is, therefore, a complete application. The director shall notify the applicant in writing that the application is complete within fifteen (15) days after the later of the filing of the application or the filing of the last application resubmittal in response to a notice of deficiency from the director. Promptly thereafter, current planning shall post the complete application on the city's website for public review, but excluding any information required in this chapter to be kept confidential.

B. *Development Review Team.* After an application is filed with current planning and has been determined by the director to be a completed application, it shall be reviewed by the DRT. The DRT shall review the application for conformance with the applicable provisions of this chapter and any other applicable provisions of this code. As part of this review, the DRT may meet with the applicant or the applicant's representatives to discuss the application and to present the DRT's questions, concerns and recommendations. Within thirty (30) days after the application has been determined by the director to be a complete application, the DRT shall complete its review by submitting a written report of its findings and recommendations to the applicant and the director. The report shall also be posted on the city's website with the application, but excluding any information required under this chapter to be kept confidential. Within thirty (30) days of the issuance of the DRT's report, the applicant may supplement its application in response to the DRT report.

C. *Neighborhood Meeting.* Promptly after the director has issued the written determination that the application is complete, current planning shall schedule a neighborhood meeting to be held within forty-five (45) days of the director's written determination of completeness. Once that neighborhood meeting has been scheduled, notices of the neighborhood meeting shall be provided in accordance with all applicable requirements of code chapter 18.05. The mailed notice required for neighborhood meetings under chapter 18.05 shall also be sent to the surface owner or owners of the parcel or parcels of real property on which the oil and gas operations are proposed to be located. In addition to the other contents required for the mailed notice under chapter 18.05, the mailed notice shall state that the application can be reviewed prior to the neighborhood meeting on the city's website or at current planning's office. The neighborhood meeting shall be conducted by current planning. The applicant or a representative of the applicant shall attend the neighborhood meeting and be available to answer questions concerning the application. The objective of a neighborhood meeting shall be to inform noticed persons and other interested citizens attending the meeting of the scope and nature of the proposed oil and gas operations under the application and how the operations will be regulated under this chapter and the COG regulations. Notwithstanding the foregoing, the director may waive the provisions of this paragraph C. if the director determines that the City's required notices and neighborhood meeting under this paragraph will be duplicative of the notice and neighborhood meeting

requirements under the COG regulations for the applicant's COG permit. To be considered duplicative, the commission's neighborhood meeting must be held within the city.

D. *Planning Commission Hearing.* Current planning shall schedule the application for a public hearing before the planning commission within forty-five (45) days after the DRT has finished its review of the application. Notice of the hearing shall be provided in accordance with all applicable requirements of chapter 18.05. The mailed notice required in chapter 18.05 for this hearing shall also be mailed to the surface owner or owners of the parcel or parcels of real property on which the oil and gas operations are to be located. In addition, the mailed and published notices shall state that the complete application can be reviewed by the public on the city's website or at current planning's office.

E. *Planning Commission Hearing Procedures.* The planning commission's public hearing shall be conducted as a quasi-judicial proceeding. Subject to the planning commission chairperson's discretion to limit the time and scope of testimony and to make allowances for the adequate presentation of evidence and the opportunity for rebuttal, the order of the hearing shall be as follows: (1) explanation and nature of application by current planning staff; (2) applicant's presentation of evidence and testimony in support of the application; (3) public comment and presentation of evidence; (4) applicant's rebuttal presentation; and (5) motion, discussion and vote by the planning commission on the application. No person making a presentation and providing testimony or comment at the hearing shall be subject to cross-examination. However, during the hearing members of the planning commission and the city attorney may make inquiries for the purposes of eliciting new information and to clarify information presented.

F. *Planning Commission Decision.* The planning commission shall consider the application based solely on the testimony and evidence submitted at the hearing, the applicable provisions of this chapter and any other applicable provisions of this code. At the conclusion of the presentation of testimony and evidence, the planning commission shall vote to grant, grant with conditions or deny the oil and gas permit requested in the application under consideration. A condition may only be imposed on the grant of an oil and gas permit if the applicant agrees to that condition on the record of the hearing. An applicant's refusal to agree to any such condition shall not be used by the planning commission as a basis, in whole or part, to deny the applicant's requested oil and gas permit, unless the condition is expressly required by this chapter 18.77. In granting, granting with conditions or denying an application for an oil and gas permit, the planning commission shall adopt its written findings and conclusions within thirty (30) days of its decision at the hearing.

G. *Appeal of Planning Commission Decision.* The planning commission's decision described in paragraph F. of this section may be appealed to the city council by the applicant and any "party in interest" as defined in section 18.80.020. The written notice of appeal shall be filed with current planning within ten (10) days of the effective date of the planning commission's final decision, which date shall be the date the planning commission adopts its written findings and conclusions. The appeal shall be filed and conducted in accordance with the applicable provisions in chapter 18.80 for appeals from the planning commission to the city council. The council's decision in the appeal hearing to grant, grant with conditions or deny the applicant's request for an oil and gas permit shall, like the planning commission's decision, be based on the applicable provisions of this chapter and any other applicable provisions of this code. The

council shall also not impose any condition on its grant of the oil and gas permit unless the applicant agrees to the condition on the record of the council's appeal hearing. An applicant's refusal to agree to any such condition shall not be used by the city council to deny the permit unless the condition is expressly required by this chapter 18.77.

18.77.050 Administrative Review Process.

A. *Applicant's Election to Use Administrative Review Process.* As an alternative to processing an application using the planning commission review process set out in section 18.77.045, an applicant may elect to use the expedited and enhanced administrative review process set out in this section. In electing to use this administrative review process, the applicant must acknowledge and agree in its application to all of the following: (1) that by using this administrative review process to obtain an expedited review, the applicant's application will not only be subject to the baseline standards in section 18.77.060, but also the enhanced standards in section 18.77.065, which enhanced standards might be interpreted to be in operational conflict in one or more respects with the COG regulations; (2) that to the extent the enhanced or negotiated standards imposed through this administrative review process are not already included as conditions in the applicant's COG permit, the applicant will request the commission to add such enhanced standards as additional conditions to the applicant's COG permit; and (3) that if for any reason the applicant wishes to revoke its election to use this administrative review process or to withdraw from the process once started, but still desires an oil and gas permit under this chapter, it will be required to follow and meet all of the requirements of the planning commission review process.

B. *Application Completeness Review.* An application reviewed under this section shall be reviewed by the director for completeness using the same process used in the planning commission review process as set out in section 18.77.045.A.

C. *Development Review Team.* After an application is filed with current planning and determined by the director to be a complete application, it shall be reviewed by the DRT. The DRT shall review the application for conformance with the applicable provisions of this chapter and any other applicable provisions of this code. As part of this review, the DRT may meet with the applicant or the applicant's representatives to discuss the application and to present the DRT's questions, concerns and recommendations. Within thirty (30) days after the application has been determined by the director to be a complete application, the DRT shall complete its review by submitting a written report of its findings and recommendations to the applicant and the director. The report shall also be posted on the city's website with the application, but excluding any information required under this chapter to be kept confidential. Within thirty (30) days of the issuance of the DRT's report, the applicant may supplement its application in response to the DRT report.

D. *Neighborhood Meeting.* The neighborhood meeting for an application reviewed under this section shall be scheduled, noticed and conducted or waived in the same manner as under the planning commission review process set out in section 18.77.045.C., but with one addition. The notices mailed under section 18.77.045.C. shall state that the application is being reviewed under the administrative review process and notify the recipients of the notice that they will have until fifteen (15) days after the neighborhood meeting is held or after such other date set by the

director if the neighborhood meeting is waived by the director as provided in section 18.77.045.C. in which to submit to current planning for the director's consideration any comments and information, in written, electronic or photographic form, related to the subject application as provided in paragraph E. of this section.

E. *Public Comment.* Within fifteen (15) days after the neighborhood meeting is held or after such other date set by the director if the neighborhood meeting is waived by the director as provided in section 18.77.045.C., any person may file with current planning for the director's consideration and to be included in any record on appeal taken under paragraph H. of this section, any comments and information, in written, electronic or photographic form, relevant to the director's consideration of the subject application under this section. Current planning shall preserve all of the comments and information received under this section to ensure that they are included in any record of appeal. These comments and information shall also be made available for review by the applicant. The applicant may supplement its application in response or rebuttal to the comments and information submitted by the public. The applicant must file this supplemental information with current planning within fifteen (15) days after the deadline for the public's submittal of its comments and information. Any comments and information received by current planning after the deadlines set forth herein, shall not be considered by the director in his or her decision and shall not be included in the record of any appeal under paragraph H. of this section.

F. *Director's Negotiations with Applicant.* After receiving the DRT report and all of the public comments and information provided under paragraph E. of this section, the director shall negotiate with the applicant for standards to be added as conditions to the oil and gas permit in addition to or in substitution of those baseline standards required in section 18.77.060 and the enhanced standards in section 18.77.065, if in the director's judgment such conditions will result in the increased protection of the public's health, safety or welfare or further minimize adverse impacts to surrounding land uses, the environment or wildlife resources. The director shall have ten (10) days after the last of the public comments and information have been submitted under paragraph E. of this section in which to conduct those negotiations. If after those negotiations the applicant agrees in writing to these new standards, they shall be added as conditions to the oil and gas permit if the permit is granted by the director. If the applicant does not agree to these conditions, they shall not be added as conditions to any granted oil and gas permit. In addition, the applicant's refusal to agree to any such conditions shall not be used by the director as a basis, in whole or part, to deny the applicant's requested oil and gas permit, unless the condition is expressly required by this chapter 18.77.

G. *Director's Decision.* Within fifteen (15) days after the expiration of the negotiation period in paragraph F. of this section, the director shall issue his or her written findings and conclusion, granting, granting with conditions to the extent agreed by the applicant under paragraph F. of this section or denying the applicant's requested oil and gas permit. The director's written decision shall be mailed to the applicant and to all persons required in paragraph D. of this section to be mailed written notice of the neighborhood meeting. The record which the director must consider in issuing his or her written findings and conclusions shall consist solely of the application, the applicant's supplementals to the application, the DRT report and the public comments and information submitted under paragraph E. of this section. This record shall be used by the director to then determine the application's compliance or

noncompliance with the applicable provisions of this chapter and any other applicable provisions in this code.

H. *Appeal of Director's Decision.* The director's decision as set out in his or her written findings and conclusions shall constitute the director's final decision. The director's final decision is not appealable to the planning commission or the city council. The director's final decision may only be appealed to the district court for Larimer County under Rule 106(a)(4) of the Colorado Rules of Civil Procedure by the applicant, ~~or~~ by anyone required in paragraph D. of this section to be mailed written notice of the neighborhood meeting, and by any other person or persons considered a "party in interest," ~~as defined in~~ under section 18.80.020., ~~to the district court for Larimer County under Rule 106(a)(4) of the Colorado Rules of Civil Procedure.~~ The record to be considered in the appeal shall consist of the director's written findings and conclusion, the application, the applicant's supplementals to the application, the DRT report, all comments and information provided by the public under paragraph E. of this section and any other evidentiary information the district court orders to be included in the record.

18.77.055 Baseline Standards for Planning Commission Review Process.

All applications considered in the planning commission review process and all oil and gas operations approved under this process shall be subject to and comply with the setback and mitigation requirements set forth in COG rule 604, as amended, in addition to the standards and requirements in code section 18.77.060.

18.77.060 Baseline Standards for Planning Commission and Administrative Review Processes.

All applications considered in the planning commission review process and the administrative review process and all oil and gas operations approved under either process shall be subject to and comply with the following standards and requirements, as applicable:

A. *COG regulations for setback requirements.* All oil and gas operations shall comply with COG rule 603, as amended.

B. *COG regulations for groundwater baseline sampling and monitoring.* All permits for oil and gas operations shall comply with COG rule 318.A.e, as amended.

C. *COG regulations for protection of wildlife resources.* All permits for oil and gas operations shall comply with COG rule series 1200, as amended. The operator shall notify the director if consultation with Colorado Division of Parks and Wildlife is required pursuant to COG rule 306.c.

D. *COG regulations for reclamation.* All permits for oil and gas operations shall comply with COG rule series 1000, as amended. The operator shall provide copies of the commission's drill site reclamation notice to the director at the same time as it is provided to the surface owner.

E. *COG regulations for well abandonment.*

1. All oil and gas facilities shall comply with the requirement for well abandonment set forth in COG rule 319, as amended. The operator shall provide a copy of the approval granted by the commission for the abandonment to the director within thirty (30) days from receiving such approval.

2. The operator shall provide copies of the commission's plugging and abandonment report to the director at the same time as it is provided to the commission.

3. The operator shall notify the Loveland Fire Rescue Authority not less than two (2) hours prior to commencing plugging operations.

F. *Applications and permits.* Copies of all county, state and federal applications and permits that are required for the oil and gas operation shall be provided to the director.

G. *Burning of trash.* No burning of trash shall occur on the site of any oil and gas operations.

H. *Chains.* Traction chains on heavy equipment shall be removed before entering a city street.

I. *COG regulations for hydraulic fracturing chemical disclosure.* All operators shall comply with COG rule 205.A, as amended. Each operator shall also provide to the Loveland Fire Rescue Authority in hard copy or electronic format the operator's chemical disclosure form that the operator has filed with the chemical disclosure registry under COG rule 205.A. Such form shall be filed with the director within five (5) days after the form is filed in the chemical disclosure registry.

J. *Color.* Oil and gas facilities, once development of the site is complete, shall be painted in a uniform, non-contrasting, non-reflective color, to blend with the surrounding landscape and with colors that match the land rather than the sky. The color should be slightly darker than the surrounding landscape.

K. *Cultural and historic resources standards.* The installation and operation of any oil and gas facility shall not cause significant degradation of cultural or historic resources, of sites eligible as City Landmarks, or the State or National Historic Register, as outlined in code section 15.56.030.

L. *Stormwater quality and dust control.* All permits for oil and gas operations shall comply with COG rule 805, as amended, plus code chapter 13.20.

M. *Electric equipment.* The use of electric-powered equipment during production operations shall be required if a provider of electric power agrees at the provider's customary rates, fees and charges to provide electric service to an oil and gas facility and the cost to make the electrical connection is economically practicable. If available, electric service to the oil and gas facility shall be acquired by the operator within the shortest time period reasonably practicable. Temporary use of natural gas or diesel generators may be used until electric service

is provided. Electric equipment shall not be required during drilling and well completion operations.

N. *Emergency response standards.*

1. In General. Operators agree to take all reasonable measures to assure that oil and gas operations shall not cause an unreasonable risk of emergency situations such as explosions, fires, gas, oil or water pipeline leaks, ruptures, hydrogen sulfide or other toxic gas or fluid emissions, hazardous material vehicle accidents or spills.

2. Emergency Preparedness Plan. Each operator with an operation in the city is required to provide to the City its emergency preparedness plan for operations within the City, which shall be in compliance with the applicable provisions of the International Fire Code as adopted in the city code. The plan shall be filed with the Loveland Fire Rescue Authority and updated on an annual basis. The emergency preparedness plan shall contain at least all of the following information:

(a) The designation of the operator's office group or individual(s) responsible for emergency field operations. An office group or individual(s) designated to handle first response situations, emergency field operations or on-scene incident commands will meet this requirement. A phone number and address of such office group or individual(s) operation shall be required.

(b) A map identifying the location of pipelines, isolation valves and/or a plot plan, sufficient in detail to enable the Loveland Fire Rescue Authority to respond to potential emergencies. The information concerning pipelines and isolation valves shall be kept confidential by the Loveland Fire Rescue Authority, and shall only be disclosed in the event of an emergency or as otherwise required by law.

(c) A provision that any spill outside of the containment area that has the potential to leave the facility or to threaten waters of the state and that is required to be reported to the commission or the commission's director shall be immediately reported to the Loveland Fire Rescue Authority emergency dispatch at 911 and to the director promptly thereafter.

(d) Access or evacuation routes and health care facilities anticipated to be used in the case of an emergency.

(e) A project-specific emergency preparedness plan for any operation that involves drilling or penetrating through known zones of hydrogen sulfide gas.

(f) A provision obligating the operator to reimburse the appropriate emergency response service providers for costs incurred in connection with any emergency caused by oil and gas operations and not promptly handled by the operator or its agents.

(g) Detailed information showing that the applicant has adequate personnel, supplies and funding to implement the emergency response plan immediately at all times during construction and operations.

O. *Noise mitigation.* All permits for oil and gas operations shall comply with COG rule 802, as amended, plus the following:

1. The exhaust from all engines, coolers and other mechanized equipment shall be vented up and in a direction away from the closest existing residences.

2. Additional noise mitigation may be required based on specific site characteristics, including, but not limit to, the following:

(a) Nature and proximity of adjacent development;

(b) Prevailing weather patterns, including wind direction:

(c) Vegetative cover on or adjacent to the site; and

(d) Topography.

3. The level of required noise mitigation may increase with the proximity of the well and well site to existing residences and platted subdivision lots, and the level of noise emitted by the well site. To the extent feasible and not inconsistent with its operations, operator may be required to use one (1) or more of the following additional noise mitigation measures to mitigate noise impacts:

(a) Acoustically insulated housing or cover enclosures on motors, engines and compressors;

(b) Vegetative screens consisting of trees and shrubs;

(c) Solid wall or fence of acoustically insulating material surrounding all or part of the facility;

(d) Noise mitigation plan identifying and limiting hours of maximum noise emissions, type, and frequency, and level of noise to be emitted and proposed mitigation measures; and

(e) Lowering the level of pumps or tank batteries.

P. *Fencing.* After the drilling, well completion and interim reclamation operations are completed, the operator shall install permanent perimeter fencing six (6) feet in height around the entire perimeter of the production operations site, including gates at all access points. Such gates

shall be locked when employees of the operators are not present on the site. Such fencing and gates shall be solid, opaque and consist of masonry, stucco, steel or other similar materials. The director may allow chain link fencing if solid and opaque fencing creates a threat to public safety or interferes with emergency or operations access to the production site.

Q. *Flammable material.* All land within twenty five (25) feet of any tank, pit or other structure containing flammable or combustible materials shall be kept free of dry weeds, grass or rubbish.

R. *Land disturbance standards.* The following mitigation measures shall be used to achieve compatibility and reduce land use impacts:

1. Pad dimensions for a well shall be the minimum size necessary to accommodate operational needs while minimizing surface disturbance.

2. Oil and gas operations shall use structures and surface equipment of the minimal size necessary to satisfy present and future operational needs.

3. Oil and gas operations shall be located in a manner that minimizes the amount of cut and fill.

4. To the maximum extent feasible, oil and gas operations shall use and share existing infrastructure, minimize the installation of new facilities and avoid additional disturbance to lands in a manner that reduces the introduction of significant new land use impacts to the environment, landowners and natural resources.

5. Landscaping plans shall include drought tolerant species that are native and less desirable to wildlife and suitable for the climate and soil conditions of the area. The operator shall submit to the city a temporary irrigation plan and implement said plan, once approved by the city, for the first two years after the plant material has been planted. If it is practicable to provide a permanent irrigation system, the operator shall submit an irrigation plan for permanent watering and the operator shall provide a performance guarantee for such landscaping that is acceptable to the director. Produced water may not be used for landscaping purposes.

6. The application shall include an analysis of the existing vegetation on the site to establish a baseline for re-vegetation upon temporary or final reclamation or abandonment of the operations. The analysis shall include a written description of the species, character and density of existing vegetation on the site and a summary of the potential impacts to vegetation as a result of the proposed operations. The application shall include any commission-required interim and final reclamation procedures and any measures developed from a consultation with current planning regarding site specific re-vegetation plan recommendations.

S. *Landscaping.* When an oil and gas operation site is less than one hundred (100) feet from a public street, a Type D Bufferyard shall be required between the oil and gas operation and

the public street in accordance with the City of Loveland Site Development Performance Standards and Guidelines as adopted in code chapter 18.47.

T. *Lighting.* All permits for oil and gas operations shall comply with COG rule 803, as amended, plus the following:

1. Except during drilling, completion or other operational activities requiring additional lighting, down-lighting shall be required, meaning that all bulbs must be fully shielded to prevent light emissions above a horizontal plane drawn from the bottom of the fixture; and

2. A lighting plan shall be developed to establish compliance with this provision. The lighting plan shall indicate the location of all outdoor lighting on the site and on any structures, and include cut sheets (manufacturer's specifications with picture or diagram) of all proposed fixtures.

U. *Maintenance of machinery.* Routine field maintenance of vehicles and mobile machinery shall not be performed within three hundred (300) feet of any water body.

V. *Mud tracking.* An operator shall take all practical measures to ensure that the operator's vehicles do not track mud or leave debris on city streets. Any such mud or debris left on city streets by an operator's operation shall be promptly cleaned up by the operator.

W. *Reclamation plan.* The application shall include any interim and final reclamation requirements required by the COG regulations.

X. *Recordation of flowlines.* The legal description of all flowlines, including transmission and gathering systems, shall be filed with the director and recorded with the Larimer County Clerk and Recorder within thirty (30) days of completion of construction. Abandonment of any flowlines shall be filed with the director and recorded with the Larimer County Clerk and Recorder within thirty (30) days after abandonment.

Y. *Removal of debris.* When oil and gas operations become operational, all construction-related debris shall be removed from the site for proper disposal. The site shall be maintained free of debris and excess materials at all times during operation. Materials shall not be buried on-site.

Z. *Removal of equipment.* All equipment used for drilling, re-drilling, maintenance and other oil and gas operations shall be removed from the site within thirty (30) days of completion of the work. Permanent storage of equipment on well pad sites shall be prohibited.

AA. *Signs.* A sign permit shall be obtained for all signs at the oil and gas facility or otherwise associated with the oil and gas operations in accordance with code chapter 18.50 except such permit shall not be required for those signs required by the COG regulations or this chapter.

BB. *Spills.* Chemical spills and releases shall be reported in accordance with applicable state and federal laws, including, without limitation, the COG regulations, the Emergency Planning and Community Right to Know Act, the Comprehensive Environmental Response Compensation and Liability Act, the Oil and Pollution Act, and the Clean Water Act, as applicable. If a spill or release impacts or threatens to impact a water well, the operator shall comply with existing COG regulations concerning reporting and notification of spills, and the spill or release shall also be reported to the director within twenty-four (24) hours of the operator becoming aware of the spill or release.

CC. *Temporary access roads.* Temporary access roads associated with oil and gas operations shall be reclaimed and re-vegetated to the original state in accordance with COG rule series 1000.

DD. *Development standards for street, electric, water/wastewater, and stormwater infrastructure.* All permits for oil and gas operations shall comply with the development standards for street, electric, water/wastewater and stormwater infrastructure set forth in code chapter 16.24.

EE. *Transportation and circulation.* All applicants shall include descriptions of all proposed access routes for equipment, water, sand, waste fluids, waste solids, mixed waste and all other material to be hauled on the city's streets. The submittal shall also include the estimated weights of vehicles when loaded, a description of the vehicles, including the number of wheels and axles of such vehicles, and any other information required by the city engineer. In addition to any other bonding or indemnification requirements of the city as may be reasonably imposed, all applicants shall provide the city with a policy of insurance in an amount determined by the city engineer to be sufficient to protect the city against any damages that may occur to the city's streets, roads or rights-of-way as a result of any weight stresses or spillage of hauled materials including, without limitation, water, sand, waste fluids, waste solids and mixed wastes.

FF. *Water supply.* The operator shall identify on the site plan its primary source(s) for water used in both the drilling and well completion phases of operation. In addition, if requested by the city's Water and Power Department director, the applicant's source(s) and amounts of water used in the city shall be documented and a record of it shall be provided to the city. The disposal of water used on site shall also be reported to the Water and Power Department director if requested to include the operator's anticipated haul routes and the approximate number of vehicles needed to supply and dispose of the water. When operationally feasible, the operator shall minimize adverse impacts caused by the delivery of water to the operation site by truck. If available and commercially viable, the operator shall make a service line connection to a domestic water supplier who is willing to provide such water at the same rates, fees and charges and provided that the amount of the water that can be supplied by that provider can be done so without delay or negative impact to the operator's drilling and well completion operations. When operationally feasible, the operator may alternatively purchase non-potable water from any other sources and transfer that water through ditches or other waterways and/or through above or below ground lines.

GG. *Weed control.* The applicant shall be responsible for ongoing weed control at oil and gas operations sites, pipelines and along access roads during construction and operations, until

abandonment and final reclamation is completed pursuant to commission rules. Control of weeds shall comply with the standards in code chapter 7.18.

HH. *Well abandonment.* The operator shall comply with the COG regulations regarding well abandonment. Upon plugging and abandonment of a well, the operator shall provide the director with surveyed coordinates of the abandoned well and shall leave onsite a physical marker of the well location.

II. *Federal and state regulations.* The operator shall comply with all applicable federal and state regulations including, without limitation, the OGC act and the COG regulations.

JJ. *Building permits.* A building permit shall be obtained for all structures as required by the International Fire Code and/or International Building Code as adopted in the city code.

KK. *Floodplains.* All surface oil and gas operations within the city's floodway and flood fringe districts, as these districts are defined and established in code chapter 18.45, shall be conducted, to the extent allowed under COG regulations, in accordance with all applicable COG regulations, including, without limitation, COG rules 603.k. and 1204. In addition, if the operator's oil and gas operations will involve any development or structures regulated under the city's Floodplain Building Code in code chapter 15.14, the operator shall also obtain a floodplain development permit before beginning such regulated operations.

LL. *Trash and recycling enclosures.* All applications for oil and gas operations shall comply with the requirements contained in code chapter 7.16, to the maximum extent feasible.

MM. *Representations.* The approved project development plan shall be subject to all conditions and commitments of record, including verbal representations made by the applicant on the record of any hearing or review process and in the application file, including without limitation compliance with all approved mitigation plans.

NN. *Seismic operations.* The operator shall provide at least a fifteen (15) day advance notice to the director and the Loveland Rural Fire Authority whenever seismic activity will be conducted within the city.

OO. *Access roads.* All private roads used to access the tank battery or the wellhead shall, at a minimum, be:

> 1. A graded gravel roadway at least twenty (20) feet wide with a minimum unobstructed overhead clearance of thirteen (13) feet six(6) inches, having a prepared subgrade and an aggregate base course surface a minimum of six (6) inches thick compacted to a minimum density of ninety-five percent (95%) of the maximum density determined in accordance with generally accepted engineering sampling and testing procedures approved by the City Engineer. The aggregate material, at a minimum, shall meet the requirements for a Class 6, Aggregate Base Course as specified in the *Colorado Department of Highways Standard Specifications for Road and Bridge Construction*, latest edition.

2. Grades shall be established so as to provide drainage from the roadway surface and shall be constructed to allow for cross-drainage to waterway (i.e. roadside swells, gulches, rivers, creeks, etc.) by means of an adequate culvert pipe. Adequacy of culvert pipes shall be subject to approval by the city engineer.

PP. *Visual impacts.*

1. To the maximum extent practicable, oil and gas facilities shall be:

(a) Located away from prominent natural features such as distinctive rock and land forms, vegetative patterns, river crossings, and other landmarks;

(b) Located to avoid crossing hills or ridges;

(c) Located to avoid the removal of trees; and

(d) Located at the base of slopes to provide a background of topography and/or natural cover.

2. Access roads shall be aligned to follow existing grades and minimize cuts and fills.

3. One (1) or more of the landscaping practices may be required on a site specific bases:

(a) Establishment and proper maintenance of adequate ground cover, shrubs and trees;

(b) Shaping cuts and fills to appear as natural forms;

(c) Cutting rock areas to create irregular forms; and

(d) Designing the facility to utilize natural screens.

QQ. *COG regulations for odor.* All oil and gas operations shall comply with COG rule 805.

RR. *COG regulations for abandonment of pipelines.* Any pipelines abandoned in place shall comply with COG rule 1103 and the operator's notice to the commission of such abandonment shall be promptly filed thereafter by the applicant with the director.

SS. *Temporary Housing.* Temporary housing shall be prohibited on any oil and gas operations site, including, without limitation, trailers, modular homes and recreational vehicles, except for the temporary housing customarily provided and required during twenty-four hour drilling, well completion and flowback operations.

18.77.065 Enhanced Standards for Administrative Review Process.

All applications considered in the administrative review process and all oil and gas operations approved under this process shall be subject to and comply with the following standards and requirements, as applicable, in addition to the standards and requirements in code section 18.77.060. The operator shall designate these standards and requirements, to the extent applicable, as agreed upon best management practices on any application the operator files with the commission.

A. *Setbacks*. All oil and gas facilities shall comply with the setback distances set forth in Table A below or such greater distances as may be required by the commission. Setback distances shall be measured from the closest edge of any equipment included in the definition of oil and gas facility in Section 18.77.025.FF to the nearest part of the nearest feature associated with the sensitive area as described in Column C in Table A. For the purpose of measuring the setback from any sensitive area that does not have a defined property or boundary line, the director shall establish the boundary line for measurement purposes.

Table A – Setbacks for oil and gas facilities

Column A	Column B	Column C
Sensitive Area	Setback Distance (ft.)	Setback to be measured to the following nearest feature of sensitive area:
Building	500	Wall or corner of the building
Public road, major above-ground utility facility, or railroad tracks	200	Right-of-way or easement property line
Property on which the oil and gas facility is located	200	Property line
Lease area on which the oil and gas facility is located	200	Property line
Natural area or wetland	500	Property line
Property managed by the City's Parks and Recreation Department, any City park, or property subject to a conservation easement managed by a public or non-profit entity	500	Property line of property or easement
Surface water body	500	Operating high-water line
FEMA floodway zoning district	500	Boundary line as shown by the Flood Insurance Rate Map (FIRM) revised to reflect a Letter of Map Revision effective May 24, 2010, published by the FEMA
Domestic or commercial water well	500	Center of wellhead

Column A	Column B	Column C
Outdoor assembly area	1,000	Property line
High occupancy building	1,000	Wall or corner of the building

~~A. *Setbacks.* The following setbacks shall apply to the oil and gas operations. Unless specified otherwise herein, setbacks shall be measured from the closest edge of the oil and gas facility to the nearest wall or corner of the building;~~

~~1. Except as required under subparagraph 5, below, all oil and gas facilities shall be located at least five hundred (500) feet from any building, or such greater distance as may be required by the commission.~~

~~2. All oil and gas facilities shall be at least two hundred (200) feet from public roads, major above ground utility lines, railroads or any property or lease area line of the oil and gas facility, or such greater distance as may be required by the commission.~~

~~3. All oil and gas facilities shall be located at least five hundred (500) feet from: (i) the boundary of any natural area or wetland; (ii) the property line of any property managed by the city's Parks and Recreation Department and any city park; (iii) the operating high water line of any surface water body; (iv) the boundary of the FEMA floodway zoning district as set forth in code chapter 18.45; and (v) the property line of any property subject to a conservation easement managed by a public or non-profit entity, or such greater distance as required by the commission.~~

~~4. All oil and gas facilities shall be located at least five hundred (500) feet from any domestic or commercial water well, or such greater distance as required by the commission.~~

~~5. All oil and gas facilities shall be located at least one thousand (1,000) from any building with an occupancy rating for fifty (50) persons or more and any outdoor assembly area with a capacity of fifty (50) persons or more, or such greater distance as required by the commission.~~

B. *Commission mitigation regulations.* All oil and gas operations shall comply with the mitigation measures required under commission Rule 604.c, as amended.

C. *Bufferyards.* The bufferyards set forth in Table B~~1~~ below, shall be established once the well is in production around the entire perimeter of the oil and gas production site, excluding vehicular access points, and maintained until the site has been restored in accordance with the final reclamation plan approved by the city and the commission. Bufferyards shall not be required during drilling and well completion operations. The use of xeriscape plant types shall be used unless a permanent irrigation system is provided by the operator. A temporary irrigation system shall be provided, maintained and operated for xeriscape plant types for a period of two years from planting.

Table B~~1~~ - Bufferyards			
Base Standard (plants per 100 linear feet)	**Optional Width (feet)**	**Plant Multiplier**	**Option: add 6 foot opaque masonry wall**
5 canopy trees	150	1.00	.85
6 evergreen trees	170	0.90	
4 large shrubs	190	0.80	
	210	0.70	
	230	0.60	
	250	0.50	

D. *Air quality standards.* Air emissions from oil and gas facilities shall be in compliance with the permit and control provisions of the Environmental Protection Agency, Air Quality Control Commission and Colorado Oil and Gas Conservation Commission. In addition, the operator of the oil and gas facility agrees to employ the following enhanced standards for air quality mitigation.

1. *General duty to minimize emissions.* All continuously operated equipment, including but not limited to, storage vessels and dehydrators shall route vapors to a capture and control device with at least a ninety-eight percent (98%) destruction efficiency. Operators shall submit to the director test data of like equipment or manufacturer's data demonstrating the control device can meet the destruction efficiency. Any combustion device, auto ignition system, recorder, vapor recovery device or other equipment used to meet the destruction efficiency shall be installed, calibrated, operated and maintained in accordance with the manufacturer's recommendations, instruction and operating manuals.

2. *Combustion devices.* All flares shall be designed and operated as follows:

(a) The combustion devices shall be designed and operated in a matter that will ensure it complies with 40 Code of Federal Regulations ("CFR") §60.18 (General control device and work practice requirements);

(b) The combustion device, during production operations, shall be operated with a pilot flame present at all times vapors may be routed to it. Presence of a pilot flame shall be continuously monitored and recorded; and

(c) Combustion devices shall be equipped with automatic flame ignition systems in the event the pilot flame is extinguished.

3. *Fugitive emissions.* The operator shall develop and follow a leak detection and repair plan to minimize emissions from fugitive components. The plan will be submitted to the director for incorporation into the permit.

4. *Pneumatic controllers.* The operator shall use only no- or low-bleed pneumatic controllers, where such controllers are available for the proposed application. High-bleed pneumatic controllers may be used where air is the motive gas for operation of the controller and valve.

5. *Well completion practices.* For each well completion operation, the operator shall minimize emissions from the operation as set forth below:

(a) For the duration of flowback, route the recovered gas to the sales pipeline once the well has enough gas to safely operate the separator, or like device, and liquid control valves;

(b) If flow and gathering lines are not available to comply with subparagraph (a) above, the operator shall capture the recovered gas to a completion combustion device, equipped with a continuous ignition system, to oxidize the recovered gas stream except in conditions that may result in a fire hazard or explosion, or where high heat emissions from the completion device may negatively impact a sensitive area or nearby structure;

(c) Operators shall have a general duty to safely maximize resource recovery and minimize releases to the atmosphere during flowback; and

(d) Operators shall maintain a log for each well completion operation. The log shall be completed in accordance with the methods outlined in the Environmental Protection Agency's Code of Federal Regulations, specifically 40 CFR Part 60, Subpart OOOO.

6. *Well maintenance and blowdowns.* The operator shall utilize best management practices during well maintenance and blowdowns to minimize or eliminate venting emissions.

7. *Capture of produced gas from wells.* Gas produced during normal production shall be captured, to the maximum extent feasible, and not flared or vented, except in situations where flaring or venting is required to ensure that associated natural gas can be safely disposed of in emergency shutdown situations.

8. *Rod-packing maintenance.* Operators shall replace rod-packing from reciprocating compressors located at facilities approved after April 15, 2013, every twenty-six thousand (26,000) hours of operation or thirty-six (36) months, whichever occurs first.

9. Monitoring compliance and reporting. Operators shall submit to the director an annual report providing the following information concerning the operator's oil and gas operations as related to air emissions:

(a) Dates when the operator or its agent inspected its oil and gas facilities under its leak detection and repair plan;

(b) A record of the expected and actual air emissions measured at the facilities;

(c) The operator's emissions data collected during well completion activities;

(d) Dates and duration when operator conducted well maintenance activities to minimize air emissions;

(e) If venting occurred at any time during the reporting period, an explanation as to why best management practices could not have been used to prevent such venting; and

(f) Dates when reciprocating compressor rod-packing is replaced.

E. *Pipelines*. Any newly constructed or substantially modified pipelines on site shall meet the following requirements:

1. Flowlines, gathering lines and transmission lines shall be sited at a minimum of fifty (50) feet away from residential and non-residential buildings, as well as the high-water mark of any surface water body. This distance shall be measured from the nearest edge of the pipeline. Pipelines and gathering lines that pass within one hundred fifty (150) feet of residential or non-residential building or the high water mark of any surface water body shall incorporate leak detection, secondary containment or other mitigation, as appropriate;

2. To the maximum extent feasible, pipelines shall be aligned with established roads in order to minimize surface impacts and reduce habitat fragmentation and disturbance;

3. To the maximum extent feasible, operators shall share existing pipeline rights-of-way and consolidate new corridors for pipeline rights-of-way to minimize surface impacts; and

4. Operators shall use boring technology when crossing streams, rivers, irrigation ditches or wetlands with a pipeline to minimize negative impacts to the channel, bank and riparian areas.

F. *Sound Limitiations.* All oil and gas facilities shall comply with the sound limitation standards set forth in code chapter 7.32 after development of the well is complete, meaning while the well is in production. A noise mitigation study shall be submitted with the application to demonstrate compliance with said code chapter. If necessary to comply with said chapter, a noise screen shall be constructed along the edge of the oil and gas facility between the facility and existing residential development or land zoned for future residential development.

18.77.070 Application Requirements.

All applications submitted to current planning shall contain the information required for a COG permit and any additional information required by the city's "Oil and Gas Development Application Submittal Checklist" approved by the city manager.

18.77.075 Variances.

A. *Variance Request.* In both the planning commission review and administrative review processes, an applicant may request a variance from any provision of this chapter. A request for a variance under this section may be included in the applicant's application and shall be processed, reviewed and granted, granted with conditions or denied in accordance with and as part of the planning commission review process or the administrative review process, as applicable. The variance provisions of chapter 18.60 shall not be applicable to a variance request under this chapter.

B. *Grounds for Variance.* A variance from the application of any provision in this chapter shall be granted on the basis of one or more of the following grounds:

1. The provision is in operational conflict with the OGC act or the COG regulations, meaning the application of the provision would have the effect of materially impeding or destroying a state interest as expressed in the COG act or the COG regulations.

2. There is no technology commercially available at a reasonable cost to conduct the proposed oil and gas operations in compliance with the provision and granting a variance from the operation of the provision will not have an adverse effect on the public health, safety or welfare or on the environment.

3. Protection of the public health, safety and welfare and of the environment would be enhanced by an alternative approach not contemplated by the provision.

4. Application of the provision will constitute a regulatory taking of property without just compensation by the city under Article II, Section 3 of the Colorado Constitution.

5. Application of the provision is impractical or would create an undue or unnecessary hardship because of unique physical circumstances or conditions existing on or near the site of the oil and gas operations, which may include, without limitation, topographical conditions, shape or dimension of the operation site, inadequate public infrastructure to the site, or close proximity of occupied buildings.

18.77.080 Transfer of Permits.

Oil and gas permits may be assigned to another operator only with the prior written consent of the director and upon a showing to the director that the new operator can and will comply with all conditions of the transferred permit and with all of the applicable provisions of this chapter. The existing operator shall assign the permit to the new operator on a form provided

by the city and the new operator shall also sign the form agreeing to comply with all of the conditions of the permit and all applicable provisions of this chapter.

18.77.085 Other Applicable Code Provisions.

In addition to the provisions of this chapter, all oil and gas operations conducted within the city shall comply with all applicable provisions of the following code chapters: 3.16, Sales and Use Tax; 7.12, Nuisances - Unsanitary Conditions; 7.16, Solid Waste Collection and Recycling; 7.18, Weed Control; 7.26, Accumulations of Waste Materials; 7.30, Graffiti; 7.36, Fire Protection; 10.04, Traffic Regulations; 10.20, Parking; 12.16, Use of City Rights-of-Way; 12.28, Prohibited Uses of Streets and Other Public Places; 13.18, Stormwater Management; 13.20, Stormwater Quality; 15.08, Building Code; 15.12, Property Maintenance Code; 15.14, Floodplain Building Code; 15.16, Mechanical Code; 15.24, Electrical Code; 15.28, Fire Code, 16.38, Capital Expansion Fees; 16.41, Adequate Community Facilities; 16.42, Street Maintenance Fee; 18.45, Floodplain Regulations; 18.50, Signs; 13.04, Water Service; 13.06, Cross Connection Control; and 19.06, Irrigation.

18.77.090 Emergency Response Costs.

The operator shall reimburse the Loveland Fire Rescue Authority for any emergency response costs incurred by the Authority in connection with fire, explosion or hazardous materials at the well or production site, except that the operator shall not be required to pay for emergency response costs where the response was precipitated by mistake of the Authority or in response to solely a medical emergency.

18.77.095 Application and Inspection Fees.

The city council may establish by resolution fees to be collected at the time an application is filed with current planning for the city's reasonable costs in processing applications under this chapter and for fees thereafter imposed for the city's reasonable costs to conduct inspections to ensure compliance with this chapter. Fees established for inspections shall be nondiscriminatory to only cover the city's reasonable costs to inspect and monitor for road damage and for compliance with the city's fire code, building codes and the conditions of any permit issued under this chapter. However, such inspection fees shall not be based on any costs the city might incur to conduct inspections or monitoring of oil and gas operations with regard to matters that are subject to rule, regulation, order or permit condition administered by the commission.

18.77.100 Capital Expansion Fees.

Oil and gas operations within the city shall be subject to the capital expansion fees established under code chapter 18.38. The city council may adopt and set such fees by resolution. Any such fees adopted, shall be paid by the operator to the city at the time of issuance of an oil and gas permit under this chapter.

18.77.105 Reimbursement for Consultant Costs.

If the city contracts with an outside consultant to review and advise the city concerning any applicant's application or in connection with any applicant's hearing conducted under this chapter, the applicant shall reimburse the city for the city's reasonable costs incurred with that consultant. No permit shall be issued and no suspended permit shall be reinstated until the applicant reimburses the city in full for any such costs.

18.77.110 Adequate Transportation Facilities.

All applications submitted and all permits issued under this chapter shall be subject to all of the applicable adequate community facilities requirements of code chapter 16.41 as they relate solely to the transportation facilities required in code section 16.41.110.

18.77.115 Insurance and Performance Security.

A. *Insurance.* Every operator granted a permit under this chapter shall procure and maintain throughout the duration of the operator's oil and gas operations a policy of comprehensive general liability insurance, or a self-insurance program approved by the Colorado Insurance Commission, insuring the operator and naming the city as an additional insured, against any liability for personal injury, bodily injury or death arising out of the operator's permitted operations, with coverage of at least one million dollars ($1,000,000) per occurrence. Unless the operator is self-insured, insurance required by this paragraph A. shall be with companies qualified to do business in the State of Colorado and may provide for a deductible as the operator deems reasonable, but in no event greater than ten thousand dollars ($10,000). The operator shall be responsible for payment of any deductible. No such policy shall be subject to cancellation or reduction in coverage limits or other modification except after thirty (30) days prior written notice to the city. The operator shall identify whether the type of coverage is "occurrence" or "claims made." If the type of coverage is "claims made," which at renewal the operator changes to "occurrence," the operator shall carry a twelve (12) month tail. The operator shall not do or permit to be done anything that shall invalidate the policies. In addition, the insurance required by this paragraph A. shall cover any and all damages, claims or suits arising out of the actual, alleged or threatened discharge, disbursal, seepage, migration, release or escape of pollutants, and shall not exclude from coverage any liability or expense arising out of or related to any form of pollution, whether intentional or otherwise. Further, the policies required by this paragraph A. shall be deemed to be for the mutual and joint benefit and protection of the operator and the city and shall provide that although the city is named as additional insured, the city shall nevertheless be entitled to recover under said policies for any loss occasioned to the city or its officers, employees or agents by reason of negligence of the operator or of its officers, employees, agents, subcontractors or business invitees and such policies shall be written as primary policies not contributing to or in excess of any insurance coverage the city may carry. Prior to the issuance of the operator's permit, the operator shall furnish to the city certificates of insurance evidencing the insurance coverage required herein. In addition, the operator shall, upon request by the city and not less than thirty (30) days prior to the expiration of any such insurance coverage, provide the city with a certificate of insurance evidencing either new or continuing coverage in accordance with the requirements of this section.

B. *Performance Security for Road Damage.* Prior to the issuance of a permit to an applicant, the applicant shall provide the city with a twenty-five thousand dollar ($25,000)

performance security for each well that is permitted while the well is in operation in the form of an irrevocable letter of credit or equivalent financial security acceptable to the director to cover the city's costs to repair any damages to the city's public rights-of-way caused by the operator's use of said rights-of-way. In the event this security is insufficient to cover the city's costs to repair any such damages, the operator shall be liable to the city for those additional costs and the city may pursue a civil action against the operator to recover those costs as provided in section 18.77.125.C. Reclamation and other activities and operations which fall under the COG regulations are exempted from this performance security coverage.

18.77.120 Inspections, Right to Enter and Enforcement.

A. *Inspections.* All oil and gas operations and facilities may be inspected by the city's duly appointed inspectors at reasonable times to determine compliance with the applicable provisions of this chapter and all other applicable provisions in this code. However, the city's inspections shall be limited to the inspection of those matters directly enforceable by the city under this chapter 18.77 as provided in paragraph C. of this section. In the event an inspection is desired by the city relating to a matter not directly enforceable by the city under this chapter, the city shall contact the commission to request that it conduct the inspection and take appropriate enforcement action.

B. *Right to Enter.* Notwithstanding any other provision in this code to the contrary, for the purpose of implementing and enforcing the provisions of this chapter and the other applicable provisions of this code, the city's inspectors shall have the right to enter upon the private property of a permitted operator after reasonable notification to the operator's designated agent, in order to provide the operator with the opportunity to be present during such inspection. Such notice shall not be required in the event of an emergency that threatens the public's health or safety. By accepting an oil and gas permit under this chapter, the operator grants its consent to this right to enter.

C. *Enforcement.* The city's enforcement of the provisions of this chapter 18.77 and of the conditions included in permits issued under this chapter shall be limited to those provisions and conditions that are not in operational conflict with state law or COG regulations and that are enforced by the commission, except when the provision or condition is an enhanced standard imposed and agreed to by the applicant through the administrative review process or agreed to by the applicant in the planning commission review process.

D. *Designated Agent.* The applicant shall include in its application the telephone number and email address of its designated agent and at least one back-up designated agent who can be reached twenty-four (24) hours a day, seven (7) days a week for the purpose of being notified of any proposed city inspection under this section or in case of an emergency. The applicant shall notify the city in writing of any change in the primary or back-up designated agent or their contact information.

18.77.125 Violations, Suspension and Revocation of Permits, Civil Actions and Penalties.

A. *Violations.* It shall be unlawful and a misdemeanor offense under this chapter for any person to do any of the following:

1. Conduct any oil and gas operation within the city without a validly issued permit;

2. Violate any enforceable condition of a permit; or

3. Violate any applicable and enforceable provision of this chapter and code.

B. *Suspension and Revocation.* If at any time the director has reasonable grounds to believe than an operator is in violation of any enforceable provision of this chapter or code, the director may suspend the operator's permit. The director shall give the operator's designated agent written notice of the suspension and, upon receiving such notice, the operator shall immediately cease all operations under the permit, except those reasonably required to protect the public's health and safety. The director's written notice shall state with specificity the operator's violation(s). The suspension shall continue in effect until the director determines that the violation(s) has been satisfactorily corrected. At any time during the suspension, the operator may appeal the director's action to the City Council by filing with the City Clerk a written notice of appeal stating with specificity the operator's grounds for appeal. Within thirty (30) days of the City Clerk's receipt of that notice, a public hearing shall be held before the City Council. The hearing shall be conducted as a quasi-judicial proceeding with the operator having the burden of proof and with the director defending the suspension of the permit. After hearing and receiving evidence and testimony from the operator, from the director and from other city staff and consultants, and after receiving public comment, the City Council may revoke the permit, terminate the suspension of the permit or take such other action as it deems appropriate under the circumstances taking into consideration and balancing the protection of the public's health, safety and welfare and the operator's rights under this chapter and state law to conduct its oil and gas operations. Within twenty five (25) days after the hearing, the Council shall adopt its written findings and conclusion supporting its decision. The Council's written findings and conclusions shall constitute the Council's final decision that may be appealed to the Larimer County District Court under Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

C. *Civil Actions.* In addition to any other legal remedies provided under this chapter to enforce violations of this chapter, the city may commence a civil action against an operator committing any such violations in any court of competent jurisdiction and request any remedy available under the law or in equity to enforce the provisions of this chapter, to collect any damages suffered by the city as the result of any violation and to recover any fees, reimbursements and other charges owed to the city under this chapter and code. If the city prevails in any such civil action, the operator shall be liable to the city for all of the city's reasonable attorney's fees, expert witness costs and all other costs incurred in that action.

D. *Penalties.* A violation of any enforceable provision of this chapter shall constitute a misdemeanor offense punishable by a fine not exceeding one thousand dollars ($1,000) or

imprisonment for a term not exceeding one (1) year, or both such fine and imprisonment. A person committing such offense shall be guilty of a separate offense for each and every day, or a portion thereof, during which the offense is committed or continued to be permitted by such person, and shall be punished accordingly.

18.77.130 Conflicting Provisions.

In the event of any conflict between any provision of this chapter and any other provision of this code, the provision of this chapter shall control.

Section 2. That ~~a new~~ Code Chapter 18.78 is hereby ~~added~~repealed and reenacted to ~~the Loveland Municipal Code to~~ read in full as follows:

~~**Chapter 18.78**~~

~~**Building Setbacks from Oil and Gas Facilities**~~

~~**Sections:**~~
~~**18.78.010 Purpose**~~
~~**18.78.020 Building Setbacks from Oil and Gas Facilities**~~
~~**18.78.030 Variances.**~~

~~**18.78.010 Purpose.**~~

~~The purpose of this chapter is to generally protect the public's health, safety and welfare and more specifically to establish setbacks for new development from existing or abandoned oil and gas facilities.~~

~~**18.78.020 Building Setbacks from Oil\and Gas Facilities.**~~

~~All "buildings," as defined in code section 18.77.025, except such buildings with an occupancy rating for fifty (50) persons or more, shall be setback a minimum distance of five hundred (500) feet from an existing or abandoned oil and gas facility. All such buildings with an occupancy rating for fifty (50) persons or more and "outdoor assembly areas," as this term is defined in code section 18.77.025, shall be set back a minimum of one thousand (1,000) feet from any existing or abandoned "oil and gas well," as this term is defined in code section 18.77.025. Land included in such setback areas shall be restricted to use only as open space and recreational uses within that open space, such as play fields, parks and playgrounds, shall not be permitted.~~

~~**18.78.030 Variances.**~~

~~The owner of any real property subject to the setback requirements of section 18.78.020 may request a variance from those setbacks in accordance with the provisions of section 18.77.075 using the planning review process set out in Chapter 18.77.~~

Chapter 18.78

Overlay Zoning Districts for ~~Oil and Gas Facility~~Development Setbacks from Existing Oil and Gas Facilities

Sections:

18.78.010 Purpose
18.78.020 Definitions
18.78.030 Establishment of zoning overlay districts
18.78.040 Applicability
18.78.050 Zoning overlay district boundaries
18.78.060 Land use restrictions within zoning overlay districts
18.78.080 Variances

18.78.010 Purpose.

The purpose of this chapter is to establish zoning overlay districts in the vicinity of existing oil and gas facilities in order to allow certain land uses within these zoning overlay districts that are compatible with the industrial nature of oil and gas facilities, but yet are protective of the public's health, safety and welfare.

18.78.020 Definitions.

The following words, terms and phases shall have the meanings set forth below, unless the context requires otherwise:

A. "Critical zone" shall mean all land and water surface area less than two hundred (200) feet from an oil and gas facility, as measured in accordance with Section 18.78.050.

B. "High occupancy building zone" shall mean all land and water surface area five hundred (500) feet or greater but ~~less than~~ one thousand (1,000) feet or less from an oil and gas facility, as measured in accordance with Section 18.78.050.

C. "Oil and gas facility" shall have the meaning given to this term in section 18.77.025.FF and shall include, without limitation, operating, shut-in and abandoned wells. However, it shall not include an abandoned well that has been demonstrated, to the satisfaction of the Development Services Director, will not be reopened or reentered in the future for any type of oil and gas operation.

D. "Restricted zone" shall mean all land and water surface area two hundred (200) feet or greater but less than five hundred (500) feet ~~or less~~ from an oil and gas facility, as measured in accordance with Section 18.78.050.

18.78.030 Establishment of zoning overlay districts.

There are hereby created and established in the city as zoning overlay districts the critical zone, the restricted zone, and the high occupancy building zone.

18.78.040 Applicability.

Notwithstanding the land uses allowed by the underlying zoning districts established in this title for any land located in the critical zone, restricted zone, or high occupancy building zone, development of such land shall be subject to and shall comply with the applicable zoning restrictions set forth in this chapter.

18.78.050 Zoning overlay district boundaries.

The boundaries of the zoning overlay districts established in section 18.78.030 shall be measured from the closest edge of any oil and gas facility.

18.78.060 Land use restrictions within zoning overlay districts.

A. In the critical zone land uses shall be limited to any of the following:

1. Essential underground public utility facilities; and

2. Undeveloped and restricted open space designed and operated to discourage access and use by natural persons, but this shall not include "recreational open space" as defined in chapter 18.04 and any of the uses allowed in the public park zoning district under chapter 18.32, unless it is an open lands/natural area that is undeveloped and designed and operated to discourage access and use by natural persons.

B. In the restricted zone land uses shall be limited to any of the following, provided no outdoor assembly area, (as defined in section 18.77.025.II), building, or parking lot is located within the restricted zone and the use is approved in accordance with the provisions in chapter 18.40 for uses permitted by special review.

1. Airports and heliports;

2. Attended recycling collection facility;

3. Commercial mineral deposit;

4. Composting facility;

5. Contractor's storage yard;

6. Essential public utility uses, facilities, services and structures;

7. Heavy industrial uses;

8. Landfill area;

9. Landscaping;

10. Personal wireless service facilities;

11. Plant nursery;

12. Public service facility;

13. Recyclable materials processing;

14. Resource extraction, process and sales;

15. Self-service storage facility;

16. Street;

17. Truck terminal;

18. Unattended recycling collection facility;

19. Vehicle rentals of heavy equipment, large trucks and trailers;

20. Vehicle rentals of cars, light trucks and light equipment;

21. Vehicle sales and leasing of cars and light trucks; and

22. Vehicle sales and leasing of farm equipment, mobile homes, recreational vehicles, large trucks and boats with outdoor storage;

These land uses shall be permitted if approved as a special review under this paragraph B. notwithstanding the fact that the underlying zoning or approved development plan governing the subject property may prohibit such approved land use.

C. In the high occupancy building zone all land uses authorized for the affected land by the land's underlying zoning district as provided in this title shall be allowed subject to the requirements of that zoning district, except that high occupancy buildings and outdoor assembly areas shall not be allowed within this zoning overlay district.

18.78.0780 Variances.

The owner of any real property subject to the requirements and limitations of this chapter may request a variance from those requirements and limitations using the variance procedures set out in chapter 18.60. The grounds for such variance shall be those set out in chapter 18.60 to the extent applicable and may also include the existence of a vested right under chapter 18.72 or Colorado law or on the grounds that application of chapter 18.78 ~~will~~would constitute a regulatory taking under Article II, Section 3 of the Colorado Constitution. However, any such variance approved must be in compliance with the underlying zoning or approved development plan governing the subject property.

Section 3. That Ordinance No. 5685 and Ordinance No. 5735 are hereby repealed.

Section 4. That as provided in City Charter Section 4-9(a)(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading in which case the Ordinance shall be published in full or the amendments shall be published in full. This Ordinance shall be in full force and effect ten days after its final publication, as provided in City Charter Section 4-8(b).

ADOPTED this _____ day of _____, 2013.

_____
Cecil A. Gutierrez, Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

City of Loveland

Development Services Department
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Planning Commission Staff Report

July 22, 2013

Agenda #1: Regular Agenda – PUBLIC HEARING

Title: Amendments to Chapter 18.77 and Chapter 18.78 regulating oil and gas development

Applicant: City of Loveland

Request: Consider proposed amendments and make recommendation to City Council.

Location: Oil and gas regulations apply to all oil and gas development within the incorporated limits of the City of Loveland.

City staff:
Greg George, Development Services Director
John Duval, City Attorney

Staff Recommendation: Subject to additional evidence presented at the public hearing, City staff recommends the following motion:

Move to recommend that City Council adopt the proposed amendments to Chapters 18.77 and 18.78 of the Loveland Municipal Code.

I. ATTACHMENTS

A. An ordinance amending Chapter 18.77 and Chapter 18.78 (redline version)

II. EXECUTIVE SUMMARY

A public hearing to consider amendments to Chapter 18.77 and Chapter 18.78.

A. Chapter 18.77

Several technical amendments are being recommended to clarify existing provisions. This includes two procedural revisions the City Attorney is recommending. The first procedural revision (***Section 18.77.050.G.***) adds a provision to the administrative review process to require that the Development Services Director's written decision granting or denying the permit in the administrative review process be mailed to the applicant and to the persons who are required to be given written notice of the neighborhood meeting. Without this mailing requirement, interested parties are not going to necessarily know when the Director's decision is made and when the appeal period has started. Related to this, the second revision (***Section 18.77.050.H.***) adds a provision to make it clear that the persons who are required to be given written notice of the neighborhood meeting also have legal standing to appeal the Director's decision in the administrative review process to the district court.

A table has been inserted into ***Section 18.77.065.A***. to better explain the setback distances for oil and gas facilities from existing sensitive areas under the enhanced standards, and how those setbacks are to be measured. The actual setbacks have not been changed.

B. Chapter 18.78

1. **Setbacks:** When the oil and gas regulations were adopted in March 2013, setbacks from oil and gas facilities for new development were established in Chapter 18.78. Setbacks were established as follows:
   a. 500 feet for a "building" defined as any residential or non-residential structure designed and permitted to be occupied by natural persons; and
   b. 1,000 feet for a "high occupancy building" defined as any building with an occupancy rating of 50 persons or more and for "outdoor assembly areas" defined as an improved facility, not within a building, designed to accommodate and provide a place for natural persons to congregate. At time of adoption, the definition of "outdoor activity area" contained a technical error by not including that the area must be reasonably capable of being occupied by 50 or more natural persons. Correcting this error is included in these amendments.
2. **"No building zone":** Section 18.78.020 required that land included in such setback areas be restricted to uses only as open space, and that recreational uses such as play fields, parks and playgrounds not be permitted. These restrictions on use would effectively create, what was referred to during the public hearing process as, 'no building zones" within the City. A setback with a radius of 500 feet would create an eighteen (18) acre "no building zone" around the oil and gas facility, while a setback with a 1,000 foot radius would create a seventy-two (72) acre "no building zone".

3. **Uses compatible with oil and gas facilities:** City staff has reevaluated the current setback requirements to determine if there are any land uses that could be compatible with the industrial nature of oil and gas facilities and yet not adversely affect the public's health, safety and welfare if special conditions are placed on such uses through the special review process. City staff is recommending the following zoning overlay zones to allow such land uses within these setbacks from oil and gas facilities.
   a. Critical zone – less than 200 feet from an oil and gas facility (***Section 18.78.060.A.***): It is recommended that in this area's restrictions on land uses remain as currently set forth in the ordinance in recognition of the possibility that an existing well is reentered, including new horizontal drilling and hydraulic fracturing, after new development has been constructed in the vicinity. Except for the allowance of underground public utility facilities, the recommendation is that the area be managed as restricted open space.
   b. Restricted zone – less than 500 feet from an oil and gas facility (*Section 18.78.060.B.*): It is recommended that in this area certain uses of a heavy or light industrial nature be allow as special review uses, provided no building, parking lot or outdoor assembly area is allowed closer than 500 feet to the oil and gas facility. The special review process is being recommended to require a neighborhood meeting and to allow special conditions to be placed on the new development to mitigate possible site specific impacts and to ensure land use compatibility.
   c. **High occupancy building zone – less than 1,000 feet from an oil and gas facility (*Section 18.78.060.C.*):** It is recommended that in this area the only use restriction be for high occupancy buildings, which are defined as any residential or non-residential structure design to be occupied by natural persons and permitted with an occupancy rating for fifty (50) persons or more. This restriction is consistent with the requirement that new oil and gas facilities be setback a minimum of 1,000 feet from any existing high occupancy building as defined.

4. **Variances:** Section 18.78.080 has been revised so requests for variances to the use limitations set forth in the zoning overlay districts are processed under the existing procedures in Chapter 18.60 for variances to the zoning standards established in Title 18. This revision was necessary since Chapter

18.78 now establishes actual zoning overlay districts and not just simply setbacks for new development.

III. STAFF RECOMMENDATION

City staff recommends the following motion for Planning Commission action:

Move to recommend that City Council adopted the proposed amendments to Chapter 18.77 and Chapter 18.78 as presented in Attachment A to this staff report.

CITY OF LOVELAND
PLANNING COMMISSION MINUTES
July 22, 2013

A meeting of the City of Loveland Planning Commission was held in the City Council Chambers on July 22, 2013 at 6:30 p.m. Members present: Chairman Meyers; and Commissioners Middleton, Massaro, Molloy, Dowding, Crescibene, Krenning, and Prior. Members absent: Commissioner Ray. City Staff present: Bob Paulsen, Current Planning Manager; Judy Schmidt, Deputy City Attorney.

These minutes are a general summary of the meeting. For more detailed information, audio and videotapes of the meeting are available for review in the Community Services office. These meeting minutes are in draft form and have yet to be approved by the Planning Commission. Item # 3, Oil and Gas Development Code Amendment, is complete. Meeting minutes for other items are in progress.

CITIZEN REPORTS

There were no citizen reports.

STAFF MATTERS

1.

COMMITTEE REPORTS

COMMISSIONER COMMENTS

APPROVAL OF THE MINUTES

Chair Meyers asked for a motion to approve the minutes from the 07/08/13 Planning Commission meeting. **Commissioner Middleton** moved to approve the minutes. Upon a second by **Commissioner Dowding**, the meeting minutes were approved five to two with **Commissioners Molloy and Prior** abstaining since they were absent from the 07/08/13 Planning Commission meeting.

ZONING BOARD OF ADJUSTMENT

CONSENT AGENDA

1. Marianna Butte 25th

REGULAR AGENDA

DRAFT

2. King of Glory
Oil and Gas Development Code Amendment
This is a public hearing to consider an ordinance amending Chapter 18.77 and 18.78 of the city of Loveland Municipal Code.

Commissioner Massaro addressed his fellow Commissioners and stated that his wife has been involved with "Protect our Loveland" group, and asked if anyone felt this created a conflict of interest with him participating in the discussion. **Chair Meyers** responded that given the nature of the amendment, he felt there was not a conflict of interest. **Judy Schmidt, Deputy City Attorney,** concurred and explained that this amendment does not represent a personal interest and would not create a conflict of interest.

Greg George, Director of Development Services, addressed the Commission and stated that he had taken the proposed amendments to the Title 18 Committee and explained there was some confusion as to the difference between Chapters 18.77 and 18.78. He wanted to clarify that Chapter 18.77 does one thing; it regulates oil and gas development as it occurs within the city limits. Setbacks have been established, and a two-step process has been created in order for developers to get a permit from the city. Chapter 18.77 establishes regulations on new oil and gas development. By contrast, Chapter 18.78 establishes regulation on new land development, including new residential subdivisions and industrial commercial development, when that development is within close proximity to an existing oil and gas facility. The purpose of the two chapters is entirely different as they regulate two different issues.

Mr. George went on to explain the amendments addressed technical, procedural amendments to Chapter 18.77, regulating the location and mitigation measures required for new oil and gas facilities. He asked the Commissioners to refer to the copy of the proposed ordinance amendments and explained he would share on which pages the various changes were made. Starting on page 6, **Mr. George** explained that a definition of a high occupancy building was included. The definition was moved from section 18.77.065 to the definition section of the code, as it was a more appropriate placement; however, the definition itself was unchanged.

Turning to page 7, **Mr. George** shared that the definition of an oil and gas facility in the existing code did not provide easy means of measuring or determining the edge of an oil and gas facility. For purposes of measuring a setback, a well-defined starting point must be identified. The expanded definition is consistent with the oil and gas commission definition. This allowed for a starting point to measure from. Depending on the configuration of where the equipment is located, the shape of the oil and gas facility may change; however, it does provide a mechanism for measurement. It differs on how the oil and gas commission measures the location of an oil and gas facility; the oil and gas commission measures from the center of the facility, or the center of the wellhead itself. **Mr. George** stated he believes the new definition improves upon the oil and gas commission definition.

Mr. George added that also on page 7, there is a provision in the setback in the overlay zoning part of the ordinance, which does not allow outdoor assembly areas within the restricted zone. It initially indicated that backyards of residential buildings would not be included, but was later removed because it was considered to be a redundant statement.

Outdoor assembly areas are not allowed in the restricted areas. Any portion of a residential lot would not be allowed in a restricted zone. The definition of a setback, located on page 8, was removed because the definition of a setback is used for enhanced standards. It is located in a different section of the code for the baseline standards of a setback. It states that the operator only needs to comply with setbacks established by the oil and gas commission, which is how the baseline standards were preempted. The current definition can be found in 18.77.065 of the proposed amendment.

Mr. George continued, addressing pages 13 and 14. He explained that in the section addressing the Appeal of Director's Decision, procedural clarifications were made by **John Duval, City Attorney,** who wanted to make clear who has standing to appeal the decision of the director. Any appeal to the director's decision would need to be made through Larimer County District Court. He also clarified who would get notice of any decision made by the director.

Mr. George whet on to address setback requirements for oil and gas development in sensitive areas, found on page 23, indicating that the proposed definition of setbacks includes methods for measuring both the beginning point as part of the oil and gas facility itself and which portion of a sensitive area that is measured to. **Mr. George** explained he felt it was easier to clarify the setback requirements by using a table rather than the narrative description located in the current ordinance. The setbacks for the enhanced standards have not changed but do contain better definitions for measurement requirements.

Mr. George then moved onto Chapter 18.78. He referred the Commission to a diagram which illustrated the overlay zones and how they work. The diagram showed an example of an oil and gas facility. It was communicated that if an oil and gas company goes through the baseline standards, it requires a Planning Commission hearing process. The setback is measured to the nearest property line as 200 feet to the closest well head. Under city's enhanced standards; it is measured from the edge of the oil and gas facility, 200 feet to what is referred to as the critical zone.

Mr. George explained the overlay zones, indicating that there are three zones represented in the diagram; the critical zone, the restricted zone, and the high occupancy building zone. The goal of 18.78 is to create overlay zones that change the uses allowed by property owners. As it stands today, all three of the proposed overlay zones are absolutely restricted as open space areas, also referred to as "no build areas", and a 1000 foot radius around the oil and gas facility would create a 72 acre no build zone. As **Mr. George** explained, this area makes it very difficult to work within an urban setting during efforts to develop urban uses. To remedy the restriction, **Development Services** determined appropriate uses for these zones could include heavy industrial and certain types of industrial uses, which would be compatible with an oil and gas facility site, particularly after it's under production. It should be noted, **Mr. George** indicated, that a permit can be issued by the oil and gas commission as well as the city, allowing permission to reenter the oil and gas facility; it could create additional heavy industrial activity. In Chapter 18.78, there are listed uses that would be allowed in the restricted zone that could be compatible to an oil and gas facility, but would require a Special Review. Special Review is the process used to determine if the use is compatible with the oil

and gas facility and other uses in the vicinity. City reserves the right to deny the application if it is determined the use is not compatible at a site. Additional limitations for the uses listed in the proposed amendment states that no building or parking lot would be permitted within the restricted zone. High occupancy buildings, such as a hospital or library, would still be required to be outside of the 1000 foot radius.
Mr. Duval addressed the commission and explained that city staff discovered two changes that needed be made on page 34 to the definitions. It needed to be clarified that "critical zone" shall mean all land and water surface area less than 200 feet from and oil and gas facility, and "high occupancy building zone" shall mean all land and water surface area less than 1000 feet from an oil and gas facility. "Restricted zone" shall mean all land and water surface 500 feet or less from an oil and gas facility.

Commissioner Krenning questioned **Mr. Duval** as to why city staff did not use the "Rule of Seven" approved by the Supreme Court, meant for use in ease of calendaring. He asked if any consideration was given to the use this metric. **Mr. Duval** responded that it was not considered and felt that reasonable timelines were included which would work well internally for the City of Loveland.

Commissioner Massaro asked for clarification about the "restricted zone". He stated that the proposed amendment would allow for uses such as an airport or helicopter port in the restricted zone, however he questioned how that could happen if a building or parking lot are not permitted. **Mr. George** responded that it could be used as a runway with open space, but stressed such a use would require Special Review approval. The goal, as **Mr. George** explained, is to allow as many buildings as appropriate to establish reasonable uses in the overlay zones. **Mr. Massaro** restated his concern about the wording in the ordinance in relation to the restricted zone. He asked if there was an existing building within the 'restricted zone", could an oil and gas well be placed within the proposed overlay zone. **Mr. George** clarified that existing setback requirements as they apply today would be enforced for existing developments and open space areas.

Commissioner Dowding stated she had concerns regarding the 18.77.060 section of the proposed amendment. She questioned if 18.78 complied with COG regulations. **Mr. George** stated that 18.78 does not regulate oil and gas development and, therefore, does not interfere with COG regulations.

Commissioner Dowding pointed out that on page one; under the sixth "Whereas", it states that the city will not enact anything that is in "operational conflict" with state law. **Mr. Duval** explained that the "Whereas" clause regarding operational conflict is a legal clause the court has used when a city regulation is in conflict with a state regulation in terms of the location and permitting of oil and gas facilities. However, Chapter 18.78 is not a regulation imposed on the oil and gas operators; rather, Chapter 18.78 is a regulation that is imposed on developers that outlines the standard that will need to be met when they submit plans for subdivision or PUD's, for example. **Commissioner Dowding** suggested that putting the word "existing" in the title would help clarify its intent. **Mr. Duval** agreed to the suggestion and said he would take it under consideration. **Commissioner Dowding** asked why city staff went to great trouble in 18.77 to create the beautiful table which made it very clear to understand,

but in 18.78 it is all verbiage but no table. **Mr. Duval** agreed to take that recommendation under consideration as well. **Ms. Schmidt** suggested that using the phrase "permitted oil and gas facilities" for better clarification.

Commissioner Crescibene asked about 18.77, specifically page 20 of the proposed amendment, referring to chemical spills, water supplies, and hauling. He said that nowhere in 18.77 does it refer to the disclosure of what the chemicals being used by oil and gas operators are, nor does it refer to water testing requirements. **Mr. George** pointed out that on page 15, under paragraph I, COG requires that all operators shall provide the Loveland Fire Rescue Authority, in hard copy or electronic format, the operator's chemical disclosure form. It was also pointed out that there is a provision for COG to test water baseline in accordance with oil and gas regulations. **Mr. George** made it clear that if the City of Loveland attempted to strengthen these provisions they would be preempted. He also stated that it was unlikely that city would create its own water sampling criteria or revisit how the COG regulations are working. The goal was to create an ordinance that would allow reasonable land uses on property in the vicinity of an existing oil and gas facility.

Mr. Crescibene indicated that he believes that the baseline standards should be addressed and explained, and that is one of the more pressing issues surrounding oil and gas development. He would like full disclosure of what chemicals are being used in the process of hydraulic fracturing. **Mr. Duval** explained that when creating the enhanced standards, they avoided including strict requirements because city staff felt it increased the likelihood of oil and gas developers participating in the process. Otherwise they might elect using the baseline standards and landowners would be left without options to develop property with existing oil and gas wells. **Mr. Crescibene** added that if he owned a well within 1000 feet of a fracking distribution point, he would have the water tested very frequently. **Mr. Duval** reiterated that city staff has not gotten direction from City Council to pursue those concerns.

Commissioner Middleton stated that he felt the topic of discussion related to oil and gas development has been a mess, and has been since day one. He commended city staff for their efforts on the proposed amendments, but echoed concerns regarding oil and gas development. He questioned why a disinterested third party could not do air and water quality testing at fracking sites, at the expense of oil and gas developers. **Mr. George** responded that city staff has been given a statement of direction from City Council regarding the oil and gas ordinance, but if in the future city staff was directed by City Council to further explore air and water quality standards, they would be happy to do so.

Mr. Krenning interjected that he felt the purpose of the meeting was to discuss the minor adjustments to the existing ordinance. The policy debate that is ongoing surrounding oil and gas development should be left to the City Council. **Mr. Middleton** disagreed and stated that the Commission is being asked to approve an ordinance. **Chair Meyers** pointed out that the ordinance is already approved and the Commission is only being asked to make redline changes.

Commissioner Molloy asked what the permit requirements were for capped wells in the vicinity of housing developments. **Mr. George** explained that a permit could be granted by the

oil and gas commission, however, if the oil developer goes through the city's enhanced standards and the proposed location of the well does not comply with the enhanced standards for setbacks, they would not get the permit because certain setbacks are absolute. The operator would have to go through the Planning Commission review process where the COGCC setback rules apply.

Mr. Molloy stated he had concerns about the variances and Director's decisions. He used Greeley as an example, and explained that they recently made the decision to allow oil and gas developments in neighborhoods and felt that decision was a travesty. He wanted to make a suggestion that when it came to a Director's decision, written notification should be not only sent within the notification area, but also to individuals who attend neighborhood meetings and provide in writing their desire to be notified. **Mr. Krenning** expressed doubt that participation in a neighborhood meeting would grant a non-city resident standing in any Director decision appeal, and felt it would be a burden to city staff to do so. **Mr. Molloy** clarified the burden would fall to the applicant and not city staff. **Mr. Duval** responded that as the ordinance is written today, only people within the written notification area, which is currently any resident within 2200 feet, would be notified of decisions. **Chair Meyers** commented he felt such a requirement would create a process nightmare. **Mr. Duval** clarified that "parties of interest" who wish to appeal a director decision are only those who are included in the written notification area. He pointed out that Council Members and Planning Commissioners are also able to appeal decisions.

Mr. George stated his desire for the Commission to recommend approval of the proposed ordinance amendment to City Council. He stated that the Commission had the option, if it felt inclined to do so, to pass a motion with majority approval, to make comments to the Council about difficulties with the existing ordinance.

Chair Meyers opened up the meeting to Public Hearing and invited members of the audience to make comments. He asked that comments be kept to the issue at hand, which is recommendation of approval of the proposed ordinances.

Ms. Kim Orr, PO Box 2045, Loveland CO, addressed the commission and asked if it would be possible that in the ordinances for the developers, a requirement could be included for them to test water and air quality for contamination in existing well sites prior to further development.

Ms. Sue Mullins, 4785 Hahn's Peak Dr. #203, Loveland, CO wanted to share with the Commission what she considered to be their charge. After listening to the discussion, she said she appreciated **Mr. Molloy's** comments. She feels anyone who lives in the City of Loveland should have standing in this issue. She believes the Commission takes its charge seriously. She believes the Commission is responsible for the health and welfare of city citizens. She commented that having only appeal powers to the Larimer County District Court was a very high burden to place on concerned citizens. She wanted to share that she has listened to concerned citizens of Loveland and wanted to pass that concern on to the Commission. She asked the Commission to remember who they represent.

Ms. Carla Massaro, 4250 Tarryall Ct, Loveland, CO, stated she wanted to reiterate her appreciation for all the Commissioners hard work and concern that they have displayed for the citizens of Loveland. She doesn't feel that the City Council has the same concern. She would like to believe experience in the field should carry more weight than just opinion. **Chair Meyers** asked if **Ms. Massaro** could please redirect the discussion to focus on the two amendments to the current ordinance. **Ms. Massaro** stressed the importance of listening to professional opinions and applauded the Commission for their concern regarding air and water quality at fracking sites and thanked them for their hard work.
Chair Meyers closed the Public Hearing.

Mr. George addressed concerns raised by citizens and explained that the purpose of the proposed amendments was to lessen the burden of property owners within the vicinity of oil and gas facilities by increasing available opportunities for development. He stated the city did not feel it was reasonable to require land developers to conduct air and water quality test prior to development activities.

In response to concerns regarding citizen appeal rights only at the Larimer County District Court, **Mr. Duval** responded that this is a process that's been in place for a long time and also applies to any quasi-judicial City Council decisions.

Chair Meyers continued the discussion regarding who should have standing in neighborhood meetings. **Mr. Krenning** replied that he didn't support the concept of granting citizens standing who aren't directly impacted by oil and gas development. He continued that he felt that it was important to keep the focus of the meeting on the proposed amendments. He stated that he has provided close attention on the issue of fracking because it is controversial, serious, and a hot topic item. **Mr. Krenning** noted that he recently read an article published in the Denver Post regarding a study done by the Department of Energy along with a group of private scientists. **Mr. Krenning** stated that the study concluded that there has been zero ground water contamination due to oil well drilling and fracking. He stated that he is open to any scientific data that would prove otherwise, but to date he has not seen any information that supports fracking contaminates ground water. He reiterated the importance of focusing on the proposed amendments and did not want the Commission to be bogged down in another discussion regarding the controversy surrounding fracking. He made a motion to recommend that City Council adopt the proposed amendments to Chapter 18.77 and 18.78 of the Loveland municipal code. Upon a second by **Ms. Dowding** the discussion continued.

Mr. Molloy stated that he felt the Planning Commissions has a responsibility to ensure that projects being developed within the city not have any negative consequences to the city or its citizens. He reiterated his suggestion to expand the requirement to notify citizens of a Director's decision not only within the current notification area, but also to individuals who attend neighborhood meetings. He pointed out that heavily industrialized projects could impact more than just the citizens in the written notification area.

Mr. Massaro commented that he disagreed with the statements made suggesting ground water has not been contaminated by fracking. He stated that on the COGC website that there are over 200 incidents in Weld County alone of documented ground water contamination from

the oil and gas industry. He pointed out that contaminated ground water is very difficult to clean-up. **Mr. Massaro** continued that in the entire State of Colorado there is a spill per day, and 43% of those spills contaminate ground water. In regards to expanding the mailing list, he agreed that the notification area be as wide as possible, however, he felt it would create a burden by allowing out of area citizens to be notified and wanted to take more time to consider the issue.

Commissioner Prior agreed with **Mr. Molloy** regarding citizen notification but felt that Director decisions should be limited to citizens within city limits, but only in cases when the impact would be city wide. He stated that he has a background in water engineering, and agreed that there is no proven evidence of water contamination from fracking. He explained that the data provided by the COGC does not point to evidence of contaminated ground water and felt the confusion regarding the data should be resolved at a later time.

Ms. Dowding commented that the Commission originally addressed the issue of notification by doubling the mail notice area to 2,200 feet at a prior meeting. She concluded that the issue has been sufficiently addressed. She suggested that if the issue needed further discussion it should be hashed out at a Title 18 Committee meeting.

Commission Middleton asked for a vote on the motion before the Commission. The motion passed 7-1 with **Commissioner Middleton** voting nay.

ADJOURNMENT

Commissioner Middleton made a motion to adjourn. Upon a second by **Commissioner Dowding**, the motion was unanimously adopted and the meeting was adjourned.

Approved by:_____
Buddy Meyers, Planning Commission Chairman

_____
Kimber Kreutzer, Planning Commission Secretary

DRAFT

18.60 ZONING BOARD OF ADJUSTMENT*

Sections:

18.60.010 Board of adjustment established.
18.60.020 Powers and duties.
18.60.030 General Variance Review Criteria.
18.60.040 Sign Variance Review Criteria.
18.60.050 Applications.
18.60.060 Procedure.
18.60.070 Notice.

*For statutory provisions regarding boards of adjustment, see CRS §§ 31-23-301 and 31-23-307.

18.60.010 Board of adjustment established.

The planning commission shall serve as the board of adjustment for the city.

18.60.020 Powers and duties.

The board of adjustment shall have the powers and duties to grant variances from certain standards set forth in this title 18 subject to and in compliance with this chapter and the laws of the state. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this title, the board of adjustment may vary or modify certain regulations or provisions of the title so that the spirit of the title is observed, public safety and welfare secured, and substantial justice done. The board of adjustment has the power to vary or modify the application of the regulations or provisions of this title related to the following:

A. Standards for lot area, lot dimensions, and setback requirements;
B. Square footage of accessory structures;
C. Percentage of open space; and
D. Setbacks for a freestanding sign, spacing between freestanding signs and the area for freestanding and wall mounted signs.

After considering if the proposed variance meets the applicable criteria in Section 18.60.030 and 18.60.040 below, the board shall take action to approve, approve with conditions, or deny the application.

18.60.030 General Variance Review Criteria

To approve a zoning variance application, the board of adjustment shall consider the following review criteria and find that each criterion has been met or determined to be inapplicable:

A. There are unique circumstances or conditions that are particular to or related to the land or structure for which the variance is requested. The circumstances may include, but are not limited to, exceptional topographic conditions, the shape or dimensions of the property, or the existence of mature landscaping or natural features that impact the property;
B. The special circumstances are not the result of actions or inactions by the applicant or the current owner;

Exhibit E

C. The strict interpretation and enforcement of the provisions of the code would cause an unnecessary or undue hardship;
D. Granting the variance is the minimum action needed to accommodate or alleviate the difficulty or hardship involved;
E. The variance would not substantially impact the reasonable use and enjoyment or development of other property in the vicinity of the subject land or structure;
F. The variance would not authorize any use in a zoning district other than a use specifically permitted in such zoning district; and
G. The variance would not waive or modify the requirements of any use approved by special review.

18.60.040 Sign Variance Review Criteria

A. Variances to the requirements of Chapter 18.50 shall not be permitted, except as related to the requirements concerning the setback of a freestanding sign, the spacing between freestanding signs, or the maximum sign area. To approve a zoning variance application to Chapter 18.50, the board must consider the following review criteria and find that each criterion has been met.
   1. There are special physical circumstances or physical conditions, including, without limitation, buildings, topography, vegetation, sign structures, or other physical features on adjacent properties or within the adjacent public right-of-way that would substantially restrict the effectiveness of the sign in question, and such special circumstances or conditions are unique to the business to which the applicant desires to draw attention and do not apply generally to all businesses in the area;
   2. The variance would be consistent with the purposes set forth in Section 18.50.010 and would not adversely affect the neighborhood or other businesses within the vicinity in which the subject business is located; and
   3. The variance is the minimum necessary to permit the applicant to reasonably draw attention to its business.
B. In addition to the above criterion, for signs that contain an electronic message module, the board must consider the review criteria in Section 18.50.100.A.4.h and find that each criterion has been met.

18.60.050 Applications.

Any person seeking action or review upon any matter within the jurisdiction of the board of adjustment, shall make an application on forms provided by the current planning division. The application shall be accompanied by such supporting material as may be required. The applicant shall also pay, at the time of filing of the application, any required filing fee as established by resolution of the city council.

18.60.060 Procedure.

The board of adjustment may designate one or more hearing officers from within the board to conduct public hearings on matters coming before the board. The designated hearing officer shall have the discretion to forward any matter onto the full board of adjustment for the initial public hearing.

Exhibit E

Within ten (10) days after the conclusion of any hearing conducted by the hearing officer, the hearing officer shall submit proposed findings and order to the board, to the applicant, and to all parties participating in the hearing, which findings and order shall constitute the hearing officer's final decision. The hearing officer's final decision may be appealed to the full board of adjustment by any party-in-interest as defined in chapter 18.80, by the filing of a written appeal with the current planning division in accordance with the provisions contained in Section 18.80.030.B, within ten (10) days of the decision of the hearing officer. If an appeal is filed, the hearing officer shall forward to the board of adjustment the record of the hearing. The board shall consider any such appeal on the first available date for which proper notice can be provided pursuant to Chapter 18.05. The appeal shall be conducted as a de novo hearing as defined in Chapter 18.80, and shall follow the procedures set forth in Section 18.80.090. Whether as a result of an initial public hearing by the board or an appeal of the hearing officer's final decision, the board shall submit its findings and order to the applicant and all parties participating in the hearing within thirty (30) days following the conclusion of the hearing. The findings and order of the board representing the board's final decision, may be appealed to city council by any party-in-interest as defined in chapter 18.80, by the filing of a written appeal with the current planning division in accordance with the provisions contained in Section 18.80.030.B within ten (10) days of the mailing of the findings and order. City council shall consider any such appeal at a public hearing noticed in accordance with Section 18.80.050.C. and conducted in accordance with Section 18.80.090. Unless otherwise stated in the findings and order, or in the decision of city council, all permits or actions authorized as a result of an approval of a variance must be initiated within six months of the date such findings and order became final. Upon written request by the applicant, an additional six months may be granted by the current planning manager for initiating such permits or actions. In reviewing the proposed time extension, the current planning manager shall consider the following criteria:

A. Has there been a change of zoning for the site, or for any property adjacent to the site since the original approval?
B. Has a change of use taken place on the site or on any adjacent property since the original approval, or is a change of use proposed for the site which would be divergent from the use shown in the application documents for the original variance?
C. Have there been changes in the regulations and requirements specified in the Loveland Municipal Code which are applicable to the site and which should be addressed prior to the development of the site?
D. Has the ownership of any adjacent property changed?
E. Will the granting of the extension be detrimental to the public health, safety, or general welfare?
F. Will the granting of the extension be in keeping with the purposes set forth in this title to the same degree as intended in the original approval?

18.60.070 Notice.

Notice requirements for appeals shall be provided in accordance with chapter 18.80. All other notices required by this Chapter shall be provided pursuant to Chapter 18.05. (Ord. 5581 § 34, 2011)

Exhibit E

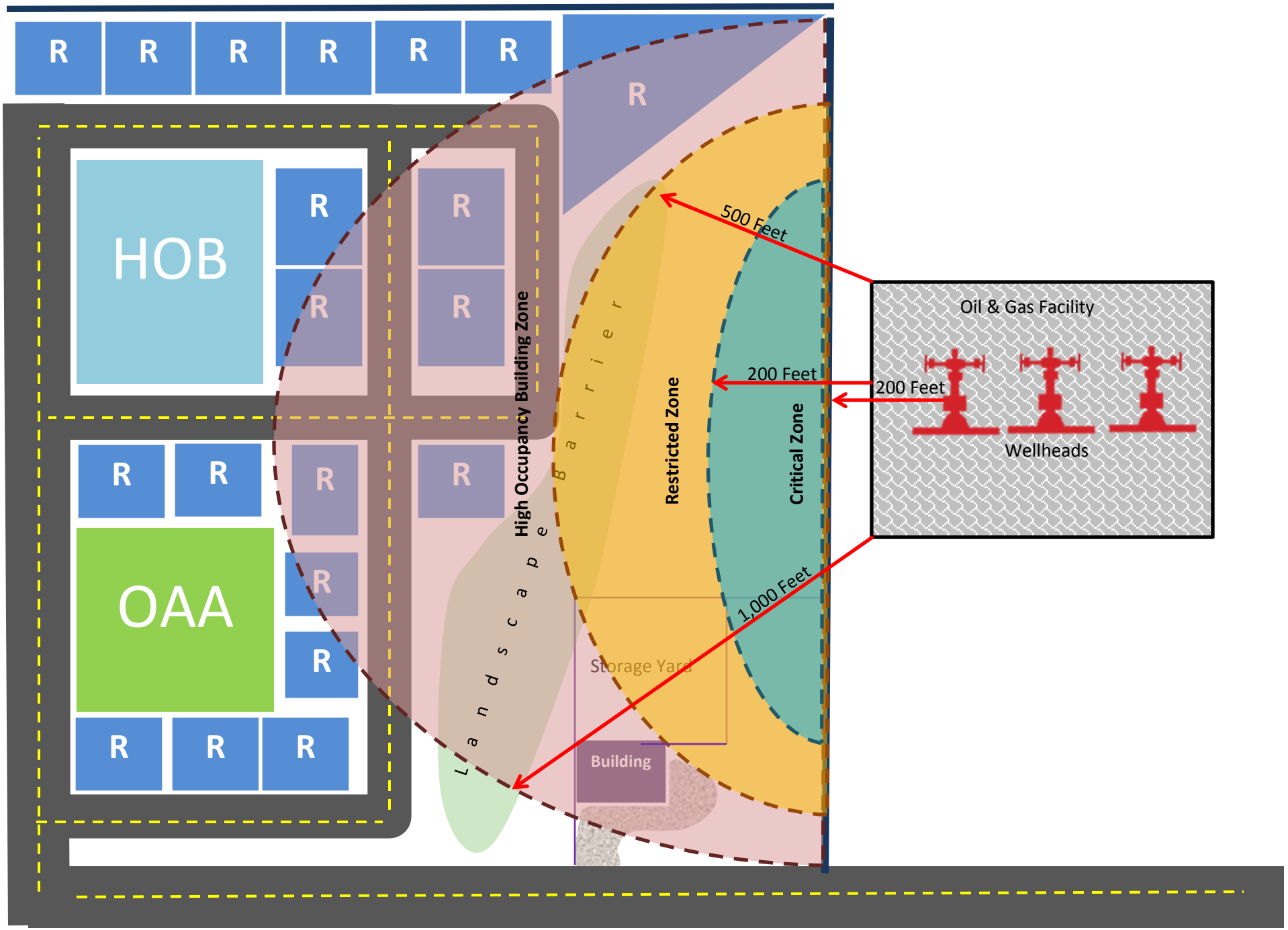
R
HOB
OAA
High Occupancy Building Zone
Landscape barrier
Restricted Zone
Critical Zone
500 Feet
200 Feet
200 Feet
1,000 Feet
Oil & Gas Facility
Wellheads
Storage Yard
Building

Exhibit F

CITY OF LOVELAND
CITY MANAGER'S OFFICE
Civic Center • 500 East Third • Loveland, Colorado 80537
(970) 962-2303 • FAX (970) 962-2900 • TDD (970) 962-2620

AGENDA ITEM: **21**
MEETING DATE: 8/6/2013
TO: Mayor and City Council
FROM: City Manager
INTRODUCTION: William Cahill
PRESENTER: Buddy Meyers, Managing Partner – Tall Guns, LLC

TITLE:
A Motion to Approve the Written Request from Local Businesses for Council to Send a Letter to the Governor's Office Urging a Stay of Enforcement Regarding HB 13-1224 and HB 13-1229

RECOMMENDED CITY COUNCIL ACTION:
City should consider the request and take appropriate action.

OPTIONS:
1. Adopt the action as recommended
2. Deny the action
3. Adopt a modified action (specify in the motion)
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

SUMMARY:
This is an administrative action. Council is asked to consider the attached letter from several concerned local shooting-sports businesses regarding the implementation of HB 13-1224 and HB 13-1229. Council previously approved a related letter on HB 13-1224. The requesting local businesses ask that the effects of both laws be considered together.

If the Council desires to send a letter, two options are attached:
Option A is drafted by staff and uses the Tall Guns material as an attachment.
Option B was submitted by Councilor McKean after the drafting of Option A.

BUDGET IMPACT:
☐ Positive
☐ Negative
☒ Neutral or negligible

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:
Previous Council Letter to the Governor's Office
Possible Council Letter: Option A
Possible Council Letter: Option B
Material from Tall Guns

City of Loveland

CITY COUNCIL

Civic Center • 500 East Third Street, Suite 330 • Loveland, CO 80537
(970) 962-2303 • Fax (970) 962-2900 • TDD (970) 962-2620
www.cityofloveland.org

July 2, 2013

John W. Hickenlooper, Governor
136 State Capitol
Denver, CO 80203-1792

Dear Governor Hickenlooper:

We, the City Council of Loveland, Colorado write you to ask that you stay the enforcement of a recent House Bill that you signed into law, House Bill 13-1229, concerning the transfer of firearms.

This bill will have a detrimental impact on two Loveland charitable organizations, Colorado Youth Outdoors and Pheasants Forever. Bob Hewson, Executive Director of Colorado Youth Outdoors, has informed us that the result of compliance with this law will severely limit the ability of Colorado Youth Outdoors to carry out its important mission of connecting youth and their parents with the time honored sports of target shooting and hunting. Pheasants Forever's program will be similarly affected. The new requirements for background checks on persons being loaned firearms and the subsequent requirement for background checks when returning them to the original owner create an undue burden upon these charitable organizations. In addition, the personal liability for the actions of others created by this misguided legislation is an unreasonable encumbrance for such individuals and organizations.

This will have a very detrimental effect this summer on the children and parents who receive great benefit from Colorado Youth Outdoors, Pheasants Forever, and similar charitable organizations across Colorado.

In addition, there are many small business owners that will be adversely affected by this bill. The future of their businesses are put in jeopardy by HB 13-1229.

We believe that HB 13-1229 imposes restrictions that are detrimental to the livelihood and well-being of the citizens of Loveland and the state of Colorado as a whole. Therefore, we ask you to consider implementing immediately, in concert with the Attorney General, a stay to the enforcement of HB 13-1229 until the Colorado General Assembly can amend the bill in its next session. Thank you for your review of this matter which is important to Colorado youth and businesses.

Respectfully,

Cecil A. Gutierrez, Mayor

Daryle Klassen, Mayor Pro Tem

Chauncey Taylor, Councilor

Joan Shaffer, Councilor

Phil Farley, Councilor

John Fogle, Councilor

Hugh McKean, Councilor

Ralph Trenary, Councilor

Dave Clark, Councilor

Printed on
Recycled Paper

August 7, 2013

John W. Hickenlooper, Governor
136 State Capitol
Denver, CO 80203-1792

Dear Governor Hickenlooper:

We, the City Council of Loveland, Colorado write you to ask that you stay the enforcement of two recent House Bills that you signed into law, House Bills 13-1224 and 13-1229, concerning firearms magazines and the transfer of firearms.

This bill will have a detrimental impact upon Loveland small businesses and on two Loveland charitable organizations, Colorado Youth Outdoors and Pheasants Forever. These organizations have informed us of the negative impacts upon them. We are attaching information supplied by local small businesses about the difficulties imposed by these two legislative acts.

We have previously written you about the impacts of HB 13-1229 and received a response letter from your legal staff. While we appreciate the response, the exceptions cited in the letter as possible solutions had in fact previously been considered, and do not resolve the issues raised.

We believe that HB 13-1224 and HB 13-1229 impose restrictions that are detrimental to the livelihood and well-being of the citizens of Loveland and the state of Colorado as a whole. Therefore, we ask you to consider implementing immediately, in concert with the Attorney General, a stay to the enforcement of these bills until the Colorado General Assembly can amend the bill in its next session. Thank you for your review of this matter which is important to Colorado youth and businesses.

Respectfully,

Cecil A. Gutierrez, Mayor

Daryle Klassen, Mayor Pro Tem

Chauncey Taylor, Councilor

Joan Shaffer, Councilor

Phil Farley, Councilor

John Fogle, Councilor

Hugh McKean, Councilor

Ralph Trenary, Councilor

Dave Clark, Councilor

DRAFT

18 July 2013

City Council of Loveland
c/o Mr. Bill Cahill, City Manager
500 E. 3rd St.
Loveland Colorado 80537

Dear Council Members,

We the undersigned appreciate the opportunity to submit this letter of concern to the City Council of Loveland, Colorado (Council) pursuant to the discussion and action items related to New Business entered during the Council meeting of 2 July 2013.

The undersigned represent a significant portion of the shooting sports industry and citizens of the City of Loveland directly impacted by legislation enacted by the State of Colorado under House Bill (HB) 13-1224 (Attachment 4) and HB 13-1229 (Attachment 5) that were effective 1 July 2013. We are urging the Council to submit a letter to request a stay of enforcement of these two bills to the Honorable John Hickenlooper, Governor of the state of Colorado, based on legal, enforcement deficiencies and financial burden set forth in this letter.

To provide context in regard to these two legislative actions we submit the following:

- HB 13-1224 is in regard to possession, manufacture, sale and handling of large capacity magazines, for all firearms.
- HB 13-1229 is in regard to the transfer, temporary or permanent of a firearm to another party requiring background checks being performed by the Colorado Bureau of Investigation (CBI).

These two legislative bills have had unintended consequences on the law-abiding citizens, non-profit and for-profit entities in the City of Loveland. We contend that these impacts were a direct result of rushed preparation, limited analysis time of the facts, citizen input and a legislative process that was focused on *"doing something"*. These bills as written and passed into law do not enhance the safety, enjoyment of the citizens and are not representative of the will of the majority of the citizens of Loveland and the State of Colorado. They restrict law-abiding citizens and in only one place in HB 13-1224 define any penalty for the non-law-abiding party.

These two bills must be looked at from a consolidated view as there are overlaps and impacts of each jointly on the citizens.

We appreciate the fact that the Council submitted a letter to Governor Hickenlooper to stay enforcement of HB 13-1229 but we feel that it is crucial to understand the impact of HB 13-1229 and HB 13-1224 and their inter-relation that impacts the citizens of Loveland, businesses in the

Loveland area and for visitors to our area and submit a request to Governor Hickenlooper with this broader understanding.

From our analysis we have concluded that HB 13-1224 does the following:

1) Restricts the sale, possession, inheritance and transfer of all firearm magazines rendering the bill unconstitutionally vague;

2) Bans the possession, sale and transfer of certain existing firearms;

3) Provides no relief to businesses or individuals owning large capacity magazines that had the intent to sell these for profit; and

4) Is virtually impossible to implement and enforce.

I. HB-1224, As Written, Bans All Magazines

While it may not have been the intent of the drafters of the bill, the plain meaning of HB 13-1224 is that it will prohibit almost every ammunition magazine as of 1 July 2013. The bill defines restricted magazines as any that that are "designed to be readily converted" to accept more than fifteen rounds. Recent agreements reached between the Governor of the State of Colorado, Attorney General's office and the plaintiffs in the legal suit over HB 13-1224on 10 July 2013, but did resolve issues in this area as it related to magazines "with a floor plate", but did not address the broad definition of magazine in the context of the other firearm magazine types defined in HB 13-1224.

A. Magazine Design

Virtually every ammunition magazine that is commercially available has a removable floor plate or a facsimile thereof. This *design* feature is necessary for cleaning, maintenance, and ease of manufacturing assembly which is agreed to by all and reflected in the position taken by John Suthers, Attorney General of the State of Colorado at the direction of Governor John Hickenlooper on 10 July 2013.

The majority of the readers of the bill interpret the topic is about removable ammunition magazines but the bill defines it further to include shotguns with a tubular *design* magazine, rifle firearms, that are not lever action, with tubular *design* magazines and any firearm that has any type of "magazine" by *design*.

As a result, nearly every magazine, fixed, internal and removable can be converted to exceed the capacity limit set by HB 13-1224, including those for many **bolt action hunting rifles, shotguns and common handguns**.

This directly affects all citizens owning one of these firearms, Colorado Youth Outdoors (CYO), Pheasants Forever, competitive shooters of all types such as our Olympians, NCAA sports teams, 4-H, the Young Marines, ROTC, etc. just to mention a few besides the impact on businesses selling firearms to the general public for the shooting sports.

B. Standard Extensions

A basic product search via the internet demonstrates that virtually every magazine-fed firearm on the market has one or more commercially available extensions. These extensions are offered by the firearm manufacturer and by many aftermarket suppliers. In fact, the most popular home defense firearms come with an option to add an OEM magazine capacity extension, demonstrating that they are "designed to be readily converted." The bill's sponsor, Rhonda Fields, conceded in an interview with 9-News in Denver, Colorado that the extension issue **was not** considered while drafting the bill.

C. Shotgun Shell Amendment

HB 13-1224 in its earliest form prohibited the sale and possession of any device "capable of accepting more than 8 shotgun shells." The Colorado Senate acknowledged that this provision created a legal conflict because every shotgun, by its inherent design, includes an ammunition source tube that can be expanded through commercially available extensions. To address this conflict, the Senate adopted an amendment on second reading that simply prohibits shotgun shell tubes that extend beyond a specific length. HB 13-1224's final version in magazine capacity restriction contains the identical conflict still**, which was not addressed by amendment**.

This directly affects all citizens owning a shotgun, Colorado Youth Outdoors, Pheasants Forever, competitive shooters of all types such as our Olympians, NCAA sports teams, 4-H, the Young Marines, ROTC, etc. just to mention a few besides the impact on businesses selling shotguns to the general public.

D. Unconstitutionally Vague

HB 13-1224 requires persons located in Colorado to determine whether a firearm magazine they are about to possess, sell, or transfer "is designed to be readily converted". The fact it has a removal "floor plate" does not make those types of magazines readily convertible but did not cover a broad number of other magazine *designs* any relief or acknowledgement as a result of the 10 July 2013 position by the State of Colorado. This criminal standard would require a person located in Colorado to predict the *intent* of the manufacturer's design of that magazine: if the manufacturer *intended* to design the

magazine to be readily converted, it would be illegal to sell, possess, or transfer that magazine in Colorado; if, however, the manufacturer did not *intend* to design the magazine to be readily converted, it would be legal to sell, possess, or transfer that same magazine.

Requiring individuals to predict a designer's intent to determine criminal culpability is unconstitutionally vague under the Colorado Constitution. The Colorado Supreme Court has established "[w]hen a statute is challenged as void for vagueness, the essential inquiry is whether the statute describes the forbidden conduct in terms so vague that persons of common intelligence cannot readily understand its meaning and application"[i]. A person of common intelligence cannot determine whether a magazine is designed to be readily converted.

E. Inconsistent Interpretation

A problem closely related to the vagueness issue is the near certainty of inconsistent interpretations by law enforcement and those with responsibility to enforce the law and prosecute violations. Some officials will read the law literally and make their own determination what magazines are designed to be readily converted.

II. HB 13-1224 Bans and Requires Confiscation of Certain Firearms

Regardless of the intent of legislative drafters, HB 13-1224 makes it illegal to purchase, inherit, or even possess existing firearms that have an internal ammunition source over 15 rounds other than .22 caliber or lever action firearms. This includes several popular firearm models, such as the Taurus 45 bolt action rifle which has an internal magazine capacity of sixteen .45 caliber rounds, and the SKS line of rifles which can have an internal ammunition source of 20 rounds. This category of firearm would be illegal to possess as of 1 July 2013, regardless of when it was obtained, because HB 13-1224 only "grandfathers" magazines over 15 rounds and not firearms that have an internal ammunition source over 15 rounds. As a result of HB 13-1224 being signed into law, individuals who possess this type of firearm is guilty of a criminal offense.

A. HB 13-1224 Bans Sale and Transfer of Certain Firearms.

HB 13-1224 can be interpreted to ban the sale or transfer of all firearms (except .22's and lever actions) that have an internal ammunition capacity over 15 rounds. These firearms could not be obtained or brought into Colorado after 1 July 2013. Unlike similar laws in other states, HB 13-1224 does not contain an antique or vintage firearm exemption, so all firearms of this type are prohibited. This is in contention with the terms of HB 13-1229 that grants the transfer of antique or vintage firearm exemption, HB 13-1224 makes that

an illegal act, whereby the citizens are entrapped by one law while being granted action in another law.

This confusion has already cost Colorado one major competitive shooting event sponsored by Ruger Firearms that was to be held Mesa County in late summer of 2013. This action has had impact to the businesses and tax revenues in Grand Junction and the surrounding area.

B. HB 13-1224 Bans Inheritance of Certain Firearms.

HB 13-1224 would ban the transfer of all firearms (except .22's and lever actions) that have an internal ammunition source over 15 rounds. As a result, individuals could not sell or trade these firearms after 1 July 2013. Individuals will not even be able to transfer these firearms to other family members as a gift or inheritance. Unlike other state laws, HB 13-1224 does not include an inheritance exemption. This means that a Colorado citizen cannot even pass this type of firearm down to his son or daughter, even if it is an antique or vintage firearm. This is in direct contention with HB 13-1229 that provides stipulations to accommodate the "immediate family" transfer but by definition HB 13-1224 makes that an illegal act, whereby the citizens are entrapped by one law while being granted action in another law, same as A above.

C. HB 13-1224 Makes Existing Firearms Illegal to Possess.

HB 13-1224 bans all fixed ammunition sources over 15 rounds. The bill exempts .22 and lever actions that have fixed ammunition sources over 15 rounds. The bill also grandfathers existing "magazines" over 15 rounds. However, HB 13-1224 does not grandfather firearms that have an internal ammunition source over 15 rounds that are not .22's or lever action. These firearms are illegal to possess in the State of Colorado as of 1 July 2013 regardless of when the firearm was obtained. It is a criminal offense to continue to possess these types of firearms even if an individual owned the firearm before HB 13-1224's enactment.

III. HB 13-1224 Implementation and Enforcement Virtually Impossible

In addition to the enforcement and interpretation issue discussed above, there are other serious flaws that will make HB 13-1224 virtually impossible to implement and enforce.

A. Date Stamp

The vast majority of firearm magazines do not contain a date stamp. Manufacturers outside of Colorado that are supplying an international market will not adjust

manufacturing processes to meet Colorado HB 13-1224's requirements. The fact that firearm magazines do not contain markings to demonstrate production or sale dates makes HB 13-1224 virtually impossible to enforce for at least two reasons:

1. Grandfathering

HB 13-1224 "grandfathers" prohibited magazines located in Colorado before the bill's effective date. Without date stamps on magazines, it will be impossible to determine which firearm magazines were located in the State of Colorado before the bill's effective date. In fact, the National Institute for Justice recently issued a memo that concluded magazine bans are ineffective if they contain grandfathering provisions:

> "In order to have an impact, large capacity magazine regulation needs to sharply curtail their availability to include restrictions on importation, manufacture, sale, and possession. An exemption for previously owned magazines would nearly eliminate any impact. The program would need to be coupled with an extensive buy-back of existing large capacity magazines. With an exemption the impact of the restrictions would only be felt when the magazines degrade or when they no longer are compatible with guns in circulation. This would take decades to realize."[ii]

2. General Availability

Any individual could legally purchase a "Large Capacity Magazine" in another state, including each of Colorado's neighboring states, bring the magazine back to Colorado, and there would be virtually no way for law enforcement to prove that the magazine was not purchased or transferred before the effective date of HB 13-1224.

B. Law Enforcement

HB 13-1224 places impossible enforcement decisions on Colorado law enforcement. To effectively enforce HB 13-1224, Colorado law enforcement has to be able to determine:

1) whether a magazine is "designed to be readily converted;"
2) whether a magazine was in existence prior to the ban; and
3) whether a magazine had been in continuous possession since the enactment of the ban.

This information is not available to law enforcement because it does not exist,

making HB 13-1224 impossible to enforce.

The frustration and confusion in the Law Enforcement community can be keenly attested to by the law suit brought by numerous Colorado County Sheriffs, businesses and individuals to stay HB 13-1224 and HB 13-1229.

To further consternate the issue Attorney General John Suthers issued a Technical Guidance on the Interpretation and Application of House Bill 13-1224, Large Capacity Magazine Ban on 16 May 2013 (copy is a attached, Attachment 1). This was done at the request of Governor Hickenlooper to provide technical guidance to law enforcement in Colorado in regard to the bill.

1. There is confusion upon reading this document on page 2 in paragraphs 2 and 3 in the interpretation of the intent, design and purpose of the removable base plate. This begs the question as to whose interpretation law enforcement should follow. While agreements have been reached on 10 July 2013 in regard to the purpose of the removable floor plates and the intent to modify, it left huge gaps in regard to a whole host of other magazine *designs* and firearms with internal sources of ammunition.

2. It could also be argued that by the act of sheer possession the unsuspecting citizen has committed a crime by possession as it is assumed they intended to modify it.

To add to the confusion and enforcement position is what is in the Colorado Parks & Wildlife Facts on House Bill 13-1224 High Capacity Magazines dated 28 March 2013 (Attachment 6), 12 days after Attorney General Suthers' guidance document was issued. They take the following positions:

- that removable base plates in themselves do not make a device modifiable and as such legal
- the holder of a larger than higher capacity device is protected by an affirmative enforcement criteria
  - law enforcement must prove ownership post 1 July 2013, not the accused, it is an affirmative defense condition
- they have read the exemptions differently.

These unto itself put all of the citizens and business operators in Loveland at risk of unnecessary prosecution, confiscation and detention because of the poor definitions of the implementation of the law. As such it is incumbent on our elected city representatives to protect us from such state legislation.

IV. HB 13-1224 Direct Impacts to Business

The impact of HB 13-1224 is being acutely felt by the Loveland business community and by those businesses that provide goods and services to the citizens of Loveland. While this may not have been the intent of the original drafters of the bill it has put tremendous financial burden on business operators and their customers.

There was never any consideration for businesses that maybe holding inventory for large capacity magazines, firearms that come standard from manufacturers with these large capacity magazines, had customer orders with deposits for products that come high-capacity magazines standard and had signed purchase contracts for products over a time duration in 2012 for 2013 that included specific performance clauses.

A. Inventory – Large Capacity Magazines

Numerous small shooting sports businesses in Loveland and Northern Colorado that are in a "Catch-22" with inventory in large capacity magazines. They are not fortunate enough to be part of a multi-state location corporation and able to transfer to other sites to move their saleable inventory but Colorado restricted inventory. They instead have to hold this inventory and "tie up" dollars related to it, which with the work conducted by Dr. Douglas Lambert at Ohio State University, while he was at the University of North Florida, the cost to hold inventory can be as high as 40% of the acquisition expense. Yes, they can try to sell it out of state but that incurs additional cost and in turn deprives their customers, citizens of Loveland, from buying the products. In turn the City of Loveland is losing sales tax revenue as sales either go flat or move them to other jurisdictions.

No considerations were made in the bill for grandfathering and selling inventory on-hand prior to 1 July 2013. By this action the bill has a potential "nuclear option" for small businesses in our region for having to close or lay-off employees.

B. Inventory – Firearms

In addition to the issue in A above, small shooting sports businesses in Loveland and Northern Colorado are holding firearms that were shipped to them with large capacity magazines standard from the manufacturer prior to 1 Jul 2013. Numerous of these firearms do not have any options in the industry for the standard magazines that Colorado has deemed as large capacity magazines at this time. They again, are not fortunate enough to be part of a multi-state location corporation and able to transfer to other sites to move their saleable inventory but Colorado restricted inventory. They instead have to

hold this inventory and "tie up" dollars related to it, which with the work conducted by Dr. Douglas Lambert at Ohio State University, while he was at the University of North Florida, the cost to hold inventory can be as high as 40% of the acquisition expense.

For those firearms that they might be able to acquire a lower than standard capacity magazine for some but not all. But they are paying premium prices to acquire them further eroding their profit margins and delaying the sale of the inventory. This equates to issues of "making payroll" with cash, the standard business practice is to convert inventory to cash to pay employees and expenses**. This bill and its lack of business foresight has put Loveland resident jobs and entrepreneurs dreams at risk at numerous locations.** The lay-offs, job loss and reduced tax collection revenues has begun since 1 July 2013.

They can try to sell this inventory to an out of state resident but that causes them to incur additional cost and in turn deprives their customers, citizens of Loveland and Northern Colorado, from buying the products. In turn the City of Loveland is losing sales tax revenue as sales either go "flat" or move those tax revenues to other jurisdictions.

No consideration was made in the bill for grandfathering and selling inventory on-hand prior to 1 July 2013. It is standard industry practice that the distributors and manufacturers do not take back inventory and issue refunds.

C. Orders with Deposits

Some of the businesses had taken orders, based upon demand in the market, that had not yet been filled by their supply sources. They had tendered deposits from customers to secure the order and related products. A large number of these were firearms where the standard magazine from the manufacturer is larger the 15 rounds. As a result they are no longer saleable to a Colorado resident in Colorado as mandated by Colorado law under HB 13-1224. There are **no other options** for these firearms readily available in the market.

They now are unable to fill these orders leading to refunds and impacting their cash flow positions even more and depriving their customers of their purchases due to this legislation. Some of these orders have been on the "books" and open since November 2012.

No consideration was considered in the legislation for these impacts or that this situation even existed in the market. No analysis time was spent in the preparation, writing and

implementation of this law to consider the impact to businesses.

D. Purchase Contracts with Specific Performance

It is common practice in the industry, regardless of the products sold, to forecast your next year's sales and make commitments to your suppliers to buy set quantities of products on a scheduled basis. These commitments are tied to clauses of "specific performance" in the contracts that are made between the dealer and the distributors. Whereby, you commit to buy a specified number of products over timed intervals or the supplier can seek damages for failure to perform to the agreement.

Once again HB 13-1224 and HB 13-1229 took no consideration of this normal business practice and how it may impact the businesses, citizens of Loveland and the state of Colorado. There are citizens of Loveland and their businesses facing extreme financial and legal exposures as a result of the poor crafting of the law.

Business signers of this letter have already experienced refusals of order shipments by suppliers due to confusion over HB 13-1224 which has cost them thousands of dollars in sales and put them at risk of failing to meet contract commits made prior to the enactment of the law.

V. HB 13-1229 Universal Background Checks, Transfer of Firearm

While it may not have been the intent of the bill drafters, HB 13-1229 has put commerce limiting standards in place, gated the ability the law-abiding citizen to temporary transfer via loaning of a firearm to another law-abiding citizen for pleasure or commerce, imposed excessive penalties for non-compliance and created a confusing and direct contention with the scope and limits defined in HB 13-1224.

A. HB 13-1229 - Commerce Limiting

HB 13-1229 has multiple commerce limiting regulations embedded within it. These are a combination of fee limits, liability definitions, controls in regard to possession periods of time that a firearm can be loaned and limits as to where a firearm can be loaned.

We contend that these regulations and definitions with the HB 13-1229 did not take into consideration to impacts to business and law-abiding citizens involved in the shooting sports.

1. It requires mandates that a Federal Licensed Firearms (FFL) dealer cannot charge more than $10.00 to perform a firearm transfer between two parties. This does not include the additional $10.00, which is subject to change without notice, under HB 13-1228 and effective 21 March 2013, to be collected and paid to the Colorado Bureau of Investigation (CBI).

   The source of this arbitrary amount of $10.00 that the FFL can charge and how it was developed is unknown. The FFL is bound by certain laws under Title 18, Chapter 44 of the US Code to conduct specific duties and record retention for up to twenty years for a transaction. The cost of these activities far exceeds the $10.00 price placed arbitrarily by the legislation. No input from the industry was sought.

   This will either force FFLs not to provide the service or take a **legislated loss** to perform the service for a law-abiding citizen(s).

   This would seem to be in direct conflict with the commerce clause in the constitution.

2. HB 13-1229 defines that the transferee of a firearm in a temporary transaction is taking and sharing the liability jointly and severely with the transferor. This was the concern initially highlighted by Colorado Youth Outdoors and Pheasants Forever.

   There seemed to be some confusion about a 50% limit of shared liability when in reality it is up to 100% for any individual involved in the transaction.

   As a point of clarity the only entity that can own a firearm besides a natural person is a corporation under Title 18, Chapter 44 of the US Code. While HB 13-1229 states that a non-profit and government agencies are not covered by the law, from what we heard in Council Chambers from Colorado Youth Outdoors and Pheasants Forever that individuals in those organizations own the firearms and as such they are not immune from the penalties and restrictions in the law.

   This same issue exist for law-abiding citizens, providers of training, like NRA and NSSF certified instructors, 4-H, Boy Scouts of America, Girl Scouts of America, our schools both secondary and university level for simply “loaning” a firearm to an individual for a shooting sport experience or competition.

   It does not even allow, but by exclusion, eliminates a party’s ability to execute a legal Release of Liability or Insurance Coverage to mitigate this said liability risk.

   This exposes citizens of Loveland, businesses and our time valued institutions at risk

of financial loss or discontinuance of programs or business operations.

3. As a result of the legal position of the State of Colorado issued 10 July 2013 it defines a temporary transfer can be for a period longer than 72 hours as initially defined in HB 13-1229. As long as it involves law-abiding citizens and occurs for the purpose of hunting, target shooting or a shooting competition. It is defined that as long as those occur at a state approved event, at a facility providing shooting range or firearm safety training than no criminal activity has occurred or from a member of the US armed forces within 30 days of deployment (sic).

   It does not though resolve the loaner of any of the liability as defined in 2 above or any mechanisms or process to be resolved of action by the loanee. You can loan an automobile to someone and insurance or a rental agreement protects the owner from liability for actions of the operator but HB 13-1229 has removed that ability by law.

   This is very limiting for individuals that operate outfitter services or firearm training businesses that do not have “brick and mortar” facilities or conduct an event at a facility that is state approved. Which no definition of state approved is provided in the law.

   We have numerous NRA and NSSF certified instructors in the Loveland area that operate medium to very small businesses. Some have established places of business while many other operate from rented facilities ranging from churches, empty offices to hotel/motel facilities. By the definition in the legislation, these instructors, of the latter definition, educating law-abiding citizens in the safe and enjoyable operations of firearms in the shooting sports are exposed as being criminals by handing someone or receiving a firearm from someone during instruction. This is due to the fact HB 13-1229 defines that the loaning has to occur at the facilities of a duly incorporated entity whose primary business is the training of firearm safety, a shooting range or a target shooting competition.

   To add to the confusion, on 28 March 2013 the Colorado Parks and Wildlife (DOW) issued a document titled Hunting and HB 13-1229 (attached to this document, Attachment 2) that states that the DOW does not believe the 72 hours applies if the parties are using the firearm for hunting during a game season and you hold a license for the season. This position has now been supported by the Attorney General’s position of 10 July 2013, over 63 days after the DOW’s position was taken.

   This points to the confusion of understanding and interpretation by the state itself and within the law enforcement community.

B. HB 13-1229 - Ability to loan by Law-Abiding Citizens

As a result of the legal position of the State of Colorado issued 10 July 2013 it defines a temporary transfer **can be** for a period longer than 72 hours as initially defined in HB 13-1229. As long as it involves law-abiding citizens and occurs for the purpose of hunting, target shooting or a shooting competition. It is defined that as long as those occur at a state approved event, at a facility providing shooting range or firearm safety training than no criminal activity has occurred or from a member of the US armed forces within 30 days of deployment (sic).

It **does not though resolve** the loaner of any of the liability as defined in **V. A. 2** above or any mechanisms or process to be resolved of action by the loanee. You can loan an automobile to someone and insurance or a rental agreement protects the owner from liability for actions of the operator but HB 13-1229 has removed that ability by law.

C. HB 13-1229 - Excessive Penalties

First and foremost the law as defined in CRS 18-1.3-501 that a violation on HB 13-1229 is punishable as a class 1 misdemeanor with six to 18 months imprisonment, a $500 to $5,000 fine or both. In addition the person violating the law is prohibited from possessing a firearm for two years.

This can be imposed on a citizen for just doing their job or trying to be educated to be a safe and responsible firearm owner or operator.

This seems to be misguided in regard to the desire to enhance public safety and encouraging safe ownership and operation of firearms, by imposing such a heavy penalty upon the citizens of Loveland for trying to do the “right thing” in exercising their 2nd Amendment right responsibly.

D. HB 13-1229 - Confusion and Contention with HB 13-1224

In reviewing HB 13-1229 and 1224 as a set of laws you find extensive contradictions and what we term “entrapment” clauses.

Reading HB 13-1224 states that the owner of a large-capacity magazine equipped firearm, a shotgun, lever action firearm or any tubular magazine firearm that might be modifiable if the design was such to every consider that idea, would commit a crime in a legal temporary loaning activity of that firearm as defined under HB 13-1229. HB 13-

1224 specifies the original owner MUST keep control in their possession of the firearm/magazine at all times, within reason as Attorney General Suthers' Technical guidance specifies.

However, HB 13-1229 guides us that we can temporarily loan a firearm to another. But, what if that firearm is a shotgun or rifle, for this example only, as defined by Colorado Youth Outdoors and Pheasants Forever, that some "crafty" engineer determined that they could add an extension tube to it for law enforcement, competitive shooters, for use in a non-Colorado state, etc. as to improve features and function operation. Now by de facto, using the definition of the law the loaner has committed a crime by loaning that firearm to the loanee and the loanee has committed a crime in receiving it by the definition HB 13-1224. Although this is a legal activity under HB 13-1229, it is a crime under HB 13-1224.

It is unrealistic for any law-abiding citizen, business and law enforcement to keep track of every "after-market add-on" designed or made anywhere in the world. Some of which are never disclosed to the commercial market (defined as Military or Law Enforcement use only), that might affect their firearm classification as being modifiable under HB 13-1224.

This unto itself will expose the citizens of Loveland and Northern Colorado to potential criminal charges for actions beyond their control and knowledge. This further points to how these laws were not thought through in regard to the implications of each upon the other and the unenforceability of them by law enforcement.

We have also attached as Attachment 3, a Summary of Colorado's New Gun Control Laws conducted by the Office of Legislative Review (OLR) of the State of Connecticut to help you understand the reading of these bills by others dated 3 April 2013.

VI. Action Request

The City Council of Loveland has already set precedent in the letter it has submitted to Governor John Hickenlooper to stay the enforcement of HB 13-1229.

These "signed into law bills" are putting extreme hardship on Loveland businesses, curtailing the rights of citizens of Loveland to enjoy the shooting sports long valued in our state, creating an environment where citizens of Loveland are criminals in the eyes of the law by the simple exercising of the right to own a firearm, target shoot, compete in the shooting sports and/or go hunting with the family and friends.

Based upon the analysis and facts presented in this letter to you, the City Council of Loveland, to

take further action by requesting in a letter to not only stay enforcement of HB 13-1229 and HB 13-1224 but request the legislature take action to correct these unintended consequences.

We urge the City Council of Loveland, our elected representatives, to send such a letter to the Governor to stay of enforcement of HB 13-1224 and HB 13-1229 further, as you have already taken action on HB 13-1229, but with an extended scope justifying the action of the stay of both HB 13-1224 and HB 13-1229. Thereby protecting the citizens and businesses of Loveland from unnecessary hardship, loss of pleasure, loss of jobs, loss of commerce to the area, loss of a western heritage, potential criminal action and prosecution and ensuring the well-being of the citizenry at large for the state of Colorado.

This we feel is the role of our local elected officials to represent the local populace when our state enacts a law that has broad impacts on its constituents.

Communications and response coordination can be done through Buddy Meyers of Tall Guns LLC as our single point of contact (SPOC) for the under signers.

Regards,

Tall Guns, LLC
2004 West 15th St., Suite 6
Loveland, CO 80538 USA

Buddy Meyers, Managing Partner — July 18, 2013 Date

Tall Guns, LLC
2004 West 15th St., Suite 6
Loveland, CO 80538 USA

Justin Meyers, Sr. Partner — July 18, 2013 Date

Source : Buddy Meyers, Tall Guns LLC 970-619-8154, Buddy.Meyers@TallGuns.com

Burrud Arms Inc. DBA; Jensen Arms
285E East 29th St., Suite E
Loveland, CO 80538

7/18/13
John Burrud, Owner — Date

Rocky Mountain Shooters Supply
3507 East Mulberry, Suite A
Fort Collins, CO 80524

7/18/13
Tim Brough, Owner — Date

USA Liberty Arms
921 East Harmony Rd., Suites 101,102
Fort Collins, CO 80525

7/18/13
David McClelland, Owner — Date

2nd Amendment
Gunsmiths& Shooters Supplies
418 SE 8th St. Unit A-2
Loveland, CO 80527

Ed Schultz
7/18/13
Ed Schultz, Owner — Date

Front Range Gun Club
697 N. Denver Ave., Suite 128
Loveland, CO 80537

Steve Klen
7-18-13
Steve Klen, Owner — Date

7-18-13
Ed Klen, Owner — Date

Source : Buddy Meyers, Tall Guns LLC 970-619-8154, Buddy.Meyers@TallGuns.com

John W. Suthers
Attorney General

Cynthia H. Coffman
Chief Deputy Attorney General

Daniel D. Domenico
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STATE OF COLORADO
DEPARTMENT OF LAW
Office of the Attorney General

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May 16, 2013

Colorado Department of Public Safety
Executive Director James H. Davis
700 Kipling Street, 3rd Floor
Denver CO 80215

RE: Technical Guidance on the Interpretation and Application of House Bill 13-1224, Large-Capacity Magazine Ban

Dear Executive Director Davis:

House Bill 13-1224, which was passed during this year's legislative session and becomes effective July 1, 2013, prohibits the sale, transfer, and possession of "large-capacity ammunition magazines." On March 20, 2013, in a statement issued at the time he signed HB 13-1224 into law, Governor Hickenlooper instructed "the Colorado Department of Public Safety to consult with the Office of the Attorney General and others, as necessary . . . and then to draft and issue, to law enforcement agencies in the State of Colorado, technical guidance on how the law should be interpreted and enforced."

This letter sets forth the technical guidance requested by the Governor.

Introduction

This technical guidance, issued at the request of the Governor, is meant to assist Colorado law enforcement agencies in understanding and applying portions of House Bill 13-1224, which regulates the sale, transfer, and possession of "large capacity magazines." Although this guidance is not binding on the courts, it is based upon existing legal principles and represents a fair and accurate reading of the legislation.

Definition of "Large Capacity Magazine"

Under House Bill 1224, the term "large capacity magazine" is defined, in part, as follows: "a fixed or detachable magazine, box, drum, feed strip, or similar device capable of accepting, or that is designed to be readily converted to accept, more than fifteen rounds of ammunition."

The phrase "designed to be readily converted to accept more than fifteen rounds of ammunition" has prompted questions regarding the scope of the definition, particularly because some ammunition magazines include features, such as removable baseplates, that can be removed and replaced, or otherwise altered, so that the magazine accepts more than fifteen rounds.

The term "designed," when used as a modifier, denotes a feature that meets a specific function. This suggests that design features that fulfill more than one function, and whose function is not specifically to increase the capacity of a magazine, do not fall under the definition. The features of a magazine must be judged objectively to determine whether they were "designed to be readily converted to accept more than fifteen rounds."

Under this reading of the definition, a magazine that accepts fifteen or fewer rounds is not a "large capacity magazine" simply because it includes a removable baseplate which may be replaced with one that allows the magazine to accept additional rounds. On many magazines, that design feature is included specifically to permit cleaning and maintenance. Of course, a magazine whose baseplate is replaced with one that does, in fact, allow the magazine to accept more than fifteen rounds would be a "large capacity magazine" under House Bill 1224.

"Possession" of Large-Capacity Magazines and Application of the Grandfather Clause of House Bill 1224

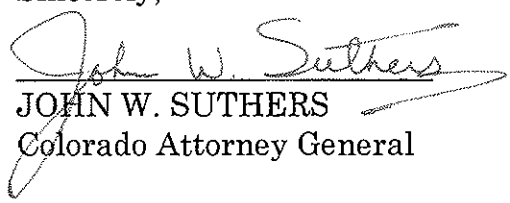
House Bill 1224 also places limitations on when and how a large-capacity magazine may be sold, transferred, or possessed. In particular, the bill's grandfather clause permits possession of a large-capacity magazine on or after July 1, 2013 by an individual who "owns" such a magazine on that date and "maintains continuous possession" of it thereafter. However, the bill prohibits the owner of a large-capacity magazine from selling or transferring it after July 1, 2013, and also prohibits an individual who as of July 1 did not own and since then has not continuously possessed a particular large-capacity magazine to possess it after July 1, 2013.

Responsible maintenance, handling, and gun safety practices, as well as constitutional principles, dictate that these provisions cannot be reasonably construed as barring the temporary transfer of a large-capacity magazine by an individual who remains in the continual physical presence of the temporary transferee, unless that temporary transfer is otherwise prohibited by law. For example, an owner should not be considered to have "transferred" a large-capacity magazine or lost "continuous possession" of it simply by handing it to a gunsmith, hunting partner, or an acquaintance at a shooting range with the expectation that it will be promptly returned. Likewise, a gunsmith, hunting partner, or acquaintance at a shooting range who acquires temporary physical custody of a large-capacity magazine from its owner should not be considered in "possession" of the magazine

so long as he or she remains in the owner's physical presence. However, it would be unreasonable to construe the bill or this guidance to exempt a temporary transfer of a large-capacity magazine in connection with criminal activity.

For similar reasons, the bill's requirement that an owner must maintain "continuous possession" in order to ensure the application of the grandfather clause cannot reasonably be read to require continuous physical possession. Proper storage of a large-capacity magazine, such as in a gun safe in the owner's home or in a secure carrying case in the trunk of an automobile, is entirely consistent with the bill's intent of limiting the acquisition and permanent transfer of large-capacity magazines after the effective date of July 1, 2013.

Sincerely,



JOHN W. SUTHERS
Colorado Attorney General

cc: Governor John Hickenlooper
Jack Finlaw, Chief Legal Counsel to Governor Hickenlooper

COLORADO PARKS & WILDLIFE

Hunting and HB 1229

FACTS ABOUT THE UNIVERSAL BACKGROUND CHECK BILL **3/28/2013**

House Bill 13-1229 Universal Background Checks

HB 1229 requires that a background check is performed before the transfer/sale of a gun from one individual to another. To facilitate the background checks, a separate bill (HB 1228) authorized the Colorado Bureau of Investigation to establish a fee for background checks and to create a system to provide those checks.

Hunting activities are exempt

HB 1229 specifically exempts hunting: "THE PROVISIONS OF THIS SECTION DO NOT APPLY… WHILE HUNTING, FISHING, TARGET SHOOTING, OR TRAPPING IF: (A) THE HUNTING, FISHING, TARGET SHOOTING, OR TRAPPING IS LEGAL IN ALL PLACES WHERE THE UNLICENSED TRANSFEREE POSSESSES THE FIREARM; AND (B) THE UNLICENSED TRANSFEREE HOLDS ANY LICENSE OR PERMIT THAT IS REQUIRED FOR SUCH HUNTING, FISHING, TARGET SHOOTING, OR TRAPPING

Temporary transfers exempt

HB 1229 exempts temporary transfers (for example, if you loan a gun to a friend for target practice) if the transfer is less than 72 hours. Note: This exemption is separate from the hunting exemption, meaning that the hunting exemption is good for the length of whatever period the transferee is hunting. For example, if you loan a neighbor a gun to go out for a nine day elk season, the hunting exemption would apply to that transfer and the 72 hours would not apply. However if you loan your friend a gun for something other than hunting or at a shooting range, the 72 hour exemption would apply.

Gun transfers to immediate family are exempt

The bill exempts gun transfers (gift or loan) to family members, specifically "SPOUSES, PARENTS, CHILDREN, SIBLINGS, GRANDPARENTS, GRANDCHILDREN, NIECES, NEPHEWS, FIRST COUSINS, AUNTS AND UNCLES"

Loaning someone a gun at a shooting range is exempt

HB 1229 exempts transfers at shooting ranges, specifically: "AT A SHOOTING RANGE LOCATED IN OR ON PREMISES OWNED OR OCCUPIED BY A DULY INCORPORATED ORGANIZATION ORGANIZED FOR CONSERVATION PURPOSES OR TO FOSTER PROFICIENCY IN FIREARMS"

Shooting competitions are exempt

HB 1229 exempts shooting competitions or trainings specifically: "AT A TARGET FIREARM SHOOTING COMPETITION UNDER THE AUSPICES OF, OR APPROVED BY, A STATE AGENCY OR A NONPROFIT ORGANIZATION"

Other Questions

Colorado Parks and Wildlife is working with the Colorado Department of Public Safety and the Attorney General to receive additional technical guidance on the new statutes. The new statutes do not take effect until July 1 and implementation guidance will be available prior to that time.

Location:
WEAPONS - GUN CONTROL;
Scope:
Other States laws/regulations; Federal laws/regulations;

OLR RESEARCH REPORT

April 3, 2013 2013-R-0198

SUMMARY OF COLORADO'S NEW GUN CONTROL LAWS

By: Michael Csere, Legislative Fellow

You asked for a summary of Colorado's new gun control laws regarding background checks and large-capacity ammunition magazines.

SUMMARY

Colorado recently passed three new gun control laws. House Bill 13-1229 requires (1) universal background checks pursuant to the transfer of firearms, including private transfers, with several exceptions; (2) new mental health reporting; and (3) a judicial appeals process for individuals restricted from acquiring or possessing firearms. This law took effect upon passage, although the background check requirement does not begin until July 1, 2013.

House Bill 13-1228 requires the Colorado Bureau of Investigation (Bureau) to recoup the cost of performing an instant criminal background check by charging a background check fee. It also specifies how the state may establish the fee and handle and use revenue from it. It took effect upon passage.

Lastly, House Bill 13-1224 prohibits the sale, transfer, or possession of large-capacity ammunition magazines (more than 15 rounds), with certain exceptions. And it requires identification markings on all large-capacity magazines manufactured in Colorado after July 1, 2013, which is when the law takes effect.

UNIVERSAL BACKGROUND CHECKS (HB 13-1229)

Background Check Requirement

Under the new law, before any person who is not a licensed gun dealer transfers possession of a firearm, he or she must arrange for a licensed dealer to obtain the required background check. In obtaining the background check, the dealer must follow all procedures that it would follow were it transferring the firearm in a retail transaction, including recording the transfer, retaining the records, and complying with all state and federal laws. The dealer must provide a copy of the background check results and the Bureau's approval or disapproval to the transferor and intended transferee,

and may charge a fee of up to $10.

A prospective transferee may not accept possession of the firearm until after the transferor has obtained the Bureau's approval, nor may he or she knowingly provide false information to the transferor or licensed gun dealer for the purpose of acquiring a firearm. Bureau approval of a firearm transaction is valid for 30 calendar days. A person who transfers a firearm in violation of the law may be held jointly and severally liable for any civil damages caused by the transferee's subsequent use of the firearm.

Exemptions

The new law exempts from the background check requirement transfers:

1. of an antique firearm (18 U.S.C. § 921(a)(16)) or a curio or relic (27 C.F.R. § 478.11);

2. of a bona fide gift between immediate family members;

3. occurring (a) by operation of law or (b) because of the death of a person for whom the prospective transferor is an executor or adminisrator of an estate or a trustee of a trust created by a will;

4. of a temporary nature that occur in the home of an unlicensed transferee if he or she (a) is not prohibited from firearm possession and (b) reasonably believes that firearm possession is necessary to prevent imminent death or serious bodily injury to the transferee;

5. of possession that are temporary and that take place (a) at a shooting range that meets specific ownership requirements; (b) at an approved target shooting competition; or (c) while legally hunting, fishing, target shooting, or trapping;

6. made to facilitate the repair of a firearm as long as all parties possessing the firearm may do so legally;

7. of a temporary nature that occur while in the continous presence of the owner of the firearm;

8. for up to 72 hours, during which time the transferor may be jointly and severally liable for damages caused by the transferee's unlawful use of the firearm; or

9. to any immediate family member from an armed services member who will be deployed outside the U.S. within the next 30 days.

The exceptions listed in the new law do not limit or alter the applicability of a different state law that prohibits the purchase or obtainment of a firearm on behalf of, or for transfer to, a person whom the transferor knows or reasonably should know is ineligible to possess a firearm under state or federal law (Colo. Rev. Stat. § 18-12-111).

Unless there is actual knowledge to the contrary, a (1) business that repairs firearms may rely on a transferor's statement that he or she may legally possess a firearm and (2) transferor may rely on the business's statement that no manager or employee is prohibited from firearm possession.

Penalties

A violation of the new background check law is a class 1 misdemeanor, which is punishable by six to 18 months imprisonment, a $500 to $5,000 fine, or both (Colo. Rev. Stat. § 18-1.3-501). Additionally, a person violating the law is prohibited from possessing a firearm for two years. The state court administrator must report any conviction related to such violation to the Bureau and the National Instant Criminal Background Check System (see below).

Mental Health

Reporting Requirements. The new law requires the state court administrator to send electronically to the Bureau the names of each person who has

been, under court order: (1) found to be incapacitated, (2) committed to a behavioral health treatment program (e.g., for substance abuse), or (3) involuntarily certified for short-term or long-term treatment and care for mental illness. The court administrator must send this information within 48 hours of notification.

If a court becomes aware that the basis for reporting such information does not apply or no longer applies, it must (1) update, correct, modify, or remove the record from any database that the federal or state government maintains and makes available to the national instant criminal background check system and (2) notify the attorney general.

Judicial Process for Relief. The new law creates a judicial process wherein a person may petition for relief from federal firearms prohibitions resulting from an adjudication as a "mental defective" or a commitment to a mental institution (18 U.S.C. § 922(d)(4) and (g)(4)). This new state judicial process was established pursuant to the federal NICS Improvement Act of 2007, which permits states to implement a program allowing people to petition for relief from certain federal firearms prohibitions, provided the state program meets specific criteria (Pub. L. ***110-180, § 105***, 18 U.S.C. § 922 note, (2008)).

In a state court proceeding, the petitioner can submit his or her own evidence. The court must review the evidence and maintain a record of the proceeding. The court must consider three factors:

1. the circumstances regarding the firearms prohibitions;

2. the petitioner's mental health and criminal history records; and

3. the petitioner's reputation, developed through character witness statements, testimony, or other character evidence.

To grant relief, the court must find that (1) the petitioner is not likely to act in a manner that is dangerous to public safety and (2) granting relief to him or her is not contrary to the public interest. If the court denies relief, the petitioner may appeal. The appeals court may, but is not required to, give deference to the lower court's decision. It also has discretion to receive additional evidence necessary to conduct an adequate review.

INSTANT CRIMINAL BACKGROUND CHECK FEE (HB 13-1228)

House Bill 1228 directs the Bureau to impose a fee for performing an instant criminal background check pursuant to state law. The fee amount cannot exceed the total amount of direct and indirect costs the Bureau incurs in performing the check.

The Bureau must transmit the fees to the state treasurer, who must credit that money to a new instant criminal background check cash fund. The legislature can appropriate money from the fund for the direct costs of performing background checks. The treasurer may invest any unspent money; any interest and income derived from the investment must be credited to the fund. Unexpended and unencumbered money remaining in the fund at the end of a fiscal year must remain in the fund and may not be credited to any other fund. If practicable, the Bureau must use any remaining funds to reduce the fee amount. The Bureau may contract with a public or private entity for fee collection services.

The Bureau must report annually to the legislative joint budget committee (1) the number of full-time employees used to perform background checks and (2) the caluculations used to determine the fee amount.

The law also authorizes the Bureau to continue using general funds appropriated to the Bureau for FY14 to perform criminal background checks on a temporary basis until the earlier of (1) six months after the bill's effective date or (2) when sufficient money exists in the new fund to pay for the background checks.

According to the Denver Post, it is estimated that the fee will be between $10 and $12.

PROHIBITION OF LARGE-CAPACITY AMMUNITION MAGAZINES (HB 13-1224)

Prohibition

Attachment 3

House Bill 13-1224 prohibits the sale, transfer, or possession of large-capacity ammunition magazines or feeding devices, which includes:

1. a fixed or detachable magazine, box, drum, feed strip, or similar device capable of accepting, or that is designed to be readily converted to accept, more than 15 rounds of ammunition;

2. a fixed, tubular shotgun magazine that holds more than 28 inches of shotgun shells, including any extension device attached to the magazine that holds additional shotgun shells; or

3. a nontubular, detachable magazine, box, drum, feed strip, or similar device that is capable of accepting more than eight shotgun shells when combined with a fixed magazine.

The following devices are not included in the ban:

1. a feeding device permanently altered so that it cannot accommodate more than 15 rounds of ammunition;

2. an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition; or

3. a tubular magazine contained in a lever-action firearm.

Penalties

Table 1 details the penalties the state may impose if someone is convicted for violating this law.

Table 1: Penalties for Possession of Large-Capacity Ammunition Magazines

Nature of violation	***Criminal Classification***	***Penalties***	
		Fine	***Imprisonment***
First-time violation	Class 2 misdemeanor	$250-$1,000	3-12 months
Violation after a conviction for a prior violation	Class 1 misdemeanor	$500-$5,000	6-18 months
Violation during the commission of a felony or any violent crime	Class 6 felony	$1,000-$100,000	12-18 months, plus one year mandatory parole

Exemptions

Attachment 3

Grandfather Clause. A person may possess a large-capacity magazine if he or she (1) owns the magazine on July 1, 2013 and (2) maintains continuous possession of the magazine. If a person asserts the grandfather provision as a defense against an alleged violation of the law, the prosecution has the burden of proof to refute the assertion.

Manufacturers and Licensed Gun Dealers. An entity that manufactures large-capacity magazines within Colorado, any licensed gun dealer, or employees of either, are not subject to the law if the transfer or sale is exclusively to:

1. a branch of the U.S. armed forces;

2. a department, agency, or political subdivision of any state, including Colorado, or the U. S. government;

3. a firearms retailer for the purpose of firearms sales conducted outside the state;

4. a foreign national government approved for such transfers by the U.S. government; or

5. an out-of-state transferee who may legally possess a large-capacity magazine.

Official Duties of Certain Employees. Employees of (1) a branch of the U.S. armed forces or (2) a department, agency, or political subdivision of any state, including Colorado, or the U.S. government who bear a firearm in the course of their official duties may possess a large-capacity magazine.

Transporters. A person who possesses a large-capacity magazine for the sole purpose of transporting the magazine to an out-of-state entity on behalf of a Colorado manufacturer of such magazines is also exempt from the law.

Identification Markings

The new law requires large-capacity magazines that are manufactured in Colorado on or after July 1, 2013 to include a permanent stamp or marking indicating when the magazine was manufactured or assembled. The stamp or marking must be legibly and conspicuously engraved or cast upon the outer surface of the magazine. Violation of this requirement is a class 2 misdemeanor.

The law authorizes the Bureau to promulgate rules needed to implement the requirement, such as requiring magazines to bear other identifying information in addition to the mandated identification markings.

HYPERLINKS

Ryan Parker, *The Denver Post*, Colorado Gun Bills: Background Check Fee Wins Initial Senate Approval, http://www.denverpost.com/breakingnews/ci_22746907/colorado-gun-bills-senate-take-up-fees-background (March 8, 2013).

MC:ro

Attachment 3

HOUSE BILL 13-1224

BY REPRESENTATIVE(S) Fields, Court, Fischer, Hullinghorst, Labuda, Levy, Melton, Pabon, Rosenthal, Schafer, Williams, Young, Buckner, Ferrandino;
also SENATOR(S) Hodge, Aguilar, Guzman, Heath, Nicholson, Ulibarri, Morse.

CONCERNING PROHIBITING LARGE-CAPACITY AMMUNITION MAGAZINES.

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

SECTION 1. In Colorado Revised Statutes, **add** part 3 to article 12 of title 18 as follows:

PART 3
LARGE-CAPACITY AMMUNITION MAGAZINES

18-12-301. Definitions. AS USED IN THIS PART 3, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "BUREAU" MEANS THE COLORADO BUREAU OF INVESTIGATION CREATED AND EXISTING PURSUANT TO SECTION 24-33.5-401, C.R.S.

(2) (a) "LARGE-CAPACITY MAGAZINE MEANS:

_____
Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(I) A FIXED OR DETACHABLE MAGAZINE, BOX, DRUM, FEED STRIP, OR SIMILAR DEVICE CAPABLE OF ACCEPTING, OR THAT IS DESIGNED TO BE READILY CONVERTED TO ACCEPT, MORE THAN FIFTEEN ROUNDS OF AMMUNITION;

(II) A FIXED, TUBULAR SHOTGUN MAGAZINE THAT HOLDS MORE THAN TWENTY-EIGHT INCHES OF SHOTGUN SHELLS, INCLUDING ANY EXTENSION DEVICE THAT IS ATTACHED TO THE MAGAZINE AND HOLDS ADDITIONAL SHOTGUN SHELLS; OR

(III) A NONTUBULAR, DETACHABLE MAGAZINE, BOX, DRUM, FEED STRIP, OR SIMILAR DEVICE THAT IS CAPABLE OF ACCEPTING MORE THAN EIGHT SHOTGUN SHELLS WHEN COMBINED WITH A FIXED MAGAZINE.

(b) "LARGE-CAPACITY MAGAZINE" DOES NOT MEAN:

(I) A FEEDING DEVICE THAT HAS BEEN PERMANENTLY ALTERED SO THAT IT CANNOT ACCOMMODATE MORE THAN FIFTEEN ROUNDS OF AMMUNITION;

(II) AN ATTACHED TUBULAR DEVICE DESIGNED TO ACCEPT, AND CAPABLE OF OPERATING ONLY WITH, .22 CALIBER RIMFIRE AMMUNITION; OR

(III) A TUBULAR MAGAZINE THAT IS CONTAINED IN A LEVER-ACTION FIREARM.

18-12-302. Large-capacity magazines prohibited - penalties - exceptions. (1) (a) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, ON AND AFTER JULY 1, 2013, A PERSON WHO SELLS, TRANSFERS, OR POSSESSES A LARGE-CAPACITY MAGAZINE COMMITS A CLASS 2 MISDEMEANOR.

(b) ANY PERSON WHO VIOLATES SUBSECTION (1) OF THIS SECTION AFTER HAVING BEEN CONVICTED OF A PRIOR VIOLATION OF SAID SUBSECTION (1) COMMITS A CLASS 1 MISDEMEANOR.

(c) ANY PERSON WHO VIOLATES SUBSECTION (1) OF THIS SECTION COMMITS A CLASS 6 FELONY IF THE PERSON POSSESSED A LARGE-CAPACITY MAGAZINE DURING THE COMMISSION OF A FELONY OR ANY CRIME OF VIOLENCE, AS DEFINED IN SECTION 18-1.3-406.

(2) (a) A PERSON MAY POSSESS A LARGE-CAPACITY MAGAZINE IF HE OR SHE:

(I) OWNS THE LARGE-CAPACITY MAGAZINE ON THE EFFECTIVE DATE OF THIS SECTION; AND

(II) MAINTAINS CONTINUOUS POSSESSION OF THE LARGE-CAPACITY MAGAZINE.

(b) IF A PERSON WHO IS ALLEGED TO HAVE VIOLATED SUBSECTION (1) OF THIS SECTION ASSERTS THAT HE OR SHE IS PERMITTED TO LEGALLY POSSESS A LARGE-CAPACITY MAGAZINE PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2), THE PROSECUTION HAS THE BURDEN OF PROOF TO REFUTE THE ASSERTION.

(3) THE OFFENSE DESCRIBED IN SUBSECTION (1) OF THIS SECTION SHALL NOT APPLY TO:

(a) AN ENTITY, OR ANY EMPLOYEE THEREOF ENGAGED IN HIS OR HER EMPLOYMENT DUTIES, THAT MANUFACTURES LARGE-CAPACITY MAGAZINES WITHIN COLORADO EXCLUSIVELY FOR TRANSFER TO, OR ANY LICENSED GUN DEALER, AS DEFINED IN SECTION 12-26.1-106 (6), C.R.S., OR ANY EMPLOYEE THEREOF ENGAGED IN HIS OR HER OFFICIAL EMPLOYMENT DUTIES, THAT SELLS LARGE-CAPACITY MAGAZINES EXCLUSIVELY TO:

(I) A BRANCH OF THE ARMED FORCES OF THE UNITED STATES;

(II) A DEPARTMENT, AGENCY, OR POLITICAL SUBDIVISION OF THE STATE OF COLORADO, OR OF ANY OTHER STATE, OR OF THE UNITED STATES GOVERNMENT;

(III) A FIREARMS RETAILER FOR THE PURPOSE OF FIREARMS SALES CONDUCTED OUTSIDE THE STATE;

(IV) A FOREIGN NATIONAL GOVERNMENT THAT HAS BEEN APPROVED FOR SUCH TRANSFERS BY THE UNITED STATES GOVERNMENT; OR

(V) AN OUT-OF-STATE TRANSFEREE WHO MAY LEGALLY POSSESS A LARGE-CAPACITY MAGAZINE; OR

(b) AN EMPLOYEE OF ANY OF THE FOLLOWING AGENCIES WHO BEARS A FIREARM IN THE COURSE OF HIS OR HER OFFICIAL DUTIES:

(I) A BRANCH OF THE ARMED FORCES OF THE UNITED STATES; OR

(II) A DEPARTMENT, AGENCY, OR POLITICAL SUBDIVISION OF THE STATE OF COLORADO, OR OF ANY OTHER STATE, OR OF THE UNITED STATES GOVERNMENT; OR

(c) A PERSON WHO POSSESSES THE MAGAZINE FOR THE SOLE PURPOSE OF TRANSPORTING THE MAGAZINE TO AN OUT-OF-STATE ENTITY ON BEHALF OF A MANUFACTURER OF LARGE-CAPACITY MAGAZINES WITHIN COLORADO.

18-12-303. Identification markings for large-capacity magazines - rules. (1) A LARGE-CAPACITY MAGAZINE THAT IS MANUFACTURED IN COLORADO ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION MUST INCLUDE A PERMANENT STAMP OR MARKING INDICATING THAT THE LARGE-CAPACITY MAGAZINE WAS MANUFACTURED OR ASSEMBLED AFTER THE EFFECTIVE DATE OF THIS SECTION. THE STAMP OR MARKING MUST BE LEGIBLY AND CONSPICUOUSLY ENGRAVED OR CAST UPON THE OUTER SURFACE OF THE LARGE-CAPACITY MAGAZINE.

(2) THE BUREAU MAY PROMULGATE SUCH RULES AS MAY BE NECESSARY FOR THE IMPLEMENTATION OF THIS SECTION, INCLUDING BUT NOT LIMITED TO RULES REQUIRING A LARGE-CAPACITY MAGAZINE THAT IS MANUFACTURED ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION TO BEAR IDENTIFYING INFORMATION IN ADDITION TO THE IDENTIFYING INFORMATION DESCRIBED IN SUBSECTION (1) OF THIS SECTION.

(3) A PERSON WHO MANUFACTURES A LARGE-CAPACITY MAGAZINE IN COLORADO IN VIOLATION OF SUBSECTION (1) OF THIS SECTION COMMITS A CLASS 2 MISDEMEANOR AND SHALL BE PUNISHED IN ACCORDANCE WITH SECTION 18-1.3-501.

SECTION 2. Effective date. This act takes effect July 1, 2013.

SECTION 3. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Mark Ferrandino SPEAKER OF THE HOUSE OF REPRESENTATIVES	John P. Morse PRESIDENT OF THE SENATE
Marilyn Eddins CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES	Cindi L. Markwell SECRETARY OF THE SENATE

APPROVED_____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO

Attachment 4

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

HOUSE BILL 13-1229

BY REPRESENTATIVE(S) Fields and McCann, Buckner, Court, Duran, Exum, Fischer, Foote, Ginal, Hamner, Hullinghorst, Kagan, Labuda, Lee, Levy, McLachlan, Melton, Mitsch Bush, Moreno, Pabon, Pettersen, Rosenthal, Schafer, Williams, Young, Ferrandino, Salazar, Tyler;
also SENATOR(S) Carroll, Aguilar, Giron, Guzman, Heath, Hodge, Hudak, Johnston, Jones, Kerr, Newell, Nicholson, Steadman, Todd, Ulibarri, Morse.

CONCERNING CRIMINAL BACKGROUND CHECKS PERFORMED PURSUANT TO THE TRANSFER OF A FIREARM, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, **add** 18-12-112 as follows:

18-12-112. Private firearms transfers - background check required - penalty - definitions. (1) (a) ON AND AFTER JULY 1, 2013, EXCEPT AS DESCRIBED IN SUBSECTION (6) OF THIS SECTION, BEFORE ANY PERSON WHO IS NOT A LICENSED GUN DEALER, AS DEFINED IN SECTION 12-26.1-106 (6), C.R.S., TRANSFERS OR ATTEMPTS TO TRANSFER POSSESSION OF A FIREARM TO A TRANSFEREE, HE OR SHE SHALL:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(I) REQUIRE THAT A BACKGROUND CHECK, IN ACCORDANCE WITH SECTION 24-33.5-424, C.R.S., BE CONDUCTED OF THE PROSPECTIVE TRANSFEREE; AND

(II) OBTAIN APPROVAL OF A TRANSFER FROM THE BUREAU AFTER A BACKGROUND CHECK HAS BEEN REQUESTED BY A LICENSED GUN DEALER, IN ACCORDANCE WITH SECTION 24-33.5-424, C.R.S.

(b) AS USED IN THIS SECTION, UNLESS THE CONTEXT REQUIRES OTHERWISE, "TRANSFEREE" MEANS A PERSON WHO DESIRES TO RECEIVE OR ACQUIRE A FIREARM FROM A TRANSFEROR. IF A TRANSFEREE IS NOT A NATURAL PERSON, THEN EACH NATURAL PERSON WHO IS AUTHORIZED BY THE TRANSFEREE TO POSSESS THE FIREARM AFTER THE TRANSFER SHALL UNDERGO A BACKGROUND CHECK, AS DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (1), BEFORE TAKING POSSESSION OF THE FIREARM.

(2) (a) A PROSPECTIVE FIREARM TRANSFEROR WHO IS NOT A LICENSED GUN DEALER SHALL ARRANGE FOR A LICENSED GUN DEALER TO OBTAIN THE BACKGROUND CHECK REQUIRED BY THIS SECTION.

(b) A LICENSED GUN DEALER WHO OBTAINS A BACKGROUND CHECK ON A PROSPECTIVE TRANSFEREE SHALL RECORD THE TRANSFER, AS PROVIDED IN SECTION 12-26-102, C.R.S., AND RETAIN THE RECORDS, AS PROVIDED IN SECTION 12-26-103, C.R.S., IN THE SAME MANNER AS WHEN CONDUCTING A SALE, RENTAL, OR EXCHANGE AT RETAIL. THE LICENSED GUN DEALER SHALL COMPLY WITH ALL STATE AND FEDERAL LAWS, INCLUDING 18 U.S.C. SEC. 922, AS IF HE OR SHE WERE TRANSFERRING THE FIREARM FROM HIS OR HER INVENTORY TO THE PROSPECTIVE TRANSFEREE.

(c) A LICENSED GUN DEALER WHO OBTAINS A BACKGROUND CHECK FOR A PROSPECTIVE FIREARM TRANSFEROR PURSUANT TO THIS SECTION SHALL PROVIDE THE FIREARM TRANSFEROR AND TRANSFEREE A COPY OF THE RESULTS OF THE BACKGROUND CHECK, INCLUDING THE BUREAU'S APPROVAL OR DISAPPROVAL OF THE TRANSFER.

(d) A LICENSED GUN DEALER MAY CHARGE A FEE FOR SERVICES RENDERED PURSUANT TO THIS SECTION, WHICH FEE SHALL NOT EXCEED TEN DOLLARS.

(3) (a) A PROSPECTIVE FIREARM TRANSFEREE UNDER THIS SECTION SHALL NOT ACCEPT POSSESSION OF THE FIREARM UNLESS THE PROSPECTIVE FIREARM TRANSFEROR HAS OBTAINED APPROVAL OF THE TRANSFER FROM THE BUREAU AFTER A BACKGROUND CHECK HAS BEEN REQUESTED BY A LICENSED GUN DEALER, AS DESCRIBED IN PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION.

(b) A PROSPECTIVE FIREARM TRANSFEREE SHALL NOT KNOWINGLY PROVIDE FALSE INFORMATION TO A PROSPECTIVE FIREARM TRANSFEROR OR TO A LICENSED GUN DEALER FOR THE PURPOSE OF ACQUIRING A FIREARM.

(4) IF THE BUREAU APPROVES A TRANSFER OF A FIREARM PURSUANT TO THIS SECTION, THE APPROVAL SHALL BE VALID FOR THIRTY CALENDAR DAYS, DURING WHICH TIME THE TRANSFEROR AND TRANSFEREE MAY COMPLETE THE TRANSFER.

(5) A PERSON WHO TRANSFERS A FIREARM IN VIOLATION OF THE PROVISIONS OF THIS SECTION MAY BE JOINTLY AND SEVERALLY LIABLE FOR ANY CIVIL DAMAGES PROXIMATELY CAUSED BY THE TRANSFEREE'S SUBSEQUENT USE OF THE FIREARM.

(6) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO:

(a) A TRANSFER OF AN ANTIQUE FIREARM, AS DEFINED IN 18 U.S.C. SEC. 921(a)(16), AS AMENDED, OR A CURIO OR RELIC, AS DEFINED IN 27 CFR 478.11, AS AMENDED;

(b) A TRANSFER THAT IS A BONA FIDE GIFT OR LOAN BETWEEN IMMEDIATE FAMILY MEMBERS, WHICH ARE LIMITED TO SPOUSES, PARENTS, CHILDREN, SIBLINGS, GRANDPARENTS, GRANDCHILDREN, NIECES, NEPHEWS, FIRST COUSINS, AUNTS, AND UNCLES;

(c) A TRANSFER THAT OCCURS BY OPERATION OF LAW OR BECAUSE OF THE DEATH OF A PERSON FOR WHOM THE PROSPECTIVE TRANSFEROR IS AN EXECUTOR OR ADMINISTRATOR OF AN ESTATE OR A TRUSTEE OF A TRUST CREATED IN A WILL;

(d) A TRANSFER THAT IS TEMPORARY AND OCCURS WHILE IN THE HOME OF THE UNLICENSED TRANSFEREE IF:

(I) THE UNLICENSED TRANSFEREE IS NOT PROHIBITED FROM POSSESSING FIREARMS; AND

(II) THE UNLICENSED TRANSFEREE REASONABLY BELIEVES THAT POSSESSION OF THE FIREARM IS NECESSARY TO PREVENT IMMINENT DEATH OR SERIOUS BODILY INJURY TO THE UNLICENSED TRANSFEREE;

(e) A TEMPORARY TRANSFER OF POSSESSION WITHOUT TRANSFER OF OWNERSHIP OR A TITLE TO OWNERSHIP, WHICH TRANSFER TAKES PLACE:

(I) AT A SHOOTING RANGE LOCATED IN OR ON PREMISES OWNED OR OCCUPIED BY A DULY INCORPORATED ORGANIZATION ORGANIZED FOR CONSERVATION PURPOSES OR TO FOSTER PROFICIENCY IN FIREARMS;

(II) AT A TARGET FIREARM SHOOTING COMPETITION UNDER THE AUSPICES OF, OR APPROVED BY, A STATE AGENCY OR A NONPROFIT ORGANIZATION; OR

(III) WHILE HUNTING, FISHING, TARGET SHOOTING, OR TRAPPING IF:

(A) THE HUNTING, FISHING, TARGET SHOOTING, OR TRAPPING IS LEGAL IN ALL PLACES WHERE THE UNLICENSED TRANSFEREE POSSESSES THE FIREARM; AND

(B) THE UNLICENSED TRANSFEREE HOLDS ANY LICENSE OR PERMIT THAT IS REQUIRED FOR SUCH HUNTING, FISHING, TARGET SHOOTING, OR TRAPPING;

(f) A TRANSFER OF A FIREARM THAT IS MADE TO FACILITATE THE REPAIR OR MAINTENANCE OF THE FIREARM; EXCEPT THAT THIS PARAGRAPH (f) DOES NOT APPLY UNLESS ALL PARTIES WHO POSSESS THE FIREARM AS A RESULT OF THE TRANSFER MAY LEGALLY POSSESS A FIREARM;

(g) ANY TEMPORARY TRANSFER THAT OCCURS WHILE IN THE CONTINUOUS PRESENCE OF THE OWNER OF THE FIREARM;

(h) A TEMPORARY TRANSFER FOR NOT MORE THAN SEVENTY-TWO HOURS. A PERSON WHO TRANSFERS A FIREARM PURSUANT TO THIS PARAGRAPH (h) MAY BE JOINTLY AND SEVERALLY LIABLE FOR DAMAGES PROXIMATELY CAUSED BY THE TRANSFEREE'S SUBSEQUENT UNLAWFUL USE

Attachment 5

OF THE FIREARM; OR

(i) A TRANSFER OF A FIREARM FROM A PERSON SERVING IN THE ARMED FORCES OF THE UNITED STATES WHO WILL BE DEPLOYED OUTSIDE OF THE UNITED STATES WITHIN THE NEXT THIRTY DAYS TO ANY IMMEDIATE FAMILY MEMBER, WHICH IS LIMITED TO A SPOUSE, PARENT, CHILD, SIBLING, GRANDPARENT, GRANDCHILD, NIECE, NEPHEW, FIRST COUSIN, AUNT, AND UNCLE OF THE PERSON.

(7) FOR PURPOSES OF PARAGRAPH (f) OF SUBSECTION (6) OF THIS SECTION:

(a) AN OWNER, MANAGER, OR EMPLOYEE OF A BUSINESS THAT REPAIRS OR MAINTAINS FIREARMS MAY RELY UPON A TRANSFEROR'S STATEMENT THAT HE OR SHE MAY LEGALLY POSSESS A FIREARM UNLESS THE OWNER, MANAGER, OR EMPLOYEE HAS ACTUAL KNOWLEDGE TO THE CONTRARY AND MAY RETURN POSSESSION OF THE FIREARM TO THE TRANSFEROR UPON COMPLETION OF THE REPAIRS OR MAINTENANCE WITHOUT A BACKGROUND CHECK;

(b) UNLESS A TRANSFEROR OF A FIREARM HAS ACTUAL KNOWLEDGE TO THE CONTRARY, THE TRANSFEROR MAY RELY UPON THE STATEMENT OF AN OWNER, MANAGER, OR EMPLOYEE OF A BUSINESS THAT REPAIRS OR MAINTAINS FIREARMS THAT NO OWNER, MANAGER, OR EMPLOYEE OF THE BUSINESS IS PROHIBITED FROM POSSESSING A FIREARM.

(8) NOTHING IN SUBSECTION (6) OF THIS SECTION SHALL BE INTERPRETED TO LIMIT OR OTHERWISE ALTER THE APPLICABILITY OF SECTION 18-12-111 CONCERNING THE UNLAWFUL PURCHASE OR TRANSFER OF FIREARMS.

(9) (a) A PERSON WHO VIOLATES A PROVISION OF THIS SECTION COMMITS A CLASS 1 MISDEMEANOR AND SHALL BE PUNISHED IN ACCORDANCE WITH SECTION 18-1.3-501. THE PERSON SHALL ALSO BE PROHIBITED FROM POSSESSING A FIREARM FOR TWO YEARS, BEGINNING ON THE DATE OF HIS OR HER CONVICTION.

(b) WHEN A PERSON IS CONVICTED OF VIOLATING A PROVISION OF THIS SECTION, THE STATE COURT ADMINISTRATOR SHALL REPORT THE CONVICTION TO THE BUREAU AND TO THE NATIONAL INSTANT CRIMINAL

BACKGROUND CHECK SYSTEM CREATED BY THE FEDERAL "BRADY HANDGUN VIOLENCE PREVENTION ACT" (PUB.L. 103-159), THE RELEVANT PORTION OF WHICH IS CODIFIED AT 18 U.S.C. SEC. 922 (t). THE REPORT SHALL INCLUDE INFORMATION INDICATING THAT THE PERSON IS PROHIBITED FROM POSSESSING A FIREARM FOR TWO YEARS, BEGINNING ON THE DATE OF HIS OR HER CONVICTION.

SECTION 2. In Colorado Revised Statutes, 13-5-142, **amend** (1) introductory portion, (2), (3) introductory portion, (3) (a), and (3) (b) (II); and **add** (1.5) and (4) as follows:

13-5-142. National instant criminal background check system - reporting. (1) ~~Beginning July 1, 2002~~ ON AND AFTER THE EFFECTIVE DATE OF THIS SECTION, the ~~clerk of the court of every judicial district in the~~ state COURT ADMINISTRATOR shall ~~periodically report~~ SEND ELECTRONICALLY the following information to the ~~national instant criminal background check system created by the federal "Brady Handgun Violence Prevention Act" (Pub.L. 103-159), the relevant portion of which is codified at 18 U.S.C. sec. 922 (t)~~ COLORADO BUREAU OF INVESTIGATION CREATED PURSUANT TO SECTION 24-33.5-401, C.R.S., REFERRED TO WITHIN THIS SECTION AS THE "BUREAU":

(1.5) NOT MORE THAN FORTY-EIGHT HOURS AFTER RECEIVING NOTIFICATION OF A PERSON WHO SATISFIES THE DESCRIPTION IN PARAGRAPH (a), (b), OR (c) OF SUBSECTION (1) OF THIS SECTION, THE STATE COURT ADMINISTRATOR SHALL REPORT SUCH FACT TO THE BUREAU.

(2) Any report made by the ~~clerk of the court of every judicial district in the~~ state COURT ADMINISTRATOR pursuant to this section shall describe the reason for the report and indicate that the report is made in accordance with 18 U.S.C. sec. 922 (g) (4).

(3) The ~~clerk of the court of every judicial district in the~~ state COURT ADMINISTRATOR shall take all necessary steps to cancel a record made by ~~that clerk~~ THE STATE COURT ADMINISTRATOR in the national instant criminal background check system if:

(a) The person to whom the record pertains makes a written request to the ~~clerk~~ STATE COURT ADMINISTRATOR; and

(b) No less than three years before the date of the written request:

(II) The period of commitment of the most recent order of commitment or recommitment expired, or ~~the~~ A court entered an order terminating the person's incapacity or discharging the person from commitment in the nature of habeas corpus, if the record in the national instant criminal background check system is based on an order of commitment to the custody of the unit in the department of human services that administers behavioral health programs and services, including those related to mental health and substance abuse; except that the ~~clerk~~ STATE COURT ADMINISTRATOR shall not cancel any record pertaining to a person with respect to whom two recommitment orders have been entered under section 27-81-112 (7) and (8), C.R.S., or who was discharged from treatment under section 27-81-112 (11), C.R.S., on the grounds that further treatment will not be likely to bring about significant improvement in the person's condition; or

(4) PURSUANT TO SECTION 102 (c) OF THE FEDERAL "NICS IMPROVEMENT AMENDMENTS ACT OF 2007" (PUB.L. 110-180), A COURT, UPON BECOMING AWARE THAT THE BASIS UPON WHICH A RECORD REPORTED BY THE STATE COURT ADMINISTRATOR PURSUANT TO SUBSECTION (1) OF THIS SECTION DOES NOT APPLY OR NO LONGER APPLIES, SHALL:

(a) UPDATE, CORRECT, MODIFY, OR REMOVE THE RECORD FROM ANY DATABASE THAT THE FEDERAL OR STATE GOVERNMENT MAINTAINS AND MAKES AVAILABLE TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM, CONSISTENT WITH THE RULES PERTAINING TO THE DATABASE; AND

(b) NOTIFY THE ATTORNEY GENERAL THAT SUCH BASIS DOES NOT APPLY OR NO LONGER APPLIES.

SECTION 3. In Colorado Revised Statutes, **add** 13-5-142.5 as follows:

13-5-142.5. National instant criminal background check system - judicial process for awarding relief from federal prohibitions - legislative declaration. (1) **Legislative declaration.** THE PURPOSE OF THIS SECTION IS TO SET FORTH A JUDICIAL PROCESS WHEREBY A PERSON MAY APPLY OR PETITION FOR RELIEF FROM FEDERAL FIREARMS PROHIBITIONS

IMPOSED PURSUANT TO 18 U.S.C. SEC. 922 (d) (4) AND (g) (4), AS PERMITTED BY THE FEDERAL "NICS IMPROVEMENT AMENDMENTS ACT OF 2007" (PUB.L. 110-180, SEC. 105).

(2) **Eligibility.** A PERSON MAY PETITION FOR RELIEF PURSUANT TO THIS SECTION IF:

(a) (I) HE OR SHE HAS BEEN FOUND TO BE INCAPACITATED BY ORDER OF THE COURT PURSUANT TO PART 3 OF ARTICLE 14 OF TITLE 15, C.R.S.;

(II) HE OR SHE HAS BEEN COMMITTED BY ORDER OF THE COURT TO THE CUSTODY OF THE UNIT IN THE DEPARTMENT OF HUMAN SERVICES THAT ADMINISTERS BEHAVIORAL HEALTH PROGRAMS AND SERVICES, INCLUDING THOSE RELATED TO MENTAL HEALTH AND SUBSTANCE ABUSE, PURSUANT TO SECTION 27-81-112 OR 27-82-108, C.R.S.; OR

(III) THE COURT HAS ENTERED AN ORDER FOR THE PERSON'S INVOLUNTARY CERTIFICATION FOR SHORT-TERM TREATMENT OF MENTAL ILLNESS PURSUANT TO SECTION 27-65-107, C.R.S., FOR EXTENDED CERTIFICATION FOR TREATMENT OF MENTAL ILLNESS PURSUANT TO SECTION 27-65-108, C.R.S., OR FOR LONG-TERM CARE AND TREATMENT OF MENTAL ILLNESS PURSUANT TO SECTION 27-65-109, C.R.S.; AND

(b) HE OR SHE IS A PERSON TO WHOM THE SALE OR TRANSFER OF A FIREARM OR AMMUNITION IS PROHIBITED BY 18 U.S.C. SEC. 922 (d) (4), OR WHO IS PROHIBITED FROM SHIPPING, TRANSPORTING, POSSESSING, OR RECEIVING A FIREARM OR AMMUNITION PURSUANT TO 18 U.S.C. SEC. 922 (g) (4).

(3) **Due process.** IN A COURT PROCEEDING PURSUANT TO THIS SECTION:

(a) THE PETITIONER SHALL HAVE AN OPPORTUNITY TO SUBMIT HIS OR HER OWN EVIDENCE TO THE COURT CONCERNING HIS OR HER PETITION;

(b) THE COURT SHALL REVIEW THE EVIDENCE; AND

(c) THE COURT SHALL CREATE AND THEREAFTER MAINTAIN A RECORD OF THE PROCEEDING.

(4) **Proper record.** IN DETERMINING WHETHER TO GRANT RELIEF TO A PETITIONER PURSUANT TO THIS SECTION, THE COURT SHALL RECEIVE EVIDENCE CONCERNING, AND SHALL CONSIDER:

(a) THE CIRCUMSTANCES REGARDING THE FIREARMS PROHIBITIONS IMPOSED BY 18 U.S.C. SEC. 922 (g) (4);

(b) THE PETITIONER'S RECORD, WHICH MUST INCLUDE, AT A MINIMUM, THE PETITIONER'S MENTAL HEALTH RECORDS AND CRIMINAL HISTORY RECORDS; AND

(c) THE PETITIONER'S REPUTATION, WHICH THE COURT SHALL DEVELOP, AT A MINIMUM, THROUGH CHARACTER WITNESS STATEMENTS, TESTIMONY, OR OTHER CHARACTER EVIDENCE.

(5) **Proper findings.** (a) BEFORE GRANTING RELIEF TO A PETITIONER PURSUANT TO THIS SECTION, THE COURT SHALL ISSUE FINDINGS THAT:

(I) THE PETITIONER IS NOT LIKELY TO ACT IN A MANNER THAT IS DANGEROUS TO PUBLIC SAFETY; AND

(II) GRANTING RELIEF TO THE PETITIONER IS NOT CONTRARY TO THE PUBLIC INTEREST.

(b) (I) IF THE COURT DENIES RELIEF TO A PETITIONER PURSUANT TO THIS SECTION, THE PETITIONER MAY PETITION THE COURT OF APPEALS TO REVIEW THE DENIAL, INCLUDING THE RECORD OF THE DENYING COURT.

(II) A REVIEW OF A DENIAL SHALL BE DE NOVO IN THAT THE COURT OF APPEALS MAY, BUT IS NOT REQUIRED TO, GIVE DEFERENCE TO THE DECISION OF THE DENYING COURT.

(III) IN REVIEWING A DENIAL, THE COURT OF APPEALS HAS DISCRETION, BUT IS NOT REQUIRED, TO RECEIVE ADDITIONAL EVIDENCE NECESSARY TO CONDUCT AN ADEQUATE REVIEW.

SECTION 4. In Colorado Revised Statutes, 13-9-123, **amend** (1) introductory portion, (2), (3) introductory portion, (3) (a), and (3) (b) (II); and **add** (1.5) and (4) as follows:

13-9-123. National instant criminal background check system - reporting. (1) ~~Beginning July 1, 2002~~ ON AND AFTER THE EFFECTIVE DATE OF THIS SECTION, the ~~clerk of the probate court~~ STATE COURT ADMINISTRATOR shall ~~periodically report~~ SEND ELECTRONICALLY the following information to the ~~national instant criminal background check system created by the federal "Brady Handgun Violence Prevention Act", Pub.L. 103-159, the relevant portion of which is codified at 18 U.S.C. sec. 922 (t)~~ COLORADO BUREAU OF INVESTIGATION CREATED PURSUANT TO SECTION 24-33.5-401, C.R.S., REFERRED TO WITHIN THIS SECTION AS THE "BUREAU":

(1.5) NOT MORE THAN FORTY-EIGHT HOURS AFTER RECEIVING NOTIFICATION OF A PERSON WHO SATISFIES THE DESCRIPTION IN PARAGRAPH (a), (b), OR (c) OF SUBSECTION (1) OF THIS SECTION, THE STATE COURT ADMINISTRATOR SHALL REPORT SUCH FACT TO THE BUREAU.

(2) Any report made by the ~~clerk of the probate court~~ STATE COURT ADMINISTRATOR pursuant to this section shall describe the reason for the report and indicate that the report is made in accordance with 18 U.S.C. sec. 922 (g) (4).

(3) The ~~clerk of the probate court~~ STATE COURT ADMINISTRATOR shall take all necessary steps to cancel a record made by ~~that clerk~~ THE STATE COURT ADMINISTRATOR in the national instant criminal background check system if:

(a) The person to whom the record pertains makes a written request to the ~~clerk~~ STATE COURT ADMINISTRATOR; and

(b) No less than three years before the date of the written request:

(II) The period of commitment of the most recent order of commitment or recommitment expired, or the court entered an order terminating the person's incapacity or discharging the person from commitment in the nature of habeas corpus, if the record in the national instant criminal background check system is based on an order of commitment to the custody of the unit in the department of human services that administers behavioral health programs and services, including those related to mental health and substance abuse; except that the ~~clerk~~ STATE COURT ADMINISTRATOR shall not cancel any record pertaining to a person

with respect to whom two recommitment orders have been entered under section 27-81-112 (7) and (8), C.R.S., or who was discharged from treatment under section 27-81-112 (11), C.R.S., on the grounds that further treatment will not be likely to bring about significant improvement in the person's condition; or

(4) PURSUANT TO SECTION 102 (c) OF THE FEDERAL "NICS IMPROVEMENT AMENDMENTS ACT OF 2007" (PUB.L. 110-180), A COURT, UPON BECOMING AWARE THAT THE BASIS UPON WHICH A RECORD REPORTED BY THE STATE COURT ADMINISTRATOR PURSUANT TO SUBSECTION (1) OF THIS SECTION DOES NOT APPLY OR NO LONGER APPLIES, SHALL:

(a) UPDATE, CORRECT, MODIFY, OR REMOVE THE RECORD FROM ANY DATABASE THAT THE FEDERAL OR STATE GOVERNMENT MAINTAINS AND MAKES AVAILABLE TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM, CONSISTENT WITH THE RULES PERTAINING TO THE DATABASE; AND

(b) NOTIFY THE ATTORNEY GENERAL THAT SUCH BASIS DOES NOT APPLY OR NO LONGER APPLIES.

SECTION 5. In Colorado Revised Statutes, **add** 13-9-124 as follows:

13-9-124. National instant criminal background check system - judicial process for awarding relief from federal prohibitions - legislative declaration. (1) **Legislative declaration.** THE PURPOSE OF THIS SECTION IS TO SET FORTH A JUDICIAL PROCESS WHEREBY A PERSON MAY APPLY OR PETITION FOR RELIEF FROM FEDERAL FIREARMS PROHIBITIONS IMPOSED PURSUANT TO 18 U.S.C. SEC. 922 (d) (4) AND (g) (4), AS PERMITTED BY THE FEDERAL "NICS IMPROVEMENT AMENDMENTS ACT OF 2007" (PUB.L. 110-180, SEC. 105).

(2) **Eligibility.** A PERSON MAY PETITION FOR RELIEF PURSUANT TO THIS SECTION IF:

(a) (I) HE OR SHE HAS BEEN FOUND TO BE INCAPACITATED BY ORDER OF THE COURT PURSUANT TO PART 3 OF ARTICLE 14 OF TITLE 15, C.R.S.;

(II) HE OR SHE HAS BEEN COMMITTED BY ORDER OF THE COURT TO

THE CUSTODY OF THE UNIT IN THE DEPARTMENT OF HUMAN SERVICES THAT ADMINISTERS BEHAVIORAL HEALTH PROGRAMS AND SERVICES, INCLUDING THOSE RELATED TO MENTAL HEALTH AND SUBSTANCE ABUSE, PURSUANT TO SECTION 27-81-112 OR 27-82-108, C.R.S.; OR

(III) THE COURT HAS ENTERED AN ORDER FOR THE PERSON'S INVOLUNTARY CERTIFICATION FOR SHORT-TERM TREATMENT OF MENTAL ILLNESS PURSUANT TO SECTION 27-65-107, C.R.S., FOR EXTENDED CERTIFICATION FOR TREATMENT OF MENTAL ILLNESS PURSUANT TO SECTION 27-65-108, C.R.S., OR FOR LONG-TERM CARE AND TREATMENT OF MENTAL ILLNESS PURSUANT TO SECTION 27-65-109, C.R.S.; AND

(b) HE OR SHE IS A PERSON TO WHOM THE SALE OR TRANSFER OF A FIREARM OR AMMUNITION IS PROHIBITED BY 18 U.S.C. SEC. 922 (d) (4), OR WHO IS PROHIBITED FROM SHIPPING, TRANSPORTING, POSSESSING, OR RECEIVING A FIREARM OR AMMUNITION PURSUANT TO 18 U.S.C. SEC. 922 (g) (4).

(3) **Due process.** IN A COURT PROCEEDING PURSUANT TO THIS SECTION:

(a) THE PETITIONER SHALL HAVE AN OPPORTUNITY TO SUBMIT HIS OR HER OWN EVIDENCE TO THE COURT CONCERNING HIS OR HER PETITION;

(b) THE COURT SHALL REVIEW THE EVIDENCE; AND

(c) THE COURT SHALL CREATE AND THEREAFTER MAINTAIN A RECORD OF THE PROCEEDING.

(4) **Proper record.** IN DETERMINING WHETHER TO GRANT RELIEF TO A PETITIONER PURSUANT TO THIS SECTION, THE COURT SHALL RECEIVE EVIDENCE CONCERNING, AND SHALL CONSIDER:

(a) THE CIRCUMSTANCES REGARDING THE FIREARMS PROHIBITIONS IMPOSED BY 18 U.S.C. SEC. 922 (g) (4);

(b) THE PETITIONER'S RECORD, WHICH MUST INCLUDE, AT A MINIMUM, THE PETITIONER'S MENTAL HEALTH RECORDS AND CRIMINAL HISTORY RECORDS; AND

(c) THE PETITIONER'S REPUTATION, WHICH THE COURT SHALL DEVELOP, AT A MINIMUM, THROUGH CHARACTER WITNESS STATEMENTS, TESTIMONY, OR OTHER CHARACTER EVIDENCE.

(5) **Proper findings.** (a) BEFORE GRANTING RELIEF TO A PETITIONER PURSUANT TO THIS SECTION, THE COURT SHALL ISSUE FINDINGS THAT:

(I) THE PETITIONER IS NOT LIKELY TO ACT IN A MANNER THAT IS DANGEROUS TO PUBLIC SAFETY; AND

(II) GRANTING RELIEF TO THE PETITIONER IS NOT CONTRARY TO THE PUBLIC INTEREST.

(b) (I) IF THE COURT DENIES RELIEF TO A PETITIONER PURSUANT TO THIS SECTION, THE PETITIONER MAY PETITION THE COURT OF APPEALS TO REVIEW THE DENIAL, INCLUDING THE RECORD OF THE DENYING COURT.

(II) A REVIEW OF A DENIAL SHALL BE DE NOVO IN THAT THE COURT OF APPEALS MAY, BUT IS NOT REQUIRED TO, GIVE DEFERENCE TO THE DECISION OF THE DENYING COURT.

(III) IN REVIEWING A DENIAL, THE COURT OF APPEALS HAS DISCRETION, BUT IS NOT REQUIRED, TO RECEIVE ADDITIONAL EVIDENCE NECESSARY TO CONDUCT AN ADEQUATE REVIEW.

SECTION 6. In Colorado Revised Statutes, 18-12-101, **add** (1) (b.5) as follows:

18-12-101. Definitions - peace officer affirmative defense. (1) As used in this article, unless the context otherwise requires:

(b.5) "BUREAU" MEANS THE COLORADO BUREAU OF INVESTIGATION CREATED IN SECTION 24-33.5-401, C.R.S.

SECTION 7. In Colorado Revised Statutes, 18-12-202, **repeal** (1) as follows:

18-12-202. Definitions. As used in this part 2, unless the context otherwise requires:

Attachment 5

(1) ~~"Bureau" means the Colorado bureau of investigation within the department of public safety.~~

SECTION 8. In Colorado Revised Statutes, 18-12-103.5, **amend** (2) as follows:

18-12-103.5. Defaced firearms - contraband - destruction. (2) Defaced firearms ~~which~~ THAT are deemed to be contraband shall be placed in the possession of the ~~Colorado~~ bureau ~~of investigation~~ or of a local law enforcement agency designated by the ~~Colorado~~ bureau ~~of investigation~~ and shall be destroyed or rendered permanently inoperable.

		APPROPRIATION FROM				
ITEM & SUBTOTAL	TOTAL	GENERAL FUND	GENERAL FUND EXEMPT	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS
$	$	$	$	$	$	$

SECTION 9. Appropriation to the department of public safety for the fiscal year beginning July 1, 2012. In Session Laws of Colorado 2012, section 2 of chapter 305, (HB 12-1335), **amend** Part XVII (1) (A), (5) (D), and the affected totals as amended by section 1 Senate Bill 13-101, as follows:

Section 2. **Appropriation.**

PART XVII
DEPARTMENT OF PUBLIC SAFETY

(1) EXECUTIVE DIRECTOR'S OFFICE					
(A) Administration					
Personal Services	2,269,953			2,269,953[a] (27.7 FTE)	
Health, Life, and Dental	~~9,672,220~~ 9,699,820	~~1,576,210~~ 1,603,810	6,929,526[b]	674,902[c]	491,582(I)
Short-term Disability	~~148,142~~ 148,436	~~27,698~~ 27,992	102,625[b]	12,338[c]	5,481(I)
S.B. 04-257 Amortization	~~2,673,401~~ 2,678,987	~~495,541~~ 501,127	1,856,708[b]	222,071[c]	99,081(I)
S.B. 06-235 Supplemental	~~2,295,550~~ 2,300,550	~~423,817~~ 428,817	1,599,803[b]	186,783[c]	85,147(I)
Shift Differential	320,607	67,963	221,871[b]	30,773[c]	
Workers' Compensation	2,827,657		265,336[b]	2,562,321[a]	
Operating Expenses	151,046			151,046[a]	
Legal Services for 4,524	349,441	78,945	103,404[b]	167,092[a]	
Purchase of Services from	2,504,611	978,611	1,361,675[b]	164,325[a]	
Multiuse Network	1,986,110	1,486,029	337,638[b]	162,443[a]	
Management and	261,189		85,395[d]	175,794[a]	
Payment to Risk	1,177,817	177,192	195,240[d]	805,385[a]	
Vehicle Lease Payments	80,076	22,698	29,437[e]	27,941[f]	

	ITEM & SUBTOTAL	TOTAL	APPROPRIATION FROM GENERAL FUND	GENERAL FUND EXEMPT	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS
	$	$	$	$	$	$	$
Leased Space	~~1,907,259~~		~~858,230~~		494,386[b]	554,643[f]	
	1,937,259		888,230				
Capitol Complex Leased	1,263,475		16,890		462,435[g]	784,150[h]	
Communication Services	652,003				593,137[g]	49,123[h]	9,743(I)
COFRS Modernization	168,478		52,658		81,603[g]	34,217[h]	
Utilities	87,407				85,907[d]	1,500[i]	
Distributions to Local	50,000				50,000[j]		
	~~30,846,442~~						
	30,914,922						

[a] Of these amounts, $5,347,958 shall be from departmental indirect cost recoveries and $1,110,401 shall be from statewide indirect cost recoveries.

[b] Of these amounts, $12,221,914 shall be from the Highway Users Tax Fund created in Section 43-4-201 (1) (a), C.R.S., and $1,051,058 shall be from various sources of cash funds.

[c] Of these amounts,$323,498 shall be from departmental indirect cost recoveries, $80,440 shall be from other state agencies for dispatch services, $74,361 shall be from the Department of Personnel Capitol Complex leased space rent proceeds, $47,125 shall be from the Judicial Department, $32,358 shall be from the Legislative Department, $16,130 shall be from the Department of Law, and $552,955 shall be from various sources.

[d] These amounts shall be from the Highway Users Tax Fund created in Section 43-4-201 (1) (a), C.R.S.

[e] This amount shall be from various sources of cash funds.

[f] Of these amounts, $544,118 shall be from departmental indirect cost recoveries and $38,466 shall be from Limited Gaming funds appropriated to the Department of Revenue.

[g] Of these amounts, $1,075,163 shall be from the Highway Users Tax Fund created in Section 43-4-201 (1) (a), C.R.S., and $62,012 shall be from various sources of cash funds.

[h] Of these amounts, $826,313 shall be from departmental indirect cost recoveries and $41,177 shall be from various sources of reappropriated funds.

[i] This amount shall be from Limited Gaming funds appropriated to the Department of Revenue.

[j] This amount shall be from the Hazardous Materials Safety Fund created in Section 42-20-107 (1), C.R.S.

		~~32,763,273~~					
		32,831,753					
(5) COLORADO BUREAU OF INVESTIGATION[1]							
(D) State Point of Contact - National Instant Criminal Background Check Program							
Personal Services	~~1,312,023~~		~~1,086,212~~		225,811[a]		
	1,484,477		1,258,666				

			APPROPRIATION FROM				
	ITEM & SUBTOTAL	TOTAL	GENERAL FUND	GENERAL FUND EXEMPT	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS
	$	$	$	$	$	$	$
			~~(22.0 FTE)~~		(4.4 FTE)		
			(26.0 FTE)				
Operating Expenses	~~361,248~~		~~300,744~~		60,504[a]		
	482,781		422,277				
	~~1,673,271~~						
	1,967,258						
		~~29,019,641~~					
		29,313,628					

[a] These amounts shall be from permit application fees collected pursuant to Section 18-12-205 (2) (b), C.R.S.

TOTALS PART XVII (PUBLIC SAFETY)	~~$273,982,783~~	~~$84,338,122~~		$136,496,137[a]	$25,083,490	$28,065,034[b]
	$274,345,250	$84,700,589				

[a] Of this amount, $105,755,507 is from the Highway Users Tax Fund pursuant to Section 43-4-201 (3) (a) (III) (C), C.R.S.

[b] This amount contains an (I) notation.

Attachment 5

SECTION 10. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of public safety, for the fiscal year beginning July 1, 2013, the sum of $1,415,932 and 24.7 FTE, or so much thereof as may be necessary, to be allocated for the implementation of this act as follows:

(a) $324,806 for the executive director's office;

(b) $80,000 for the Colorado crime information center; and

(c) $1,011,126 and 24.7 FTE for the state point of contact-national instant criminal background check program.

SECTION 11. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the instant criminal background check cash fund created in section 24-33.5-424 (3.5) (b), Colorado Revised Statutes, not otherwise appropriated, to the department of public safety, for the fiscal year beginning July 1, 2013, the sum of $1,415,932 and 24.7 FTE, or so much thereof as may be necessary, to be allocated for the implementation of this act as follows:

(a) $324,806 for the executive director's office;

(b) $80,000 for the Colorado crime information center; and

(c) $1,011,126 and 24.7 FTE for the state point of contact-national instant criminal background check program.

SECTION 12. Effective date. This act takes effect upon passage; except that section 10 of this act takes effect only if House Bill 13-1228 does not become law, and section 11 of this act takes effect only if House Bill 13-1228 becomes law.

SECTION 13. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Mark Ferrandino SPEAKER OF THE HOUSE OF REPRESENTATIVES	John P. Morse PRESIDENT OF THE SENATE
Marilyn Eddins CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES	Cindi L. Markwell SECRETARY OF THE SENATE

APPROVED_____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO

Attachment 5

COLORADO PARKS & WILDLIFE

Hunting and HB 1224

FACTS ABOUT THE HIGH CAPACITY MAGAZINE BILL **3/28/2013**

House Bill 13-1224 High-Capacity Magazines

"Grandfathering" of existing magazines

All magazines (regardless of capacity) purchased prior to July 1, 2013 are "grand-fathered in" and remain legal for possession and use. They may continue to be used for legal activities (hunting, target shooting, etc.) even after the laws take effect July 1. Existing regulations must still be followed, such as existing caliber, magazine and plugging requirements in Colorado hunting regulations.

Exemptions

HB 1224, contains the following exemptions:
"(b) LARGE-CAPACITY MAGAZINE" DOES NOT MEAN:
(I) A FEEDING DEVICE THAT HAS BEEN PERMANENTLY ALTERED SO THAT IT CANNOT ACCOMMODATE MORE THAN FIFTEEN ROUNDS OF AMMUNITION;
(II) AN ATTACHED TUBULAR DEVICE DESIGNED TO ACCEPT, AND CAPABLE OF OPERATING ONLY WITH, .22 CALIBER RIMFIRE AMMUNITION; OR
(III) A TUBULAR MAGAZINE THAT IS CONTAINED IN A LEVER-ACTION FIREARM."

Removable base plates

One section of HB 1224 that has drawn attention defines a high-capacity magazine as one that is "CAPABLE OF ACCEPTING, OR THAT IS DESIGNED TO BE READILY CONVERTED TO ACCEPT, MORE THAN FIFTEEN ROUNDS OF AMMUNITION. " As most removable base plates are designed for cleaning purposes - not for accepting additional rounds or for conversion - there is a presumption that they are legal.

Affirmative enforcement

The burden of proof regarding purchase date of a magazine will be on law enforcement, not on the person using the magazine. There is no affirmative enforcement required in these bills - meaning that we are not required to ask for gun or magazine ownership information unless we do so as part of some other inquiry, such as an investigation into another violation.

Other Questions

This is not legal advice, but rather a summary of facts related to House Bill 1224 as we understand them at this time. Colorado Parks and Wildlife is working with the Colorado Department of Public Safety and the Attorney General to receive additional technical guidance on the new statutes. The new statutes do not take effect until July 1 and implementation guidance will be available prior to that time.

Loveland City Council
500 West 3rd Street
Loveland, Colorado 80537

John W Hickenlooper, Governor
136 State Capitol
Denver, CO 80203-1792

Governor Hickenlooper,

We, the City Council of Loveland, Colorado write you to ask that you stay the enforcement of a recent House Bill that you signed into law, House Bill 13-1224 concerning magazine size limits, and ask that you reconsider our request to also stay the enforcement of House Bill 13-1229 concerning transfer of firearms.

We have demonstrated that these bills will have a detrimental impact on two Loveland charitable organizations but also are placing other Loveland businesses and citizens in jeopardy due to the vague language contained in the bills and the conflicting interpretations from various state agencies as well as local law enforcement. The requirements for background checks under HB1229 leave questions about where and when individuals would be exempt from those regulations and do not represent reasonable accommodations for those engaged in hunting away from their residences. The vague language concerning “large capacity magazines” and those “readily converted” to “large capacity” place undue pressure on our local law enforcement officers. Even in Attorney General Suther’s clarification he lends concern to a conflict of interpretation in exempting magazines with removable baseplates only to infer in the same paragraph that those “whose design was intended to be converted to larger capacity” would fall within the limits. To wit these regulations are not enforceable without a confiscation of all “large capacity” magazines currently in possession by individuals in the State. Newly manufactured and purchased magazines will be indistinguishable from those possessed by residents before the date the law was enacted, July 1, 2013. Moreover the ability for manufacturers to produce a product to meet the requirement of a single state’s law will deprive the citizens of Loveland and the state of Colorado of the ability to acquire such products. Likewise the businesses who market such goods have been damaged in their ability to acquire merchandise to sell due to the nature of the law and the requirements of the manufacturers and businesses as well as an inability to sell inventory they have on hand.

We ask that, along with a stay of the enforcement of these provisions, you also answer the complaint filed by many of the sheriffs of Colorado counties, including Larimer County Sheriff, Justin Smith. Until such a time as the legal authority of this legislation is decided in a court of law both the unreasonable nature of provisions contained within the legislation as well as the unenforceability of these laws create an undue burden on local governments with law enforcement responsibilities and place an undue burden on the businesses and citizens of Loveland and the state of Colorado as a whole.

Respectfully,

Cecil A. Guiterrez, Mayor Daryle Klassen, Mayor Pro Tem Chauncey Taylor, Councilor

Joan Shaffer, Councilor	Phil Farley, Councilor	John Fogle, Councilor
Hugh McKean, Councilor	Ralph Trenary, Councilor	Dave Clark, Councilor

CITY OF LOVELAND
DEVELOPMENT SERVICES DEPARTMENT
Civic Center • 500 East 3rd Street • Loveland, Colorado 80537
(970) 962-2346 • FAX (970) 962-2945 • TDD (970) 962-2620

AGENDA ITEM: **22**
MEETING DATE: 8/6/2013
TO: City Council
FROM: Bill Cahill, City Manager, and John Duval, City Attorney
PRESENTERS: Bill Cahill and John Duval

TITLE:
An Ordinance to add a new Chapter 7.65 to the Loveland Municipal Code to prohibit marijuana establishments from being licensed, located and operated within the City of Loveland

RECOMMENDED CITY COUNCIL ACTION:
Approve the ordinance on first reading.

OPTIONS:
1. Follow the recommended action
2. Deny the action
3. Adopt a modified action (specify in the motion), such as:
   a. Direct staff to return to Council with an ordinance to allow marijuana establishments to be licensed, located and operated within the City, or
   b. Direct staff to return to Council with an ordinance imposing a moratorium for the establishment of marijuana establishments within the City pending the voter's consideration of a referred ballot question at the November 2, 2014, statewide election to decide whether or not to allow marijuana establishments to be licensed, located and operated within the City
4. Refer back to staff for further development and consideration
5. Adopt a motion continuing the item to a future Council meeting

SUMMARY:
This is a public hearing to consider a legislative action to adopt on first reading an ordinance adding a new Chapter 7.65 to the Loveland Municipal Code to prohibit marijuana establishments from being licensed, located and operated within the City.

BUDGET IMPACT:
☐ Positive
☐ Negative
☐ Neutral or negligible

Future budget impact of "opting-in" is expected to be negative. "Opting-out" is projected as a neutral budget impact.

DESCRIPTION:
On November 6, 2012, Colorado voters approved "Amendment 64," which added Article XVIII, Section 16 to the Colorado Constitution (Amendment 64). Amendment 64 has legalized under Colorado law the cultivation and production of marijuana and marijuana products for retail sale to persons twenty-one (21) years of age or older, through laws and regulations to be adopted by the State of Colorado and its local government to license, regulate, and tax "marijuana establishments," as this term is defined in Amendment 64. "Marijuana establishments" include marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores.

The expressly stated purposes of Amendment 64 include the regulation of marijuana in a manner similar to alcohol and that such regulations shall be a matter of statewide concern, thereby limiting the power of home rule municipalities, such as Loveland, to regulate marijuana. However, Section 16(5)(f) of Amendment 64 specifically authorizes the City Council to adopt an ordinance to license and regulate marijuana establishments so long as it does so in a manner not in conflict with Amendment 64 and other state laws enacted pursuant to Amendment 64. Alternatively, Section 16(5)(f) authorizes the Council to adopt at any time an ordinance to prohibit the licensing and operation of marijuana establishments within the City or to refer this decision to the voters through a ballot measure which can be presented to the voters no sooner than at the November 2, 2014, statewide election. In response to Amendment 64, the Colorado General Assembly adopted House Bill 13-1317 enacting "The Colorado Retail Marijuana Code." The Colorado Retail Marijuana Code also expressly authorizes the Council to either adopt an ordinance to license and regulate marijuana establishment within the City or to adopt an ordinance to prohibit their licensing and operation within the City.

Amendment 64 does not change, preempt or affect in any way the enforceability of the existing federal criminal and civil laws relating to marijuana, including the Federal Control Substances Act which continues to make it a federal crime for any person to grow, possess, use or sell any form of marijuana.

City staff is recommending that the Council adopt the proposed Ordinance to opt-out of the local licensing and regulation of marijuana establishments by affirmatively prohibiting their licensing, location and operation within the City.

The reasons for the recommendation to opt-out include:

1. Increased presence of marijuana in the community can create significant problems for police, due to the conflicts between federal and state law. Operational policy issues arise if the police come into possession of marijuana, which is still a controlled Schedule 1 substance under federal law.

2. There would be an increased burden upon the City in drafting and implementing licensing and regulation of marijuana establishments. This would particularly fall upon the City Attorney and the City Clerk. Added licensing responsibilities would be borne by the City Clerk's Office, causing a need for increased staff and expense.

3. Since this is a new function of unknown size, fees and charges are difficult to determine and it is very possible that the budgetary impact upon the City would be negative.

4. Amendment 64 legalizing marijuana was narrowly passed by Loveland voters, but a previous November 2010 measure to close Loveland medical marijuana dispensaries was passed by the voters decisively. Since Amendment 64 was statewide in scope and contains provisions unrelated to local establishments, it's not clear that Loveland voters specifically intended for there to be marijuana businesses in Loveland. The November 2010 vote, however, was a clear indication opposing local medical marijuana outlets.

5. Opting-out does not prevent Loveland residents from possessing marijuana in legal quantities. It simply prevents establishment of local retail marijuana stores and other marijuana establishments. Residents may still obtain marijuana from other jurisdictions which have opted-in.

If the Council decides that it wishes to take an action other than as proposed in the Ordinance, the Council has the following options:

1. Direct staff to return to Council with an ordinance to authorize within Loveland the licensing, location and operation of marijuana establishments; or
2. Direct staff to return to Council with an ordinance to impose a moratorium on the licensing, location and operation of marijuana establishments within the City pending the voters' consideration of a ballot question at the November 2, 2014, election as to whether or not to allow marijuana establishments to be licensed, located and operated within Loveland.

REVIEWED BY CITY MANAGER:

William D. Cahill

LIST OF ATTACHMENTS:
Ordinance

FIRST READING: August 6, 2013

SECOND READING: _____

ORDINANCE #_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOVELAND TO ADD A NEW CHAPTER 7.65 TO THE LOVELAND MUNICIPAL CODE TO PROHIBIT MARIJUANA ESTABLISHMENTS FROM BEING LICENSED, LOCATED AND OPERATED WITHIN THE CITY OF LOVELAND

WHEREAS, on November 6, 2012, Colorado voters approved adoption of "Amendment 64" to add Article XVIII, Section 16 to the Colorado Constitution ("Amendment 64"); and

WHEREAS, in certain circumstances, Amendment 64 has legalized under Colorado law the personal possession and use of marijuana by persons twenty-one (21) years of age or older; and

WHEREAS, Amendment 64 has also authorized under Colorado law the cultivation and production of marijuana and marijuana products for retail sale to persons twenty-one (21) years of age or older through laws and regulations to be adopted by the State of Colorado and its local governments to license, regulate and tax "marijuana establishments," as this term is defined in Amendment 64; and

WHEREAS, the expressly stated purposes of Amendment 64 include the regulation of marijuana in a manner similar to alcohol and that such regulation shall be a matter of statewide concern, thereby limiting the powers of Colorado home rule municipalities to regulate marijuana to only as specifically allowed in Amendment 64 and by state law; and

WHEREAS, Section 16(5)(f) of Amendment 64 authorizes the City Council to adopt an ordinance to license and regulate marijuana establishments within Loveland so long as it does so in a manner not in conflict with Amendment 64 or other state laws enacted pursuant to Amendment 64; and

WHEREAS, Section 16(5)(f) expressly authorizes the City Council to alternatively adopt at any time an ordinance to prohibit the licensing and operation of marijuana establishments within the City or to refer this decision to the voters through an initiated or referred ballot measure which can be presented to the voters no sooner than at the November 2, 2014, statewide election; and

WHEREAS, in response to Amendment 64, the Colorado General Assembly adopted House Bill 13-1317 enacting the "Colorado Retail Marijuana Code" in Article 43.4 of Title 12 of the Colorado Revised Statutes ("Colorado Retail Marijuana Code"); and

WHEREAS, C.R.S. § 12-43.4-104(3) of the Colorado Retail Marijuana Code also expressly authorizes the City Council to either adopt an ordinance to license and regulate marijuana establishments within the City or to adopt an ordinance prohibiting their licensing and operation within the City; and

WHEREAS, Amendment 64 does not change, preempt or affect in any the enforceability of the existing federal criminal and civil laws related to marijuana, including the Federal Controlled Substances Act which continues to make it a federal crime for any person to grow, possess, use or sell any form of marijuana; and

WHEREAS, the City Council has carefully considered the provisions of Amendment 64 and the potential adverse effects that marijuana establishment would have on the health, safety and welfare of the City's inhabitants, and has therefore determined, in the exercise of its legal authority under Section 16(5)(f) of Amendment 64, under C.R.S. § 12-43.4-104(3), under its local land use authority, and in accordance with its other general police powers for the protection of the public's health, safety and welfare, that marijuana establishments should not be licensed, located and operated within the City's corporate limits.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LOVELAND, COLORADO, as follows:

Section 1. That the City Council hereby finds and determines that its authority to enact this Ordinance is granted to it and the City in: Article XVIII, Section 16(5)(f) of the Colorado Constitution; C.R.S. § 12-43.4-104(3); Article XX of the Colorado Constitution; the City's Home Rule Charter; the Local Government Land Use Control and Enabling Act of 1974 in Article 20 of Title 29 of the Colorado Revised Statutes; Part 3 of Article 23 of Title 31 of the Colorado Revised Statues; and C.R.S. §§31-15-103, 31-15-401 and 31-15-501.

Section 2. That the recitals of this Ordinance are hereby adopted by the City Council as findings and the Council further finds, determines and declares: that this Ordinance is enacted under the City's general police and land use powers and as specifically authorized by the Colorado Constitution and state law; that it is enacted for the public's health, safety and welfare; and that its enactment is necessary for the preservation of the public's health, safety and welfare.

Section 3. That a new Chapter 7.65 is hereby added to the Loveland Municipal Code to read in full as follows:

Chapter 7.65

Marijuana Establishments Prohibited

Section 7.65.010 Definitions

As used in this chapter, the following words, terms and phrases shall have the following meanings:

A. *Amendment 64* shall mean Article XVIII, Section 16 of the Colorado Constitution added to the Colorado Constitution by a statewide voter initiative adopted on November 6, 2012, as amended.
B. *Colorado Retail Marijuana Code* shall mean Article 43.4 of Title 12 of the Colorado Revised Statutes, C.R.S. § 12-43.4-101, *et seq.*, as amended.
C. *Consumer* shall mean a person twenty-one (21) years of age or older who purchases marijuana or marijuana products for personal use by persons twenty-one (21) years of age or older, but not for resale to others.
D. *Industrial hemp* shall mean the plant of the genus cannabis and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration that does not exceed three-tenths percent (.3%) on a dry weight basis.
E. *"Marijuana" or "marihuana"* shall mean all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marihuana concentrate. *"Marijuana" or "marihuana"* does not include industrial hemp, nor does it include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.
F. *Marijuana cultivation facility* shall mean an entity or person required to be licensed under Amendment 64 or the Colorado Retail Marijuana Code in order to cultivate, prepare, and package marijuana and sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.
G. *Marijuana establishment* shall mean a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store.
H. *Marijuana product manufacturing facility* shall mean an entity or person required to be licensed under Amendment 64 or the Colorado Retail Marijuana Code in order to purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.
I. *Marijuana products* shall mean concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.
J. *Marijuana testing facility* shall mean an entity or person required to be

licensed under Amendment 64 or the Colorado Retail Marijuana Code in order to analyze and certify the safety and potency of marijuana.

K. *Person* shall mean a natural person, trust, estate, partnership (general and limited), association, company, corporation, limited liability company, or any other organization or legal entity, or a manager, agent, owner, director, servant, officer, fiduciary, trustee, personal representative, or employee thereof.

L. *Retail marijuana store* shall mean an entity or person required to be licensed under Amendment 64 or the Colorado Retail Marijuana Code in order to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers.

Section 7.60.020 Marijuana Establishments Prohibited

A. The operation of marijuana establishments, marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, and retail marijuana stores within the city's boundary is hereby prohibited as authorized and provided in Article XVIII, Section 16(5)(f) of the Colorado Constitution and in C.R.S. § 12-43.3-104(3).

B. It shall be unlawful and a violation of this section for any person to establish, locate, operate, continue to operate, cause to be operated, or permit to be operated within the city any facility, business or other operation requiring a license under Amendment 64 or the Colorado Retail Marijuana Code to operate as a medical marijuana establishment, marijuana cultivation facility, marijuana product manufacturing facility, marijuana testing facility, or retail marijuana store.

Section 7.65.030 Penalties

A violation of any provision of this chapter 7.65 shall constitute a misdemeanor offense punishable by a fine not exceeding one thousand dollars ($1,000) or imprisonment for a term not exceeding one (1) year, or both such fine and imprisonment. A person committing any such offense shall be guilty of a separate offense for each and every day, or any portion thereof, during which the offense is committed or continued to be permitted by such person, and shall be punished accordingly.

Section 4. That if for any reason the Colorado Department of Revenue ceases or fails to process and issue licenses for marijuana establishment as authorized and required in Amendment 64, the City Clerk's Office is hereby appointed as the City's designated entity for processing any applications filed with the City for a license to operate a marijuana establishment in the City, this being the designation required by Article XVIII, Section 16(5)(e) of the Colorado Constitution. Upon the receipt of any such application, the City Clerk's Office shall notify the applicant in

writing that City Code Chapter 7.65 prohibits the licensing and operation of marijuana establishments in the City and that the applicant's application is therefore deemed denied.

Section 5. That nothing in this Ordinance is intended, nor shall it be deemed, to amend in any way any of the provisions of Code Chapter 7.60 which prohibits medical marijuana businesses from being operated within the City.

Section 6. That as provided in City Charter Section 4-9(7), this Ordinance shall be published by title only by the City Clerk after adoption on second reading unless the Ordinance has been amended since first reading, in which case this Ordinance shall be published in full or the amendment shall be published in full. This Ordinance shall be in full force and effect ten (10) days after its final publication, as provided in City Charter Section 4-8(b).

Dated this _____ day of August, 2013.

_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

Volume 1 / August 2013

The Legalization of Marijuana in Colorado

The Impact

A Preliminary Report

Rocky Mountain HIDTA

Table of Contents

Executive Summary i

Introduction

Purpose 1
The Debate 1
Background 2
Colorado's History with Marijuana Legalization 2
Early Medical Marijuana 2000 – 2008 2
Medical Marijuana Expansion 2009 – Present 3
Recreational Marijuana 4

SECTION 1: Colorado Driving Fatalities

Introduction 5
Findings 5
Data 6
Related Material 8
Sources 10

SECTION 2: Colorado Youth Marijuana Use

Introduction 13
Findings 13
Data 15
Related Material 17
Comments 18
Sources 19

SECTION 3: Colorado Adult Marijuana Use

Introduction 21
Findings 21
Data 23
Sources 24

SECTION 4: Colorado Emergency Room – Marijuana Admissions

Introduction 25
Findings 25
Data 26
Related Material 27
Comments 27
Some Case Examples 28
Sources 29

SECTION 5: Colorado Marijuana-Related Exposure Cases

Introduction 31
Findings 31
Data 33
Sources 35

SECTION 6: Diversion of Colorado Marijuana (General)

Introduction 37
Findings 38
Data 39
Some Examples of Interdictions 42
Some Examples of Investigations 46
Related Material or Comments 48
Sources 49

SECTION 7: Diversion of Colorado Marijuana (Postal Packages)

Introduction 51
Findings 52
Data 53
Related Material 55
Some Case Examples 56
Comments 58
Sources 58

Executive Summary

Rocky Mountain High Intensity Drug Trafficking Area (RMHIDTA) will attempt to track the impact of marijuana legalization in the state of Colorado. This report will utilize, whenever possible, a comparison of three different eras in Colorado's legalization history:

- 2006 – 2008: Early medical marijuana era
- 2009 – 2012: Medical marijuana expansion era
- 2012 – Present: Medical marijuana expansion and recreational use era

Rocky Mountain HIDTA will try to collect comparative data in a variety of areas, including but not limited to:

- Traffic fatalities
- Youth marijuana use
- Adult marijuana use
- Emergency room admissions
- Marijuana-related exposure cases
- Diversion of Colorado marijuana outside the state

There are other areas that require more extensive data collection and in-depth research such as: tax revenue vs. cost, tourism, and impact on business. Rocky Mountain HIDTA will reach out to experts to determine if there is an interest in conducting long-term studies in those fields.

This is the first report and foundational for future reports. It is divided into six sections with each providing data on the impact of legalization prior to and during the creation of the medical marijuana industry in Colorado. Generally, except for diversion of Colorado marijuana, there is limited data for 2012 and 2013. The sections are as follows:

> **Colorado Driving Fatalities**: From 2006 to 2011, traffic fatalities decreased in Colorado 16 percent, but fatalities involving drivers testing positive for marijuana increased 114 percent.

Colorado Youth Marijuana Use: In 2011, the national average for youth 12 to 17 years old considered "current" marijuana users was 7.64 percent which was the highest average since 1981. The Colorado average percent was 10.72.

Colorado Adult Marijuana Use: In 2011, the national average for young adults ages 18 to 25 considered current marijuana users was at 18.7 percent. The Colorado average was 27.26 percent.

Colorado Emergency Room – Marijuana Admissions: From 2005 through 2008 there was an average of 741 visits per year to the emergency room in Colorado for marijuana-related incidents involving youth. That number increased to 800 visits per year between 2009 and 2011.

Colorado Marijuana-Related Exposure Cases: From 2005 through 2008, the yearly average number of marijuana-related exposures for children ages 0 to 5 years was 4. For 2009 through 2012, that number increased 200 percent to an average of 12 per year.

Diversion of Colorado Marijuana (General): From 2005 to 2008, compared to 2009 to 2012, interdiction seizures involving Colorado marijuana quadrupled from an average per year of 52 to 242. During the same period, the average number of pounds of Colorado marijuana seized per year increased 77 percent from an average of 2,220 to 3,937 pounds. A total of 7,008 pounds was seized in 2012.

Diversion of Colorado Marijuana (Postal Packages): In 2010, the U.S. Postal Inspection Service seized 15 packages with Colorado marijuana destined for other states. Seizures steadily increased through 2012 when 158 parcels were seized. From 2010 to 2012 Colorado marijuana seized by the U.S. Postal Inspection Service increased from 57 to 262 pounds.

There is much more data in each of the sections, which can be used as a standalone document. Each of the sections is on the Rocky Mountain HIDTA website and can be printed individually. Go to www.rmhidta.org.

Introduction

Purpose

The purpose of this report and future reports is to document the impact of the legalization of marijuana for medical and recreational use in Colorado. Colorado and Washington serve as experimental labs for the nation to determine the impact of legalizing marijuana. This is an important opportunity to gather and examine data and facts on this issue. Citizens and policymakers may want to delay any decisions on this important issue until there is sufficient and accurate data to make an informed decision.

The Debate

There is an ongoing debate in this country concerning the impact of legalizing marijuana. Those in favor argue that the benefits of removing prohibition far outweigh the potential negative consequences. Some of the benefits they cite include:

- Eliminate arrests for possession and sale, resulting in fewer citizens with criminal records and a reduction in the prison population.
- Free up law enforcement resources to target more serious and violent criminals.
- Reduce traffic fatalities since users will switch from alcohol to marijuana, which doesn't impair driving to the same degree.
- No increase in use, even among youth, because of tight regulations.
- Added revenue generated through taxation.
- Reduce profits for the drug cartels trafficking marijuana.

Those opposed to legalizing marijuana argue that the potential benefits of lifting prohibition pale in comparison to the adverse consequences. Some of the consequences they cite include:

- Increase in marijuana use among youth and young adults.
- Increase in marijuana-impaired driving fatalities.
- Rise in number of marijuana-addicted users in treatment.
- Diversion of marijuana for unintended purposes.

- Adverse impact and cost of the physical and mental health damage caused by marijuana use.
- The economic cost to society will far outweigh any potential revenue generated.

Background

The next two to four years should help determine which side is most accurate. Recently a number of states have enacted varying degrees of legalized marijuana by permitting medical marijuana. In 2010, Colorado's legislature passed legislation that included the licensing of medical marijuana centers ("dispensaries"), cultivation operations and manufacturing of marijuana edibles for medical purposes. In November of 2012, Colorado voters legalized recreational marijuana allowing individuals to use and possess an ounce of marijuana and grow up to six plants. The amendment also permits licensing marijuana retail stores, cultivation operations, marijuana edible factories and testing facilities. Washington voters passed a similar measure in 2012.

Colorado's History with Marijuana Legalization

Early Medical Marijuana 2000 – 2008:

In November 2000, Colorado voters passed Amendment 20 which permitted a qualifying patient and/or caregiver of a patient to possess up to 2 ounces of marijuana and grow six marijuana plants for medical purposes. Amendment 20 provided for identification cards for those individuals with a doctor's recommendation to use marijuana for a debilitating medical condition. The system was managed by the Colorado Department of Public Health and Environment (CDPHE), which issued cards to patients based on a doctor's recommendation. The department began accepting applications from patients in June 2001.

From 2001 to 2008, there were only 5,993 patient applications received and only 55 percent of those designated a primary caregiver. During that time, the average was three patients per caregiver and there were no known retail stores selling medical marijuana ("dispensaries"). Dispensaries were not an issue because CDPHE regulations limited a caregiver to no more than five patients.

NOTE: For the purposes of data comparison, this report will use the years 2006 – 2008 as the "Early Medical Marijuana Era" when compared to the "Medical Marijuana Expansion Era" of 2009 – 2012. Most of the data is only current through 2011; thus, by using 2006 – 2008 it allows a three-year to three-year comparison with 2009 – 2011. Multi-year comparisons are generally better indicators of trends. One year changes do not necessarily reflect a new trend. Also, using the later years of the "Early Medical Marijuana Era" allows for more current data to be compared.

Medical Marijuana Expansion 2009 – Present:

In 2009, the dynamics surrounding medical marijuana in Colorado changed substantially. There were a number of factors that played a role in the explosion of the medical marijuana industry and number of patients:

The first was a Denver District Judge who, in late 2007, ruled that CDPHE violated the state's open meeting requirement when setting a five-patient-to-one-caregiver ratio and overturned the rule. That opened the door for caregivers to claim an unlimited number of patients for whom they were providing and growing marijuana. Although this decision expanded the parameters, very few initially began operating medical marijuana commercial operations (dispensaries) because of the fear of prosecution, particularly from the federal government.

The judge's ruling and caregivers' expanding their patient base created significant problems for local prosecutors seeking a conviction for marijuana distribution by caregivers. Many jurisdictions ceased or limited filing those types of cases.

At a press conference in Santa Ana, California on February 25, 2009, the U.S. Attorney General was asked whether raids in California on medical marijuana dispensaries would continue. He responded "No" and referenced the President's campaign promise related to medical marijuana. In mid-March 2009, the U.S. Attorney General clarified the position saying that the Department of Justice enforcement policy would be restricted to traffickers who falsely masqueraded as medical dispensaries and used medical marijuana laws as a shield.

In July 2009, the Colorado Board of Health, after hearings, failed to reinstate the five-patients-to-one-caregiver rule.

On October 19, 2009, U.S. Deputy Attorney General David Ogden provided guidelines for U.S. Attorneys in those states that enacted medical marijuana laws. The memo advised "Not focus federal resources in your state on individuals whose actions

are in clear and unambiguous compliance with existing state law providing for the medical use of marijuana."

Beginning in the spring of 2009, Colorado experienced an explosion to over 20,000 new medical marijuana patient applications and the emergence of over 250 medical marijuana dispensaries (allowed to operate as "caregivers"). One dispensary owner claimed to be a primary caregiver to 1,200 patients. Government took little or no action against these commercial operations.

By the end of 2009, new patient applications jumped from around 6,000 for the first seven years to an additional 38,000 in just one year. Actual cardholders went from 4,800 in 2008 to 41,000 in 2009. By mid-2010, there were over 900 marijuana dispensaries identified by law enforcement.

In 2010, law enforcement sought legislation to ban dispensaries and reinstate the one-to-five ratio of caregiver to patient as the model. However, in 2010 the Colorado Legislature passed HB-1284 which legalized medical marijuana centers (dispensaries), marijuana cultivation operations, and manufacturers for marijuana edible products. By 2012, there were 532 licensed dispensaries in Colorado and over 108,000 registered patients, 94 percent of who qualified for a card because of severe pain.

Recreational Marijuana:

In November of 2012, Colorado voters passed Amendment 64, which legalized marijuana for recreational use. Amendment 64 allows individuals 21 years or older to grow up to six plants, possess/use 1 ounce or less and furnish an ounce or less of marijuana if not for remuneration. Amendment 64 permits marijuana retail stores, marijuana cultivation sites, marijuana edible factories and marijuana testing sites. It is anticipated that the first retail marijuana businesses will be licensed in January of 2014. Some individuals have already established private cannabis clubs, formed co-ops for large marijuana grow operations and/or supplied marijuana for no fee other than donations.

What will be the impact of Amendment 64 on Colorado and other states? Only time will tell. The four-year experience with medical marijuana in Colorado may be indicative of what to expect.

SECTION 1: Colorado Driving Fatalities

Introduction

This section provides information on driving fatalities involving drivers testing positive for marijuana. The data comparison will be from 2006 through 2011. Data for 2012, and partial year 2013, was not available for this report. The information compares what will be referred to as the early medical marijuana era (2006 – 2008) and the medical marijuana expansion era (2009 – 2011) in Colorado.

- **2006 – 2008**: There were between 1,000 and 4,800 medical marijuana cardholders and no known dispensaries operating in Colorado.

- **2009 – 2012**: There were over 108,000 medical marijuana cardholders and 532 licensed dispensaries operating in Colorado by November 2012. See the introduction at the beginning of this report for more details on the explosion of Colorado's medical marijuana trade.

Findings

- Traffic fatalities in Colorado **decreased 16 percent**[1], from 2006 to 2011, which is consistent with national trends. During the same six years in Colorado, traffic fatalities involving drivers testing positive for just marijuana increased **114 percent**.[2]

- In 2006 in Colorado, traffic fatalities involving drivers testing positive for marijuana represented 5 percent of the total traffic fatalities. By 2011, that percent more than doubled to 13 percent.[2]

- In 2006, drivers testing positive for marijuana were involved in **28 percen**t of fatal vehicle crashes involving drugs. By 2011 that number had **increased to 56 percent**.[2]

- From 2006 – 2011, drivers testing positive for marijuana involved in fatal vehicle crashes more than doubled in those six years.

Data:

Fatalities Involving Driver with Positive Drug Test 2006-2011					
Crash Year	**Fatalities by Driver with Positive Drugs (Includes Cannabis)**	**Fatalities by Driver with Positive Cannabis**	**Total Statewide Fatalities**	**Percentage of Total Fatalities (All Drugs)**	**Percentage Total Fatalities (Cannabis)**
2006	85	27	535	15.9%	5%
2007	92	29	555	16.6%	5.2%
2008	84	39	548	15.3%	7.1%
2009	88	41	465	18.9%	8.8%
2010	88	46	449	19.6%	10.2%
2011	106	58	447	23.7%	13%

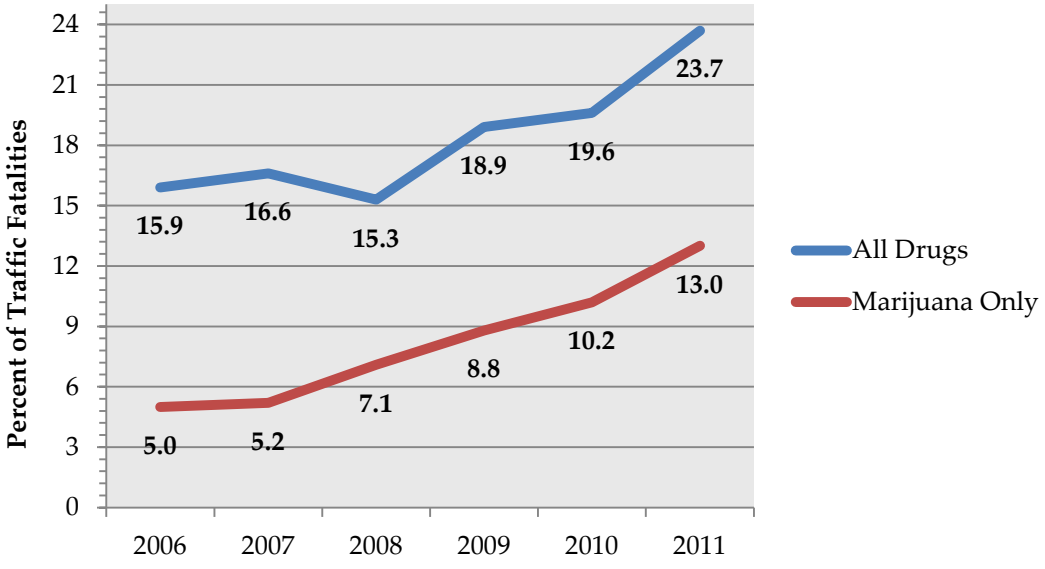
SOURCE: Colorado Department of Transportation Fatality Analysis Reporting System (FARS) 2006 - 2011

Drivers with Positive Drug Tests in Fatal Crashes 2006-2011					
Crash Year	**Drivers of Fatal Crashes of Positive Drug Tests (includes Cannabis)**	**Drivers of Fatal Crashes of Positive for Cannabis**	**Total Drivers Involved in Total Crashes**	**Percentage of Total Drivers with Positive Drugs**	**Percentage Total Drivers with Positive Cannabis**
2006	75	21	721	10.4%	2.9%
2007	81	23	789	10.3%	2.9%
2008	72	31	712	10.1%	4.4%
2009	82	37	653	12.6%	5.7%
2010	79	42	600	13.2%	7%
2011	93	52	587	15.8%	8.9%

SOURCE: Colorado Department of Transportation Fatality Analysis Reporting System (FARS) 2006 - 2011

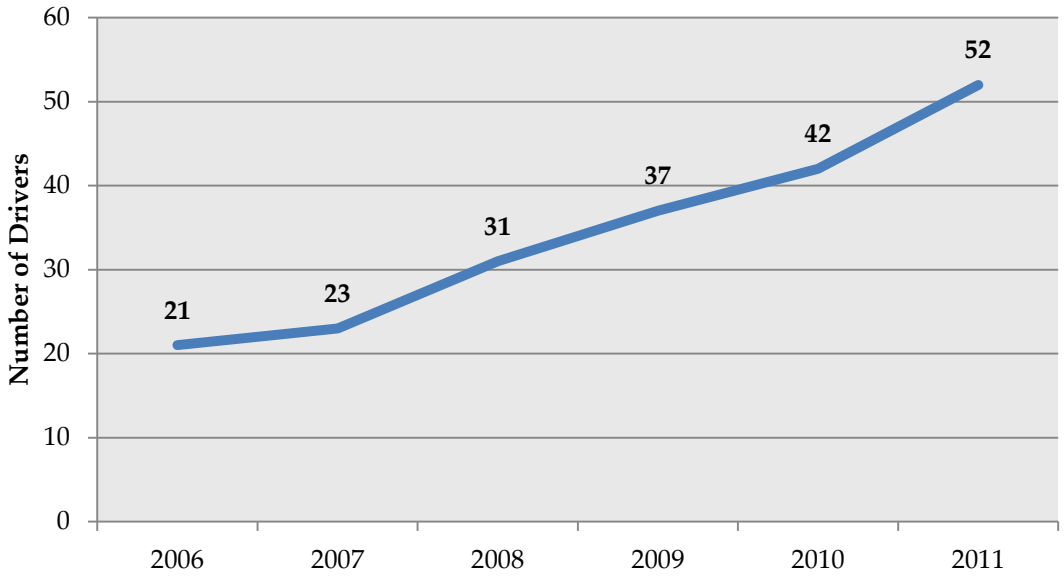
NOTE: Data only includes drivers who were tested for drugs and/or alcohol with the results that were reported to CDOT. (Revised December 24, 2012.) For instance, from 2006 through 2011, only about half of the drivers were tested for drugs (average 47.6 percent in years 2006 – 2008 and average 48.2 percent in years 2009 – 2011).[2]

Fatalities Involving Drugged Drivers



SOURCE: Colorado Department of Transportation Fatality Analysis Reporting System (FARS) 2006 - 2011

Number of Drivers Testing Positive for Marijuana Only Involved in Fatal Crashes



SOURCE: Colorado Department of Transportation Fatality Analysis Reporting System (FARS) 2006 - 2011

Related Material

- DUID (Driving Under the Influence of Drugs) Victim Voice President Ed Wood shares his perspective on drugged driving:

  > "Drivers on drugs are involved in a remarkably high proportion of fatalities. When we look at only collisions where drivers' blood tests were reported, we see that 36 percent of the fatalities involved drivers testing positive for drugs, and 20 percent tested positive for marijuana. These percentages held steady from 2006 through 2009 (averaging 29 percent and 12 percent respectively), but the marijuana numbers took a big jump to 17 percent in 2010 and again to 20 percent in 2011 after dispensaries were established."

- The National Organization for Reform of Marijuana Laws (NORML), which supports legalizing marijuana, recognizes the dangers of driving after having smoked marijuana. NORML discourages motorists from driving if they have

recently smoked marijuana.[3]

- The French National Institute for Transportation and Safety Research, in a study published in 2005 by the *British Medical Journal*, concludes that even small amounts of marijuana could double the chances of a driver suffering a crash and larger doses could more than triple the risk.

- According to the Columbia University School of Public Health, the risk of an automobile crash is almost 2.7 times higher among marijuana users than non-users. The more marijuana smoked in terms of frequency and potency, the greater likelihood of a crash.[4]

- Glenn Davis, Highway Safety Manager, Colorado Department of Transportation (CDOT), Office of Transportation Safety, said that of drug-related deaths, half involved marijuana. He stated, "You have a substance [marijuana] that causes impairment that is more readily available than it was two years ago." Davis said that was because of the increasing use of medical marijuana in Colorado.[5]

- The National Highway Traffic Safety Administration (2009) found more people are driving on weekend nights under the influence of marijuana (8.3 percent) compared to alcohol (2.2 percent).[6]

- Close to one out of four teens admit to driving under the influence of alcohol or drugs and, of those, 75 percent do not believe smoking marijuana adversely affects their driving.[7]

- The National Highway Traffic Safety Administration (2004) found that marijuana significantly impairs one's ability to safely operate a motor vehicle. They cite: decreased car handling performance, inability to maintain headway, impaired time and distance estimation, increased reaction time, lack of motor coordination and impaired sustained vigilance.[8]

- An article published in the Volume 34, 2012 edition of *Epidemiologic Reviews* examined nine studies conducted over the past two decades on marijuana and car crash risks. Their conclusion: "Drivers who tested positive for marijuana, or self-reported using marijuana, are more than twice as likely as other drivers to be involved in motor vehicle crashes."[9]

- A study published by the National Institute of Health Public Access in 2009 showed that the effects of marijuana vary more between the individual than the

effects of alcohol. The study also states that laboratory tests and driving studies show, "Cannabis may acutely impair several driving-related skills in a dose-related fashion but the effects between individuals varies more than they do with alcohol because of tolerance, the difference in smoking techniques and different absorption of THC." The study warns that patients who smoke marijuana should be counseled to have a designated driver if possible or to wait at least three hours after smoking.[10]

- A 2009 study published by the Institute for the Study of Labor in Germany claimed that states with legalized medical marijuana actually had a drop in traffic deaths. This study was not peer reviewed. The states selected were Vermont with only 400 cardholders, Rhode Island with only 3,000 cardholders and Montana which had only 6,000 cardholders.[11]

- A study by Dalhousie University (Halifax, Nova Scotia, Canada) Associate Professors Ashbridge and Hayden published in the *British Medical Journal* on February 9, 2012 showed: "Driving under the influence of cannabis was associated with a significantly increased risk of motor vehicle collisions compared with unimpaired driving.[12]

Sources:

[1] Copeland, Larry, "Jump in Connecticut traffic deaths called statistical blip," *USA Today News*, December 13, 2011, <http://usatoday30.usatoday.com/news/nation/story/2011-12-13/traffic-fatalities-connecticut/51774864/1> (June 2013)

[2] Colorado Department of Transportation Drugged Driving Statistics 2006 - 2011, <http://www.coloradodot.info/programs/alcohol-and-impaired-driving/druggeddriving/drugged-driving-statistics.html> (July 2013)

[3] Armentano, Paul, "Cannabis and Driving: A Scientific and Rational Review," September 12, 2011, <http://norml.org/library/item/cannabis-and-driving-a-scientific-and-rational-review> (July 2013)

[4] Columbia University School of Public Health – NYC, as reported in *Health Day*, October 2011

[5] Wolf, Jeffrey and Kahnart, Eric, KUSA Channel 9 News, Denver, CO, "Drugged Driving Getting Worse in Colorado", February 17, 2011, <http://www.9news.com/news/story.aspx?storyid=181802> (July 2013)

[6] National Highway Traffic Safety Administration, "Drugs and Human Performance Fact Sheets", 2009, <www.nhtsa.gov/people/injury/research/job185drugs/drugs_web.pdf> (July 2013)

[7] Liberty Mutual Insurance and Students Against Destructive Decisions (SADD) press release, "One in Four Teens Admits to Driving Under the Influence and Many Believe It Does Not Impact Their Safety", April 25, 2013, <http://SADD.ord/pdf/Teen_Driving-Summer_Press_Release-FINAL_040413.pdf> (July 2013)

[8] National Highway Traffic Safety Administration, "Drugs and Human Performance Fact Sheets", April 2004, <www.nhtsa.gov/people/injury/research/job185drugs/drugs_web.pdf> (July 2013)

[9] Li, Mu-Chen, Brady, Joanne E., DiMaggio, Charles J., Lusardi, Arielle R., Tzong, Keane Y. and Li, Guohua, "Marijuana Use and Motor Vehicle Crashes", *Epidemiologic Reviews*, 2012;34:65-72, <http://epirev.oxfordjournals.org/content/34/1/65.full.pdf> (July 2013)

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[11] Healthy and Drug Free Colorado, "*Marijuana Legalization: The Issues*", March 2012, <http://www.healthydrugfreecolorado.org> (July 2013)

[12] Asbridge, Mark, Hayden, Jill A., Cartwright, Jennifer L., Department of Community Health and Epidemiology, Dalhousie University, Halifax, Nova Scotia, Canada, "Acute cannabis consumption and motor vehicle collision risk: systematic review of observational studies and meta-analysis", *BMJ*, February 9, 2012, <http://www.bmj.com/content/344/bmj.e536> (July 2013)

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SECTION 2: Colorado Youth Marijuana Use

Introduction:

The following section reviews youth use rates of marijuana in Colorado and nationally. Data sets examine reported use "within the last 30 days" as opposed to "lifetime" usage. The use of the 30-day data provides a more accurate picture and is classified as current use. The lifetime data collection model typically includes persons who are infrequent or experimental users of marijuana. High school students, grades 9 - 12 represent the primary source of information for the data sets within this section.

Most of the comparisons are between 2006 through 2011. Data for 2012 was limited. The information compares what will be referred to as the early medical marijuana era (2006 – 2008) and the medical marijuana expansion era (2009 – 2011) in Colorado.

- **2006 – 2008**: There were between 1,000 and 4,800 medical marijuana cardholders and no known dispensaries operating in Colorado.
- **2009 – 2012**: There were over 108,000 medical marijuana cardholders and 532 licensed dispensaries operating in Colorado by November 2012. See the introduction at the beginning of this report for more details on the explosion of Colorado's medical marijuana trade.

Findings:

- **Youth (ages 12 – 17 years) Current Marijuana Use, 2011**
  - National average for youth was **7.64 percent**.[1]
  - Colorado average for youth was **10.72 percent**.[1]
  - Colorado was ranked 5th in the nation for current marijuana use among youth.

- **Students' Current Marijuana Use**
  - In 2011, nearly **one out of four** of the Boulder County School District high school students (9th - 12th grade) surveyed indicated that they were current marijuana users.[3] This is more than three times the national rate.
  - In academic school years 2008 – 2010, an average of **20.75 percent** of Adams County high school students surveyed indicated they were current marijuana users (at least once in the last 30 days). That number increased 39 percent during academic years 2010 – 2012 to **28.85 percent.**[11]
  - In the academic school years 2008 – 2010, an average of **5.65 percent** of Adams County middle school students surveyed indicated they were current marijuana users (at least once in the last 30 days). That number increased 50 percent during academic years 2010 – 2012 to **8.5 percent**.[11]

- **Colorado Springs Drug Testing High School Referrals**
  - Drug-related referrals for high school students testing positive for marijuana have increased each year from 2007 – 2012.[4]
    - During 2007 – 2009 an average of **5.6 students** tested positive for marijuana.[4]
    - During 2010 – 2012 the average number of students who tested positive for marijuana increased to **17.3 students** per year.[4]
    - In 2007, tests positive for marijuana made up **33 percent** of the total drug screenings, by 2012 that number increased to **57 percent.**
  - Detected THC levels in the students increased by **76 percent** after 2009.
    - 2007 – 2009 the average THC level quantified = 225 nanograms.[4]
    - 2010 – 2012 the average THC level quantified = 396 nanograms.[4]

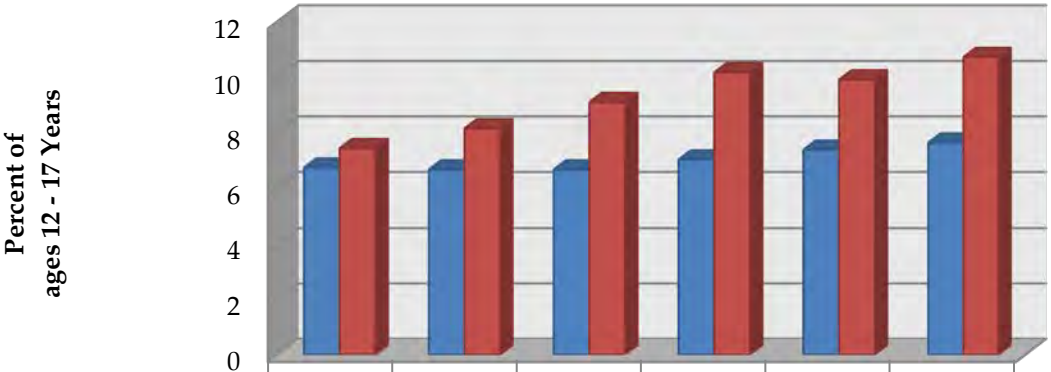
- **Current Marijuana Use Rates for 12th-Graders**
  - In 2011, the average of 12th graders using marijuana in the last 30 days:
    - Nationally – **28.0 percent**[12] (**22.6 percent**[2] according to the National Institute for Drug Abuse [NIDA])
    - Colorado – **31.2 percent**[10]
    - Denver Public Schools – **32 percent**[6]
    - Boulder County High Schools – **36 percent**[3]

- **High School Senior Daily Use of Marijuana**
  - Nationally in 2011, of the 12th grade respondents, **6.6 percent** reported smoking marijuana daily, which is the highest level since 1981 when the rate was 7 percent.[2] In 2011, **7.8 percent** of Colorado's high school seniors reported using marijuana 40 or more times per month.[10]

Another **2.9 percent** reported using marijuana between 20 and 39 times a month.[10]

Data:

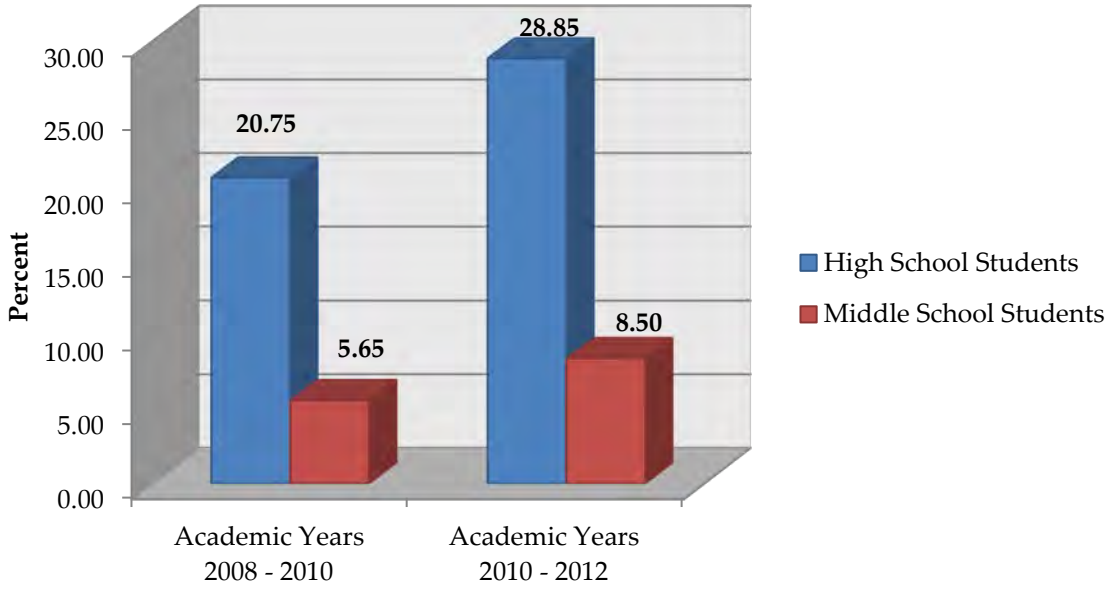
Past Month Usage of Marijuana - National v. Colorado



	2006	2007	2008	2009	2010	2011
National Average	6.74	6.67	6.67	7.03	7.38	7.64
Colorado Average	7.44	8.15	9.1	10.17	9.91	10.72

SOURCE: Data from SAMHSA.gov, National Survey on Drug Use and Health

Adams County (Colorado) Schools Admitted Use in Last 30 Days

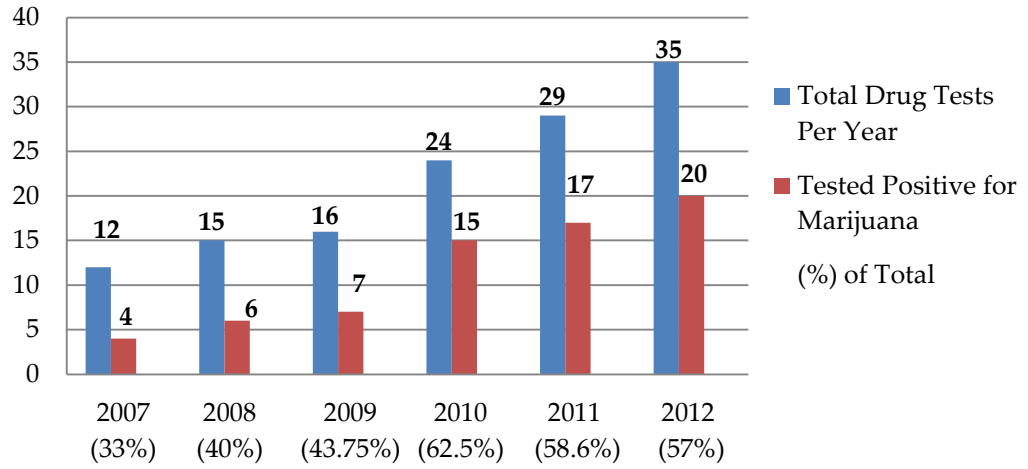


SOURCE: The Adams County Youth Initiative Student Survey, 2012

Conspire! Drug Testing Summary

Average THC results per 3-year cycle in nanograms:

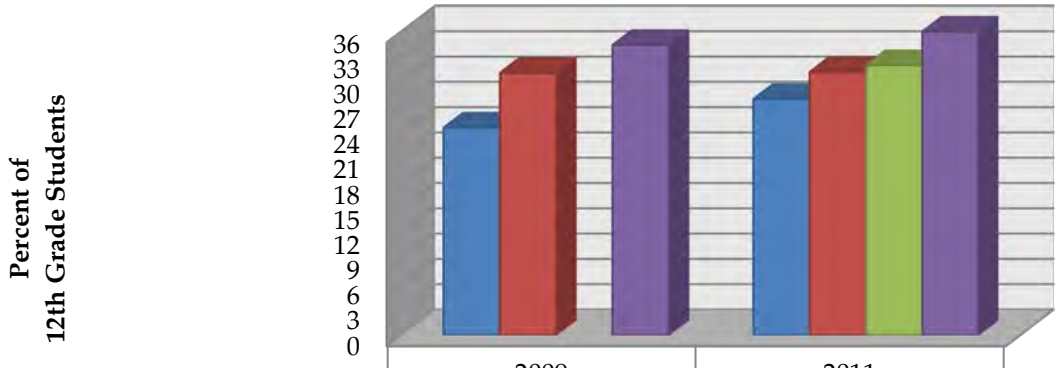
2007-2009 = 225
2010-2012 = 396



SOURCE: Conspire! Colorado Springs Drug Testing Summary

NOTE: The majority of the data was collected from high school students in the Colorado Springs, CO area sent for drug testing due to behavior issues.

12th Grade Students' Admitted Marijuana Use in Last 30 Days

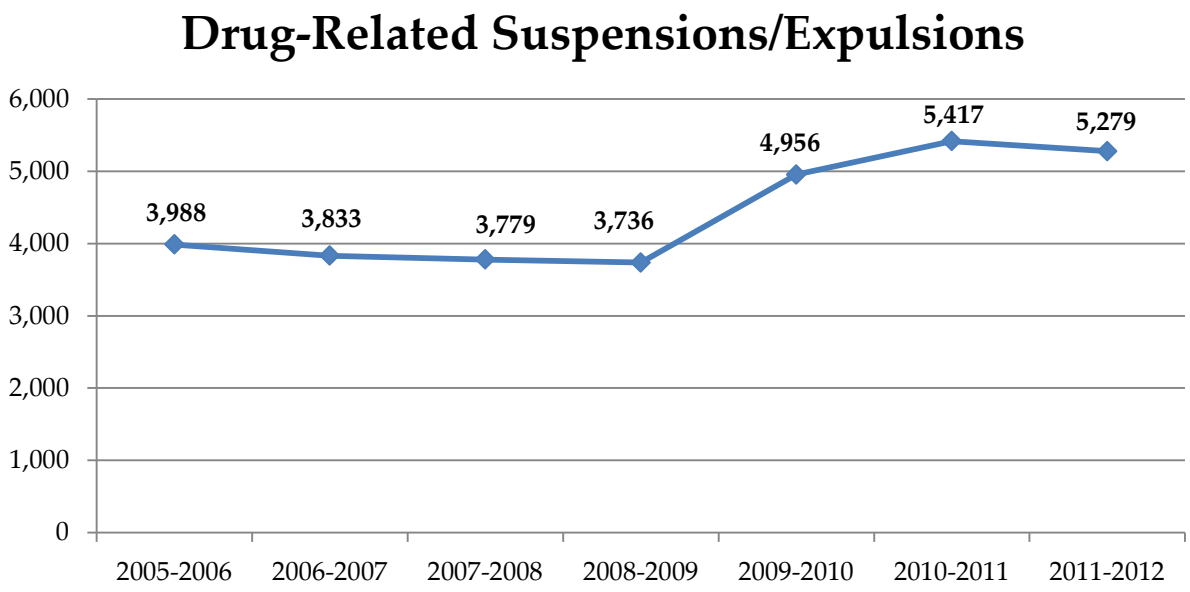


	2009	2011
National Youth Risk Behavior Survey	24.6	28
Colorado Youth Risk Behavior Survey	31.1	31.2
DPS Healthy Kids Survey (11-12)		32
Boulder County Youth Risk Behavior Survey	34.4	36

NOTE: No data was available in 2009 from the Denver Public Schools – Healthy Kids Colorado Survey. Other than Boulder and Denver, none of the other school districts contacted, including El Paso and Jefferson, have any or comparative data on student marijuana use.

Related Material:

- **Colorado Department of Education- Drug Related Suspensions and Expulsions**
  - There was a **32 percent** increase in drug-related expulsions and suspensions from the 2008 - 2009 academic year to 2009 - 2010 academic year.[7]
  - For the academic years ending in 07, 08, and 09, drug related expulsions/suspensions remained stable with an average of 3,782.[7]
  - For the academic years ending in 10, 11, and 12, drug-related expulsions/suspensions increased to an average of 5,217.[7] This is a **37 percent** increase.



SOURCE: Colorado Department of Education[7]

NOTE: The Colorado Department of Education included all drugs in this data set. However, department officials reported that **most** drug-related expulsions reported since the 2008-2009 academic year have been related to marijuana.[7]

Comments:

"Drug violations shot up dramatically in Colorado schools during the 2009-2010 school year, reversing a decade of steady decline…"[9]

Rebecca Jones, reporter, EdNews Colorado

"If Denver Public High Schools were considered a state, that state would have the highest past month marijuana use rate in the United States, behind New Hampshire. Denver has more marijuana dispensaries than liquor stores or licensed pharmacies."

Christian Thurstone, M.D., attending physician, Denver Health Medical Center

"A typical kid (*is*) between 50 and 100 nanograms. Now we're seeing these (*test results in nanograms*) up in the over 500, 700, 800 and climbing."[8]

Jo McGuire, director, Compliance and Corporate Training, Conspire!

Sources:

[1] National Survey on Drug Use and Health Model, <http://www.SAMHSA.gov>

[2] The National Institute of Drug Abuse (NIDA) Monitoring the Future Survey, <http://www.drugabuse.gov>

[3] Boulder County School District Youth Risk Behavior Survey, <http://www.bouldercounty.org>

[4] Conspire! - Drug Testing Results

[5] Denver Public Schools, Healthy Kids Colorado Survey (2011/2012) – Overview, <http://denverhealth.org/Portals/0/docs/public_health/DPSHKCSOverviewFF.pdf>

[6] Denver Public Schools, Healthy Kids Colorado Survey (2011/2012) - Key Findings, <http://denverhealth.org/Portals/0/docs/public_health/HKCS%20key%20findings%208_%209_12.pdf>

[7] Colorado Department of Education, Drug Related Suspensions and Expulsions, <http://www.drthurstone.com>

[8] CBS4 - Denver, "Drug Testing Company Sees Spike in Children Using Marijuana", March 6, 2013, <http://denver.cbslocal.com/2013/03/06/drug-testing-company-sees-spike-in-children-using-marijuana/> (July 2013)

[9] Jones, Rebecca, "Schools Report Sharp Rise in Drug Incidents", November 8, 2010, <http://www.ednewscolorado.org/news/schools-report-sharp-rise-in-drug-incidents> (July 2013)

[10] Centers for Disease Control and Prevention - Colorado Youth Risk Behavior Survey Results (YRBS) - 2005, 2007, 2009, 2011, <http://collaboration.omni.org/sites/hkc/Data%20Tables%20and%20Results/Forms/Front%20Page.aspx> (July 2013)

[11] Coulter, Heather, Adams County Youth Initiative, "Adams County Youth Initiative Student Survey – County-wide Results", May 2012

[12] Centers for Disease Control and Prevention, National Youth Risk Behavior Survey Results, 2011

SECTION 3: Colorado Adult Marijuana Use

Introduction

The following section reviews rates of marijuana use by adults in Colorado and nationally. Data sets examine reported use "within the last 30 days" as opposed to "lifetime" use. Use within past 30 days classifies the individual as a "current user." The lifetime data collection model includes those persons who were typically infrequent or experimental users of marijuana.

Data comparisons are from the National Survey on Drug Use and Health (NSDUH) reports from years 2006 through 2011. The information compares what will be referred to as the early medical marijuana era (2006 – 2008) and the medical marijuana era (2009 – 2011) in Colorado.

- **2006 – 2008**: There were between 1,000 and 4,800 medical marijuana cardholders and no known dispensaries operating in Colorado.

- **2009 – 2012**: There were over 108,000 medical marijuana cardholders and 532 licensed dispensaries operating in Colorado by November 2012. See the introduction at the beginning of this report for more details on the explosion of Colorado's medical marijuana trade.

Findings

National Survey on Drug Use and Health (NSDUH) - Substance Abuse and Mental Health Services Administration (Reports from 2006 through 2011)

- The average reported past month marijuana use for young adults (ages 18-25) in 2011:
  - The national average = **18.78 percent**
  - The Colorado average = **27.26 percent**

  - Colorado was ranked 4th nationally in this age group for marijuana use in the past month

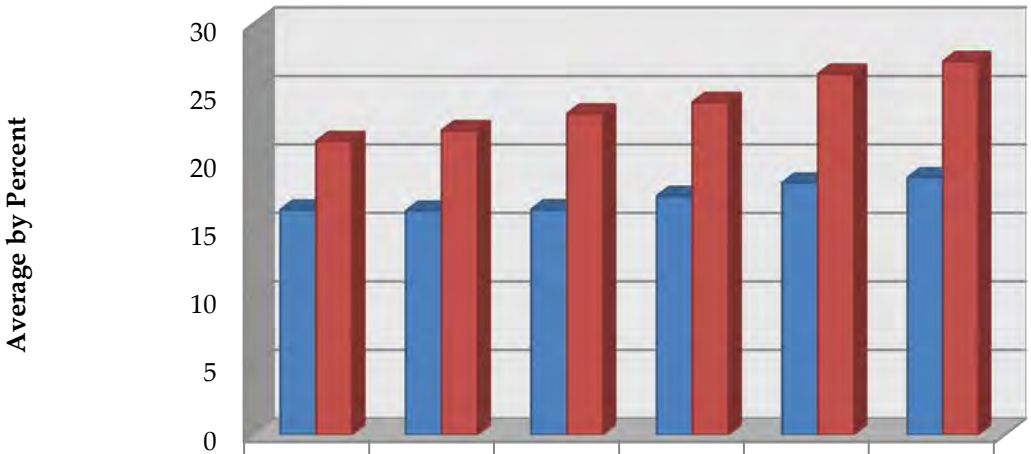
- The average reported past month marijuana use for young adults (ages 18 – 25) in Colorado has increased from **21.43** percent in 2006 to **27.26** percent in 2011. That is a **27** percent increase.

- The average reported past month marijuana use for adults (ages 26+) in 2011:
  - The national average = **4.8 percent**
  - The Colorado average = **8.19 percent**
  - Colorado was ranked 6th nationally in this age group for marijuana use in the past month

- The average reported past month marijuana use for adults (ages 26+) in Colorado has increased from **5.32** percent in 2008 to **8.19** percent in 2011. That is a **54** percent increase.

Data:

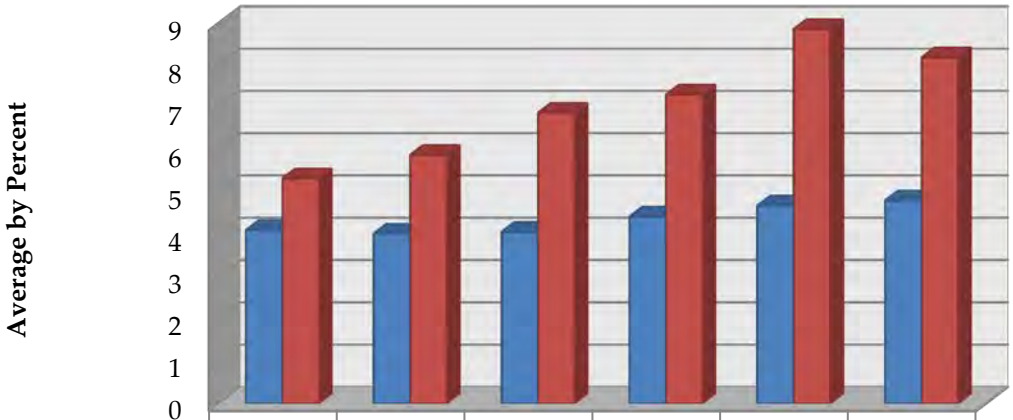
Last 30 Day Use Average, Age 18 - 25, Comparison



	2006	2007	2008	2009	2010	2011
National 18 - 25	16.42	16.34	16.45	17.42	18.39	18.78
Colorado 18 - 25	21.43	22.21	23.44	24.28	26.35	27.26

SOURCE: National Survey on Drug Use and Health

Last 30 Day Use Average, Age 26+, Comparison



	2006	2007	2008	2009	2010	2011
National 26+	4.1	4.02	4.06	4.42	4.68	4.8
Colorado 26+	5.32	5.88	6.88	7.31	8.86	8.19

SOURCE: National Survey on Drug Use and Health

Sources:

[1] National Survey on Drug Use and Health (NSDUH), Substance Abuse and Mental Health Services Administration (reports from 2006 through 2011)

SECTION 4: Colorado Emergency Room – Marijuana Admissions

Introduction:

The following section summarizes emergency room (ER) data related to marijuana and admittance in Colorado. Some of the data comparisons are from 2005 through 2011. Data for 2012, and partial year 2013, was not available for this report. The information compares what will be referred to as the early medical marijuana era (2006 – 2008) and the medical marijuana expansion era (2009 – 2011) in Colorado.

- **2006 – 2008**: There were between 1,000 and 4,800 medical marijuana cardholders and no known dispensaries operating in Colorado.

- **2009 – 2012**: There were over 108,000 medical marijuana cardholders and 532 licensed dispensaries operating in Colorado by November 2012. See the introduction at the beginning of this report for more details on the explosion of Colorado's medical marijuana trade.

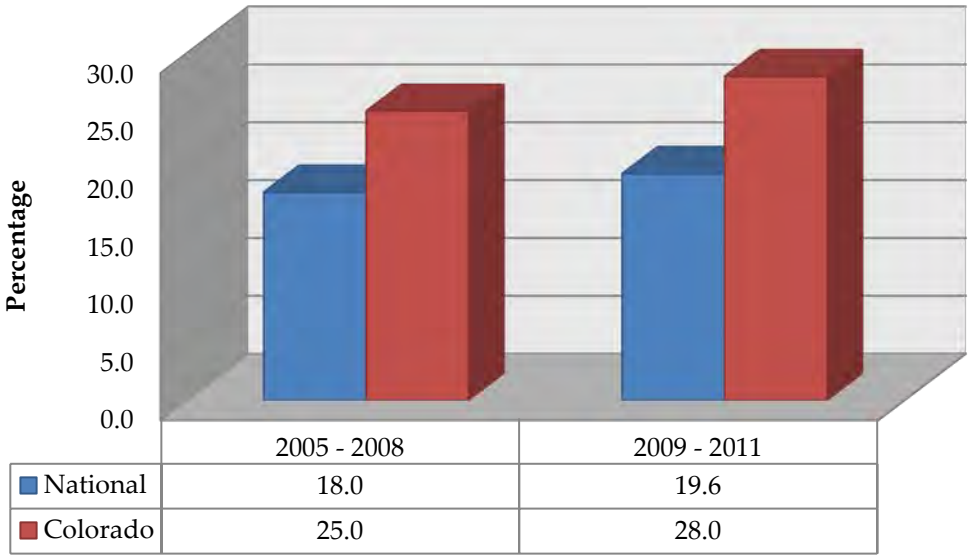
Findings:

- **Drug Abuse Warning Network (Ages 12 – 17) Data:**
  - Colorado ER visits per year <u>related to marijuana only:</u>
    - 2005 – 2008 = **741** average visits per year
    - 2009 – 2011 = **800** average visits per year
  - In 2011, Colorado ER data showed that <u>marijuana-related incidents</u> accounted for **26 percent** of the total ER visits, compared to **21 percent** nationally.

- In 2011, Colorado ER data showed that marijuana-related incidents accounted for **26 percent** of the total emergency room visits. The rate in 2005 was **20 percent**.
- Average percent of ER admissions for marijuana only:
  - 2005-2008 = Nationally – **18 percent**
    Colorado – **25 percent**
  - 2009-2011 = Nationally – **19.6 percent**
    Colorado – **28 percent**

Data:

Youth (ages 12 - 17) Emergency Room Admissions for Marijuana Only*



	2005 - 2008	2009 - 2011
National	18.0	19.6
Colorado	25.0	28.0

SOURCE: SAMSA - The Drug Abuse Warning Network[4]
*Table reflects Denver and Aurora Metropolitan area emergency room data

Note: The age group of 12 - 17 was used in this section due to data from less than 12 years old being "suppressed." This set is suppressed due to not reaching the threshold of 30 or more incidents per year. This is only a fraction of the total emergency room visits that are reportable to DAWN involving drug use or abuse. The numbers reflected in the table are specific only to marijuana.

Related Material:

- **At Children's Hospital in Aurora, Colorado[1] – (Younger than 12 Years):**
  - January 1, 2005 to September 30, 2009, 790 patients younger than 12 were admitted to the emergency room for unintentional ingestions. None were treated for marijuana exposure.[1]
  - October 1, 2009 to December 31, 2011, 588 patients younger than 12 were admitted to the emergency room for unintentional ingestions. Fourteen of them were treated for marijuana exposures. Seven of the exposures were from marijuana-infused food products.[1]

- **Drug Abuse Warning Network – (Adults):**
  - Since 2006, the percentage of young adults (ages 18 - 20) in Colorado admitted to the emergency room for marijuana-related events have remained relatively consistent. The percentage rate has varied between 17 percent and 19 percent of emergency room admissions over a six-year period. The rates with these age groups also widely fluctuated between 2006 and 2011 and don't appear to indicate a trend.
  - A review of ages 21 to 65+ admitted to the emergency room for marijuana-related events showed the percentage to be slightly above the national average. Nationally, the rate was 8.2 percent compared to 9.5 percent for Colorado.

Comments:

"We compared in Colorado the number of kids we saw with marijuana exposures before the 2009 Department of Justice (DOJ) edict that they were not going to pursue users of medical marijuana as long as they were compliant with state laws. We found we didn't see marijuana exposure prior to the DOJ edict, but afterwards when medical marijuana was decriminalized in Colorado, we saw a significant increase in medical marijuana exposures in children."[3]

Genie E. Roosevelt, M.D., Denver Health Medical Center

"The consequences of unintentional marijuana exposure in children should be part of the ongoing debate on the legalization of marijuana."[1]

Study published in JAMA Pediatrics

"In Colorado, the combination of decriminalization medical marijuana and declining federal prosecution was associated with a significant increase in the exposure of young children to marijuana."[1]

Study published in JAMA Pediatrics

Some Case Examples:

The information below represents some cases that have been seen in Colorado ER admittance. These examples are actual cases that demonstrate how some children have been unintentionally exposed to marijuana related products requiring medical attention.

- **12/5/2009**: It is believed that a 4-year-old boy found and ate marijuana edibles at the home of his grandmother. He arrived at Children's Hospital with lethargy and vomiting, testing positive for marijuana in his urine. The victim's grandmother was licensed to use medical marijuana.

  Denver (Colorado) Police Department

- **2/28/2010**: Ten-month-old twins were hospitalized after eating "trail mix" infused with marijuana. The parents had paperwork indicating they were medical marijuana patients.

  Commerce City (Colorado) Police Department

- **2011**: A 5-year-old was found glassy-eyed and slow at home. The father of the child had left a medical marijuana cookie in broken pieces on the counter. The child came to the hospital where she was unsteady even while seated. Her urine drug screen was positive for marijuana.[1]

  Study published in JAMA Pediatrics

- **2011**: A 3-year-old ate marijuana-infused chocolate that was left out. She ingested the entire piece of chocolate and was noted to be very sleepy. She was transferred to another hospital where she was admitted overnight. Her symptoms improved by the following day.[1]

  Study published in JAMA Pediatrics

Sources:

[1] "Pediatric marijuana exposures in a medical marijuana state," Wang, G. MD, Roosevelt, G. MD, MPH; Heard, Kennon, MD, *JAMA Pediatrics,* Vol. 167, No. 7, July 2013, http://archpedi.jamanetwork.com/article.aspx?articleid-1691416 (July 2013)

[2] DAWN data from SAMHSA - Drug Abuse Warning Network

[3] Young, Saundra, CNN medical senior producer, "Unintentional marijuana exposures up in Colorado kids," May 28, 2013, <http://thechart.blogs.cnn.com/2013/05/28/unintentional-marijuana-exposure-up-in-colorado-kids/> (June 2013)

[4] The Drug Abuse Warning Network (DAWN), <http://www.samhsa.gov/data/DAWN.aspx>

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SECTION 5: Colorado Marijuana-Related Exposure Cases

Introduction:

This section provides information regarding marijuana-related exposures that resulted in contact with the Rocky Mountain Poison Center (RMPC), Denver, Colorado. These are self-reported calls in which marijuana was mentioned as a product for human exposure. All reported cases are now reported closed by the RMPC. The data referred to in this section is from the RMPC and American Association of Poison Control Centers (AAPCC).

The data comparisons will be from 2002 through 2011. The information compares what will be referred to as the early medical marijuana era (2006 – 2008) and the medical marijuana expansion era (2009 – 2011) in Colorado.

- **2006 – 2008**: There were between 1,000 and 4,800 medical marijuana cardholders and no known dispensaries operating in Colorado.

- **2009 – 2012**: There were over 108,000 medical marijuana cardholders and 532 licensed dispensaries operating in Colorado by November 2012. See the introduction at the beginning of this report for more details on the explosion of Colorado's medical marijuana trade.

Findings

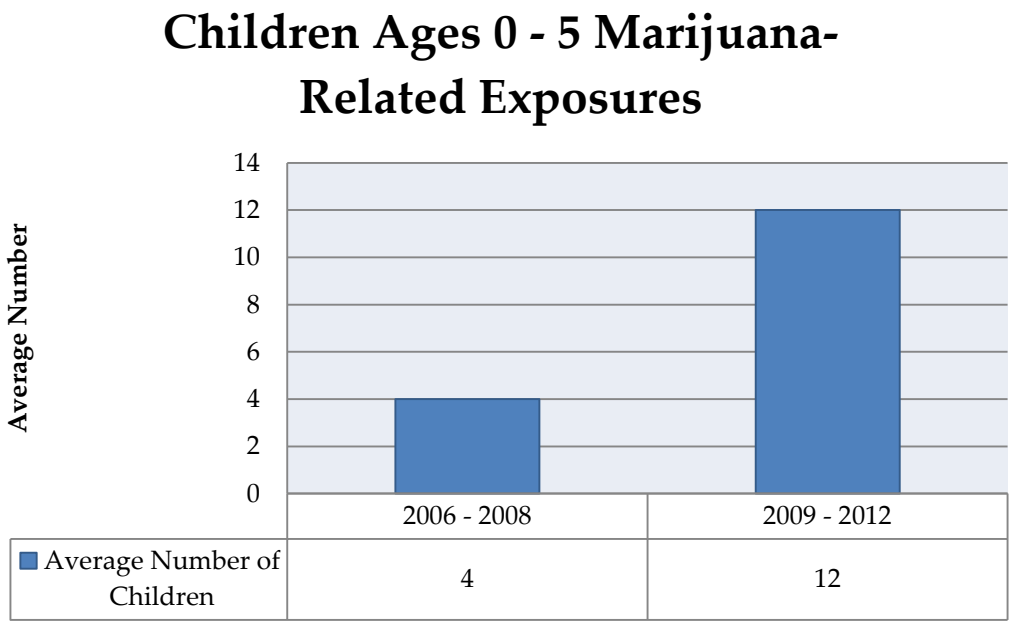
- **Young children (ages 0 to 5) marijuana-related exposures in Colorado**
  - During the years 2006 – 2008, the average number of marijuana-related exposures for ages 0 to 5 was **4** per year.[1]
  - For the years 2009 – 2012, the average number of marijuana-related exposures for ages 0 to 5 was **12** per year.[1]
    - This is a **200** percent increase.

- **Percent of total marijuana-related exposures involving children ages 0 -5 years**
  - From 2006 – 2008, a yearly average of **7 percent**[1] of all Colorado marijuana-related exposures were children ages 0 – 5 years. That average is twice the national average of **3.5 percent**.[2]
  - From 2009 – 2011, a yearly average of **16.2 percent**[1] of all Colorado marijuana-related exposures were children ages 0 – 5 years. That average more than doubled the 2006 – 2008 rate of **7 percent** and was triple the national average of **5 percent**.[2]

- **Colorado marijuana-related exposure all ages**
  - The annual average reported in Colorado marijuana-related exposure cases for all ages for 2006 – 2008 was **57** compared to an average of **73.**6 for 2009 - 2011.[1] This is an increase of **29 percent**.

- **All ages Colorado marijuana-related exposures**
  - The annual average Colorado marijuana-related exposure cases for all age groups in 2006 – 2008 compared to 2009 – 2011 increased except ages 18 – 25 years.
    - Ages 0 – 5 = **200 percent** increase
    - Ages 6 – 12 = **60 percent** increase
    - Ages 13 – 14 = **92 percent** increase
    - Ages 15 – 18 = **7 percent** increase
    - Ages 18 – 25 = **28 percent** decrease
    - Age 26+ = **69 percent** increase

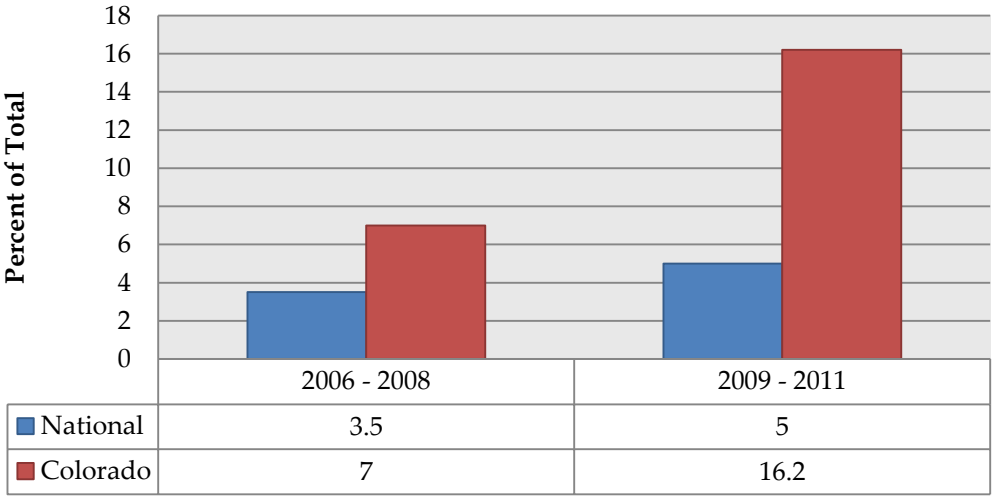
Data:



SOURCE: Rocky Mountain Poison Center[1]

NOTE: There are exposures that may go unreported to the poison control centers. The data is not intended to assume every incident of exposure to marijuana was reported to the RMPC.

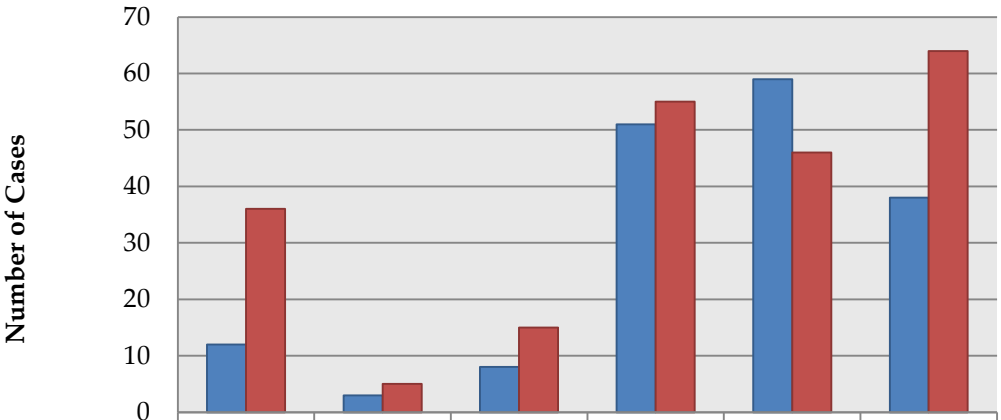
Average Percent of Marijuana-Related Exposures Attributed to Children Ages 0 - 5



	2006 - 2008	2009 - 2011
National	3.5	5
Colorado	7	16.2

SOURCES: Rocky Mountain Poison Center Data[1]
American Association of Poison Control Centers[2]

Colorado Marijuana-Related Exposures



	0-5 yrs.	6-12 yrs.	13-14 yrs.	15-18 yrs.	18-25 yrs.	26+
2006 - 2008	12	3	8	51	59	38
2009-2011	36	5	15	55	46	64

SOURCES: Rocky Mountain Poison Center Data[1]
American Association of Poison Control Centers[2]

Sources:

[1] Rocky Mountain Poison Center, *Annual Reports*, 2006 – 2011

[2] American Association of Poison Control Centers (AAPCC), *Annual Reports*,-2006-2011, <http://www.aapcc.org/annual-reports/> (July 2013)

SECTION 6: Diversion of Colorado Marijuana (General)

Introduction

This section examines whether Colorado's legalized medical marijuana industry and the recent legalization for recreational use has established Colorado as a source state for marijuana for other parts of the country. There is no mandatory process for law enforcement to report either the seizure or the source of the marijuana. Rocky Mountain High Intensity Drug Trafficking Area (RMHIDTA) contacted some law enforcement entities and requested voluntary reporting on those instances in which Colorado marijuana was seized in their jurisdiction. Only those cases that were completed and are a matter of public record were used in this report. This excluded open or long-term, major investigations involving marijuana trafficking out of Colorado. This section is an addition to the RMHIDTA August 2012 report *Colorado's Medical" Marijuana: Are Regulations Working or is "Medical" Marijuana Being Diverted?* found on www.rmhidta.org/reports. This section is divided into two subsections:

- Interdictions resulting in seizure of marijuana from Colorado
- Investigations resulting in seizure of marijuana from Colorado

The information compares the early medical marijuana era (2006 – 2008) and the medical marijuana expansion era (2009 – 2011) in Colorado. The recreational marijuana era begins in 2013 and includes some examples from that six-month period.

- **2006 – 2008**: There were between 1,000 and 4,800 medical marijuana cardholders and no known dispensaries operating in Colorado.

- **2009 – 2012**: There were over 108,000 medical marijuana cardholders and 532 licensed dispensaries operating in Colorado by November 2012. See the introduction at the beginning of this report for more details on the explosion of Colorado's medical marijuana trade.

Findings:

El Paso Intelligence Center (EPIC) has established the National Seizure System (NSS) for voluntary reporting interdiction seizures throughout the country. Many state highway patrols have done a good job reporting their highway seizures. RMHIDTA was able to identify the number of interdiction seizures involving marijuana from Colorado destined for other states in the country.

- In 2012, there were **274** Colorado marijuana interdiction seizures destined for other states compared to **54** in 2005. This is a **407 percent** increase.[1]

- Of the 274 seizures in 2012, there were **37** different states destined to receive marijuana from Colorado. The most common destinations were Kansas (37), Missouri (30), Illinois (22) Texas (18), Wisconsin (18), Florida (16) and Nebraska (13). There were some seizures in which the destination state was unknown.[1]

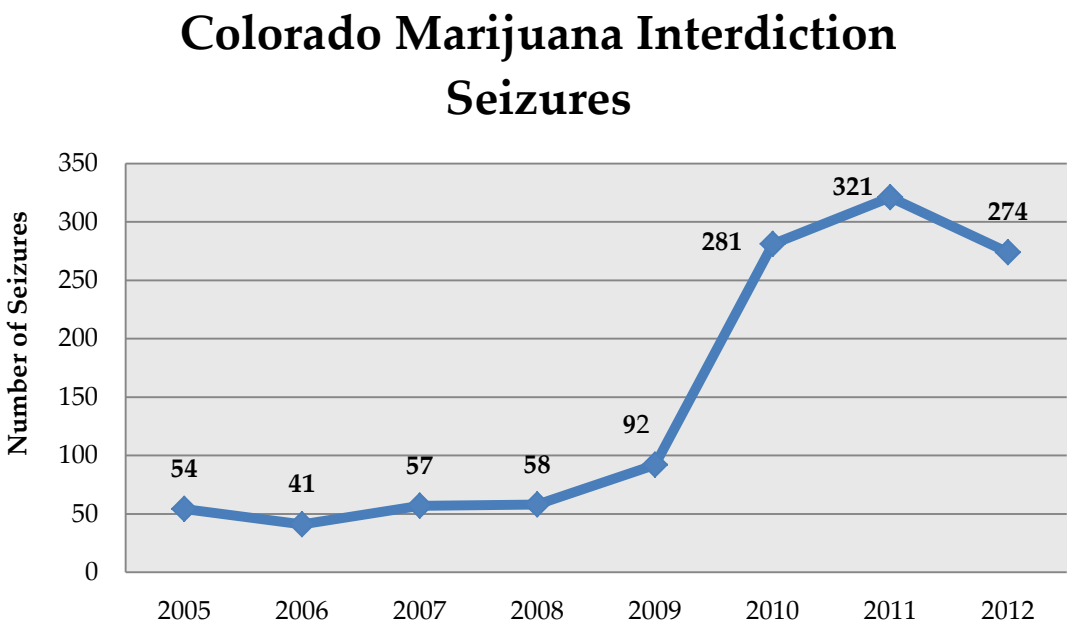
- From 2005 – 2008, compared to 2009 – 2012, the average number of interdiction seizures per year involving Colorado marijuana more than quadrupled from **52.2** to **242**.[1]

- From 2005 - 2008, compared to 2009 – 2012, the total average number of pounds of Colorado marijuana seized from interdictions increased **77** percent from an average of **2,220** pounds to **3,937**.[1]

- In 2012, there were **7,008** pounds of Colorado marijuana seized by interdictions that were destined for other states in the country.[1]

- The top three Colorado counties identified as the source for the marijuana in 2012 were Denver (141), Boulder (27) and El Paso (24).[1]

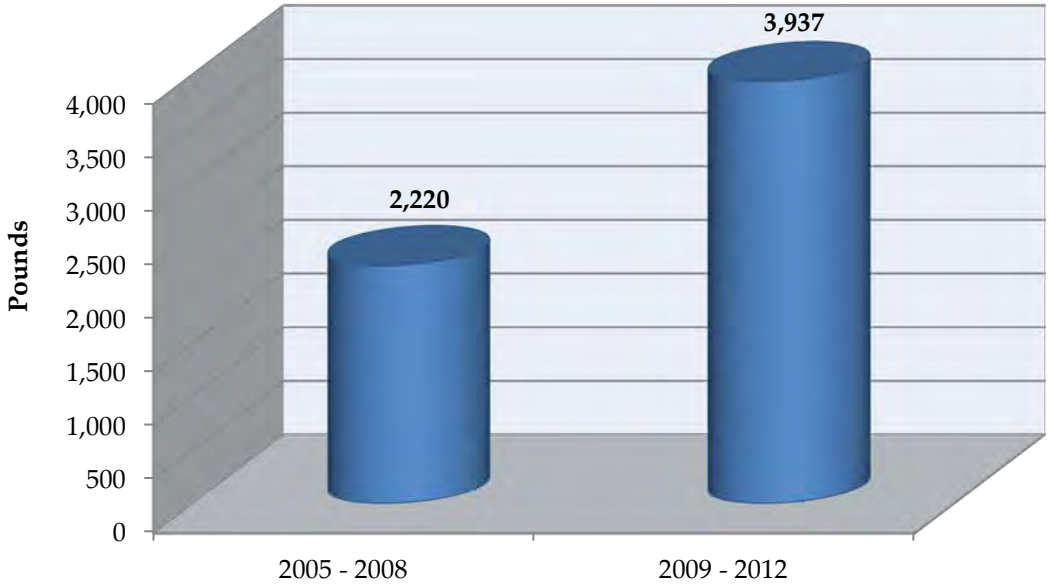
Data



SOURCE: El Paso Intelligence Center, National Seizure System

NOTE: This only includes those cases in which Colorado marijuana was actually seized and reported. It is unknown how many Colorado marijuana loads were not detected or, if seized, were not reported.

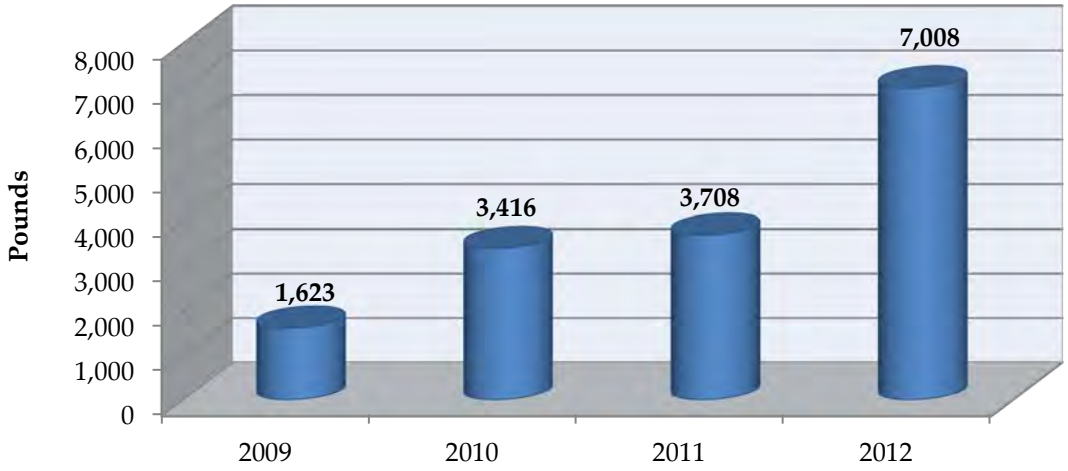
Average Pounds of Colorado Marijuana from Interdiction Seizures



SOURCE: El Paso Intelligence Center, National Seizure System

NOTE: This only includes those cases in which Colorado marijuana was actually seized and reported. It is unknown how many Colorado marijuana loads were not detected or, if seized, were not reported.

Pounds of Colorado Marijuana from Interdiction Seizures

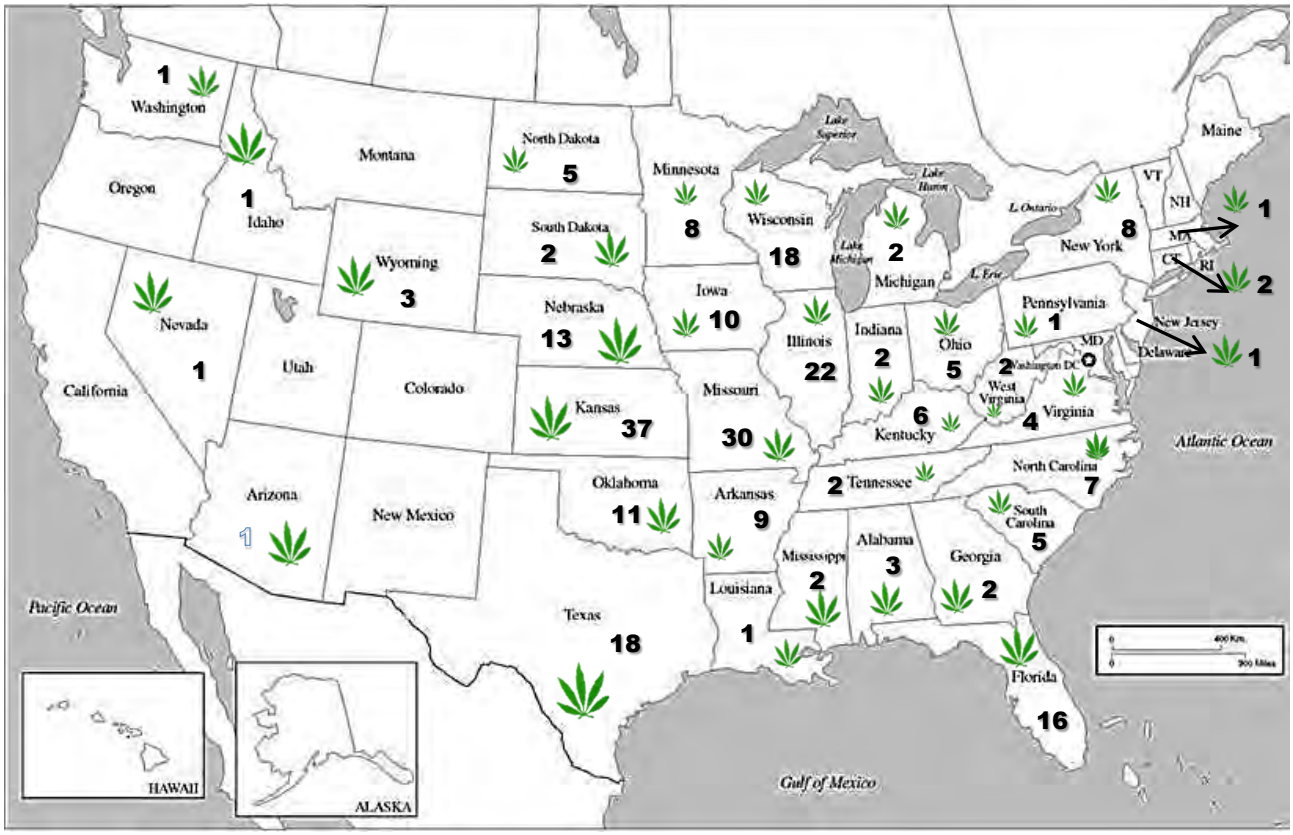


SOURCE: El Paso Intelligence Center, National Seizure System

NOTE: This only includes those cases in which Colorado marijuana was actually seized and reported. It is unknown how many Colorado marijuana loads were not detected or, if seized, were not reported.

States to Which Colorado Marijuana Was Destined (2012)

(Total Reported Incidents Per State)



SOURCE: El Paso Intelligence Center, National Seizure System

Some Examples of Interdictions:

San Diego Grow Operation Moves to Colorado: On April 26, 2012, an Arizona Highway Patrol officer stopped a vehicle for a traffic violation. Subsequent to this stop, the officer seized 110 marijuana plants in greenhouse-type planters with illuminating lights. The officer arrested the female driver who admitted she was transporting the marijuana from an associate's grow operation in San Diego, CALIFORNIA to Colorado. The driver admitted to having a Colorado medical marijuana registry card for her migraine headaches and ankle problems.

Quarter Million Dollars to Colorado: On May 23, 2012, a Kansas Highway Patrol officer conducted a traffic stop on a vehicle that was westbound on Interstate 70. The driver stated that he was coming from Kansas City, **MISSOURI** and was traveling to Denver, CO. In the conversation with the officer, the driver discussed his intent to buy a horse trailer. The driver showed the officer approximately $3,000 that he had on his person, all in $20 and $100 bills. A subsequent search of the pick-up truck revealed close to a quarter million dollars wrapped in 49 separate cellophane bundles and hidden in the tailgate of the pick-up truck. The driver denied ownership of the over $247,000 but agreed that the $3,000 was his.

Colorado Source for College Baseball Team: On January 4, 2013, South Dakota State Patrol stopped a vehicle on Interstate 90 and seized 1 pound of marijuana. The individuals in the vehicle stated they were bringing the marijuana back from Colorado to **SOUTH DAKOTA** for their college baseball teammates.

102 Pounds to Orlando, FL: On January 24, 2013, Kansas Highway Patrol stopped a vehicle traveling on Interstate 70. A subsequent search of the vehicle revealed 102 pounds of marijuana from Denver, CO destined for Orlando, **FLORIDA**.

Dispensary Owner Pays for Delivery Trips to Omaha (Nebraska): On April 28, 2013, a Nebraska State Patrol officer stopped a vehicle for a traffic violation. The officer subsequently discovered a 1 pound vacuum-sealed bag of marijuana. The driver admitted to transporting marijuana to Omaha, **NEBRASKA** for $200 per trip. He stated that a Boulder, Colorado medical marijuana dispensary owner provided him with the marijuana and paid him for the delivery.

Boulder (Colorado) Marijuana to Kentucky: On January 11, 2012, Kansas Highway Patrol stopped a vehicle for a traffic violation on Interstate 80. The driver had come from Salt Lake City, Utah and was headed to Louisville, **KENTUCKY**. A search of the vehicle resulted in 30 pounds of marijuana being seized. The driver admitted that en route to Kentucky from Utah he had stopped in Boulder, Colorado to pick up the 30 pounds of marijuana.

Quarter Ton of Colorado Marijuana Destined for Wisconsin: On January 10, 2013, Nebraska State Patrol stopped a vehicle on Interstate 80. Patrol seized 476 pounds of marijuana from Colorado that was destined for **WISCONSIN**.

Arkansas Seizes 241 Pounds of Marijuana: On March 20, 2012, Arkansas State Police stopped a vehicle on Interstate 40 for a traffic violation. The vehicle left Denver,

Colorado and was en route to Little Rock, **ARKANSAS**. A search revealed 241 pounds of marijuana in multiple duffle bags.

Grown in Colorado – Sold in Missouri: In May 2012, Kansas Highway Patrol stopped a vehicle traveling from Denver, Colorado to St. Louis, **MISSOURI**. During the search of the vehicle, officers discovered 5 pounds of marijuana. The driver admitted he grew the marijuana on his Colorado marijuana permit and was delivering it to Missouri for cash.

Marijuana Edibles Destined for Texas: On February 19, 2013, Texas Highway Patrol stopped a vehicle from Denver, Colorado destined for Richardson, **TEXAS**. A search of the vehicle revealed multiple drugs including 1.95 pounds of marijuana in seven different bags. Also found was four containers with marijuana butter, popcorn, drinks and baked cookies.

Colorado Marijuana to Virginia Beach, Virginia: On September 18, 2012, Kansas Highway Patrol stopped a vehicle on Interstate 70 for a traffic violation. A subsequent search revealed 38-1/2 pounds of marijuana packaged and sealed in gallon-size plastic bags. The driver was going to Virginia Beach, **VIRGINIA** from Colorado Springs, Colorado.

Colorado Marijuana Plants to Michigan: On April 19, 2012, a Nebraska Highway Patrol officer stopped a vehicle for a traffic violation. The officer subsequently discovered four containers with 73 marijuana plants in the trunk of the vehicle. The driver admitted he had purchased the plants in Colorado and was taking them back to **MICHIGAN** to grow marijuana and distribute to his "patients."

$70,000 in Cash to Colorado: On June 17, 2012, a Kansas Highway Patrol Officer stopped a vehicle on Interstate 70 for a traffic violation. The passenger and driver stated they were going to Colorado from Wichita, **KANSAS,** "just going to see the mountains," but had no specific destination. The driver was unemployed and the passenger was a minimum-wage waiter. The vehicle did not belong to either. A search revealed $70,000 in bundles ($10,000 per bundle). The driver and passenger denied knowledge of the money. The passenger stated the money must have been placed in the car when they were trading vehicles out.

Seven Dispensaries in a Week: In January 2012, Nebraska State Patrol stopped a vehicle traveling from Denver, Colorado to Sioux City, **IOWA**. During the search troopers discovered 1.75 pounds of marijuana. The driver admitted to having a

Colorado medical marijuana card and visiting up to seven dispensaries throughout the week.

Colorado Marijuana Edibles to Idaho: On March 10, 2012, a Wyoming Highway Patrol officer stopped a vehicle in southwest Wyoming en route to **IDAHO**. The driver of the vehicle was placed under arrest for driving under the influence of marijuana. A subsequent search revealed that the driver had purchased a quantity of high-grade medical marijuana as well as marijuana brownies and candy. The labels showed that these products came from a medical marijuana store in Colorado. The driver stated that she did not purchase the items directly from the store but a friend had purchased them for her.

Stuck in Snow: On February 26, 2013, Nebraska State Patrol responded to a vehicle that was stuck in the snow along Interstate 80. A strong odor of marijuana was emanating from the vehicle resulting in the seizure of 9.6 pounds of marijuana. The vehicle was coming from Denver, Colorado and destined for Chicago, **ILLINOIS**.

Marijuana Candy to Oklahoma: On March 22, 2013, a Texas Highway Patrol officer stopped a vehicle for a traffic violation. A subsequent search of the vehicle revealed 2.1 pounds of marijuana candy in the trunk from Denver, Colorado destined for Midwest City, **OKLAHOMA**.

Dispensary Marijuana to South Dakota: In February 2012, a Colorado state trooper stopped a vehicle traveling eastbound on Interstate 76. Approximately 7 pounds of marijuana was found in the vehicle. Some of the marijuana was marked with dispensary labels. The driver was transporting the marijuana from Colorado to **SOUTH DAKOTA**.

Texas Interdicts Colorado Marijuana Destined for Alabama: On March 9, 2012, Texas Highway Patrol officers stopped a vehicle on Interstate 40 for a traffic violation. The driver was going from Greeley, Colorado to Guntersville, **ALABAMA** with 13 pounds of marijuana and 2 pounds of hashish.

Marijuana and Hashish Destined for Wisconsin: On February 19, 2012, a Nebraska State Patrol trooper stopped a vehicle on Interstate 80 for a traffic violation. A subsequent search of the vehicle revealed close to 5 pounds of marijuana contained in ten bags and two jars. Also found was solid hashish and marijuana butter. The driver originated in Colorado Springs, Colorado and was driving to **WISCONSIN**.

Some Examples of Investigations:

The Silver Lizard Dispensary Dismantled: In August 2012, law enforcement working with the Colorado Attorney General's Office, obtained indictments against the Silver Lizard medical marijuana dispensary and members involved in a multi-state drug-trafficking operation. The indictment revealed that medical marijuana was illegally sold from the dispensary and distributed to **ARIZONA, FLORIDA, INDIANA, IOWA, LOUISIANA, MARYLAND, MASSACHUSETTS, NEW MEXICO OREGON, SOUTH DAKOTA, TENNESSEE, TEXAS, VIRGINIA,** and the **DISTRICT OF COLUMBIA**. One of the associates is accused of transporting approximately 100 pounds of marijuana from Colorado to Iowa. The owner of the Silver Lizard was arrested for selling dispensary marijuana to undercover law enforcement officers.

Twelve Indicted on Medical Marijuana Dispensary Scam: **COLORADO** law enforcement, working with the Colorado Attorney General's Office, indicted twelve individuals for various violations involving three medical marijuana dispensaries. It was revealed the dispensaries were fronts for investment scams and illegal marijuana growing operations. The owner of the dispensary and several business partners, including a local lawyer and doctor, were indicted. Charges included racketeering, marijuana cultivation and distribution, money laundering, securities fraud, tax evasion, forgery and attempting to influence a public servant. Two of the dispensaries were in Denver and one was in Lakewood, **COLORADO**.

Dispensary "Patient" Sells Fifty Percent of His Dispensary Marijuana to Juveniles: On May 31, 2012, North Metro Task Force executed a residential search warrant in Thornton, **COLORADO** where a 19-year-old male was selling marijuana. The suspect admitted to selling marijuana for two years but recently expanded his business after getting his medical marijuana card. He stated that he gets the marijuana he sells from a dispensary in the Denver Metro area. The suspect admitted he purchases approximately 5 to 6 ounces of marijuana per week. He sells 60 percent while using or sharing the other 40 percent. He estimated that his profit is approximately 30 percent. He admitted to three to four drug sales per day, seven days per week. He also stated that 50 percent of these sales are directly to juveniles. He said dispensary marijuana is easy to get and is of high quality.

Impaired Driver Cites Ease of Getting Dispensary Marijuana: In April 2012, the Thornton Police Department (**COLORADO**) contacted a driver who admitted to smoking marijuana while driving. She failed voluntary roadside tests and was arrested. During a search of her vehicle officers found 3 ounces of marijuana with dispensary stickers. In

an interview she admitted she does not have a medical marijuana card. She stands in front of dispensaries and asks people to buy her marijuana. She admitted that she had done this multiple times and had never gone away empty handed. When asked why she goes to dispensaries, she stated that the marijuana is better but the main reason was availability. She said she never had to wait more than two hours to get a couple ounces of marijuana. Conversely, when she was buying from other sources she sometimes would have to wait and never get what she wanted. She noted the ease and certainty of buying marijuana has made using dispensaries well worth it.

Colorado Springs (Colorado) Dispensary Marijuana in Pennsylvania: In 2012, Colorado Springs Police Department initiated an undercover investigation working with **PENNSYLVANIA** authorities. The case resulted in a Pennsylvania undercover agent purchasing several pounds of marijuana from the trafficker. When arrested, the dealer admitted that his main source of supply was the manager of a medical marijuana dispensary in Colorado Springs, Colorado. This dealer also indicated multiple locations in **ARIZONA** and **KANSAS** where this individual was diverting dispensary marijuana.

Colorado Marijuana Flown to Atchison, Kansas: In April 2013, the Atchison (**KANSAS**) Police Department recovered 42 pounds of high-grade marijuana flown in a private aircraft from Larimer County, Colorado to the Atchison Airport. Investigators arrested the pilot and three passengers. A subsequent investigation revealed the marijuana came from a grow operation in Ft. Collins, Colorado that was involved with the medical marijuana industry.

"Patient" Sells Medical Marijuana to Undercover Agent: In June 2012, North Metro Task Force served a search warrant at a mobile home in Broomfield, **COLORADO**. Multiple undercover marijuana purchases were made from three individuals living at the location. One subject claimed to be a medical marijuana patient. Multiple receipts for marijuana purchases from two different medical marijuana dispensaries in Northglenn, Colorado were located. The primary marijuana supply was noted to be from the two dispensaries.

Northern Colorado Marijuana Distributed in Mississippi: A Colorado parolee was arrested in Mississippi with 6 pounds of marijuana. During the interview the parolee admitted that the marijuana was grown in the Loveland/Greely area of Colorado. He also admitted that he had originally brought 20 pounds of marijuana but already had distributed 14 pounds in Gulf Port, Mississippi. According to the parolee, he had access to two Colorado grow operations and was transporting 20 pounds of marijuana a week for distribution in **MISSISSIPPI**.

Distribution of Colorado Medical Marijuana in Wyoming: In 2012, the Northeast Enforcement Team (NEET) in Wyoming arrested an individual involved in the distribution of marijuana in Gillette, **WYOMING**. He admitted to obtaining 68 ounces of marijuana during a two-month period from a Ft. Collins, Colorado source who was legally allowed to grow marijuana for dispensaries in Colorado.

Kansas Individuals Trafficking Marijuana from Colorado Springs (Colorado): In 2013, **KANSAS** law enforcement was involved in an investigation of several individuals for transportation and distribution of marijuana and methamphetamine. Their primary source of supply for marijuana was an employee of a marijuana dispensary in Colorado Springs, Colorado.

Related Material or Comments

In a press release dated August 13, 2012, **Colorado Attorney General John Suthers** stated, "It is becoming clear that as predicted in the 2010 legislative hearings, Colorado is becoming a significant exporter of marijuana to the rest of the country."

A 2011 report from the **Drug Enforcement Administration – Denver Field Division** states, "Colorado's medical marijuana system allows for a widespread exportation and illicit marijuana distribution…. Colorado is on track to become a primary source of supply for high-grade marijuana throughout the country."[2]

Nebraska State Patrol Sergeant Dana Korell: "Marijuana out of Colorado is having a local impact. It is flooding, just flooding the marketplace. It's everywhere."[3]

Cheyenne County (Nebraska) Sheriff John Jensen claims legalizing marijuana in Colorado changed local drug trafficking in a way not seen in his seventeen years in law enforcement. "Now you have dispensaries, you have grow houses in our neighboring states that are growing a much better product." "Now we're getting the high-grade marijuana" coming across the border.[3]

The Intelligence Center's analysis of the illegal drug market in the **Midwest High Intensity Drug Trafficking Area**, which includes Nebraska, found "demand for high-potency marijuana has increased during the last three years, fueling both increased indoor hydroponic grows and importation from California and Colorado."[4]

"A KHP (Kansas Highway Patrol) analysis of those 133 felony pot trafficking cases in early 2013 showed 79 seizures were of Colorado marijuana, with California weed next in 35 incidents."[5]

"With the heavy clang of brass against iron, **Deuel County (Nebraska) Sheriff Adam Hayward** unlocks a massive door securing what once was the basement jail in the Deuel County Courthouse in Nebraska. 'It smells like marijuana here,' Hayward noted, and there is no doubt he is correct. The odor of damp vegetation hangs in the air. The new strains of pot have a powerful musty scent that makes it easy for law enforcement to identify who is carrying large quantities. Opening up a military-green file cabinet he picks up a pair of the sealed evidence bags filled with items taken from out-of-staters and local residents who had their travels interrupted by a member of the sheriff's department or the Nebraska State Patrol. 'This is all from Colorado.'"[4]

Sources

[1] El Paso Intelligence Center, National Seizure System, 2005 – 2012.

[2] Rocky Mountain High Intensity Drug Trafficking Area, "*Colorado's "Medical" Marijuana Industry: Are Regulations Working?*", July 2012

[3] Kelly, Bill "Colorado's Medical Marijuana is Headache for Nebraska Law Enforcement", March 6, 2013, <http://netnebraska.org/article/news/colorados-medical-marijuana-headache-nebraska-law-enforcement> (July 2, 2013)

[4] Kelly, Bill "Legal Pot Next Door: First Marijuana Dispensary on the Border Eyed by Nebraskans", June 25, 2013,< http://netnebraska.org/article/news/legal-pot-next-door-first-marijuana-dispensary-border-eyed-nebraskans> (July 2, 2013)

[5] Hegeman, Roxana, Associated Press reporter, "Kansas at crossroads of marijuana trafficking", *The Kansas City Star*, July 28, 2013, <http://www.kansascity.com/2013/07/27/4372038/Kansas-at-crossroads-of-marijuana.html> (July 2013)

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SECTION 7: Diversion of Colorado Marijuana (Postal Packages)

Introduction:

This section examines whether Colorado's legalized medical marijuana industry and the recent legalization of marijuana for recreational use has established Colorado as a source state for marijuana for other parts of the country. The use of parcel packages as a drug smuggling method has gained popularity with drug traffickers. Parcel packages are used to ship both drugs and drug proceeds between the drug traffickers and their clients. The tracking of seizure data from the United States Postal Inspection Service (USPIS) began in the fourth quarter of 2009. Only partial data is currently available for 2013.

The data spans from 2009 through 2012, which is referred to as the medical marijuana expansion era in Colorado. The recreational marijuana era begins in 2013 and there are some examples from that six-month period.

- **2006 – 2008**: There were between 1,000 and 4,800 medical marijuana cardholders and no known dispensaries operating in Colorado.

- **2009 – 2012**: There were over 108,000 medical marijuana cardholders and 532 licensed dispensaries operating in Colorado by November 2012. See the introduction at the beginning of this report for more details on the explosion of Colorado's medical marijuana trade.

Findings:

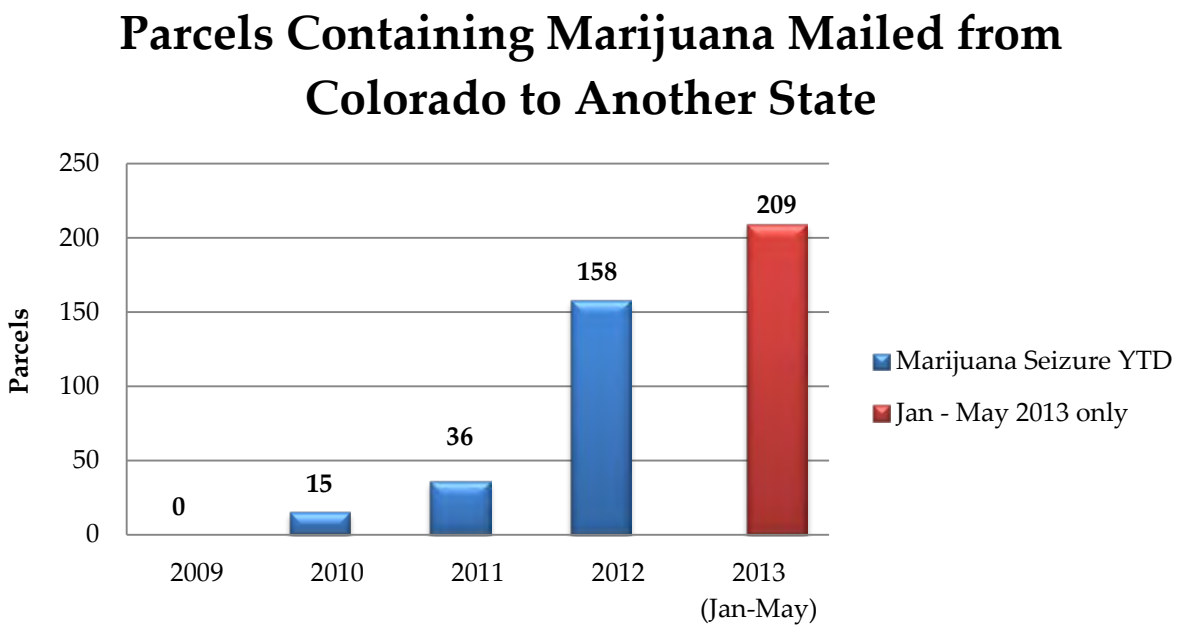
United States Postal Inspection Service (USPIS) "Prohibited Mailing of Narcotics" (PMN) drug database:[1] This database does not capture parcels with smaller amounts of marijuana which are handled administratively.

- From 2010 - 2013, the number of intercepted parcel packages of marijuana from Colorado, has increased each year:
  - 2010: **15** parcels
  - 2011: **36** parcels
  - 2012: **158** parcels
    - Over ten times the number seized in 2010
  - 2013: **209** parcels – only as of May 2013 (five months)

- From 2010 - 2012 the total pounds of marijuana seized from packages mailed from Colorado has increased each year:
  - In 2010: total of **57** pounds were seized
  - In 2011: total of **68** pounds were seized
  - In 2012: total of **262** pounds were seized
    - Nearly five times the amount seized in 2010
  - In 2013: **205** pounds have been seized – as of May 2013 (five months)

- Between 2010 and 2012, the number of states destined to receive marijuana mailed from Colorado has increased each year
  - In 2010 – **10** states
  - In 2011 – **24** states
  - In 2012 – **29** states
  - In 2013 – **23** states in only the first three months

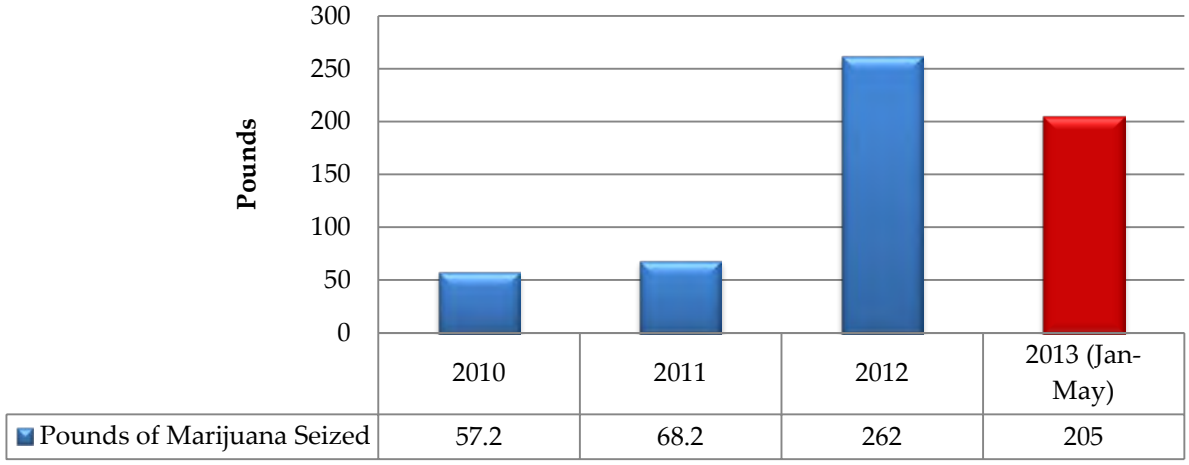
Data:



SOURCE: United States Postal Inspection Service – Prohibited Mailing of Narcotics

NOTE: These figures only reflect packages seized. They do not count packages of Colorado marijuana that were mailed and reached the intended destination.

Pounds of Colorado Marijuana Seized by the U.S. Postal Inspection Service



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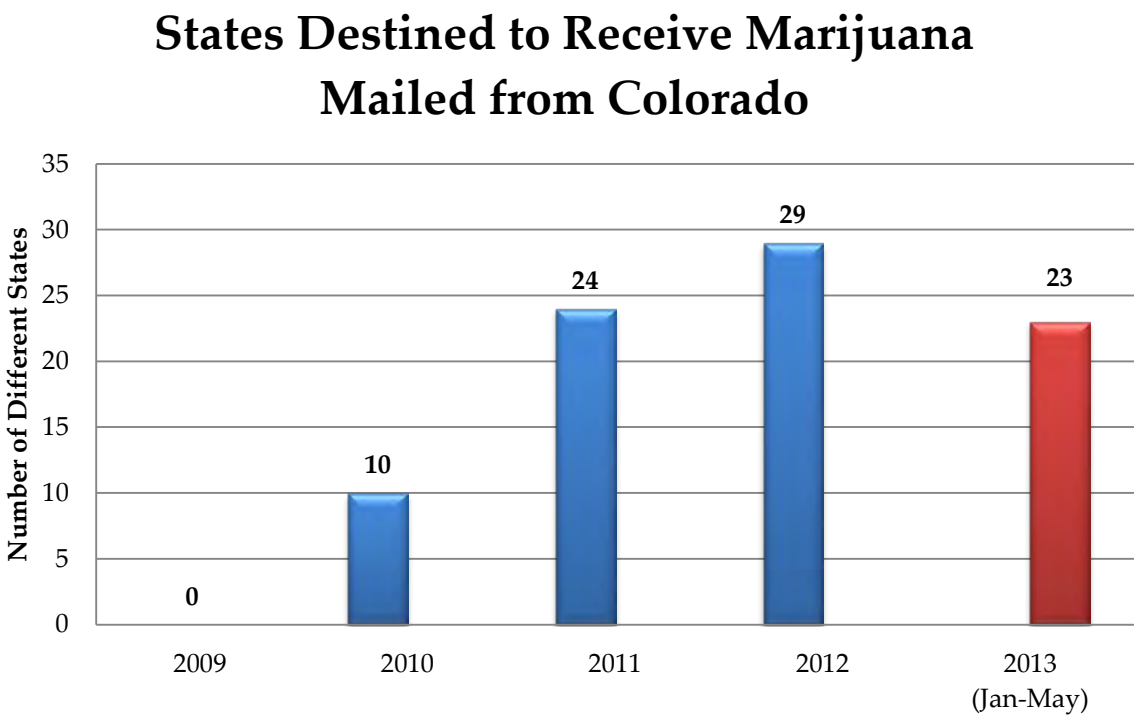


SOURCE: United States Postal Inspection Service – Prohibited Mailing of Narcotics

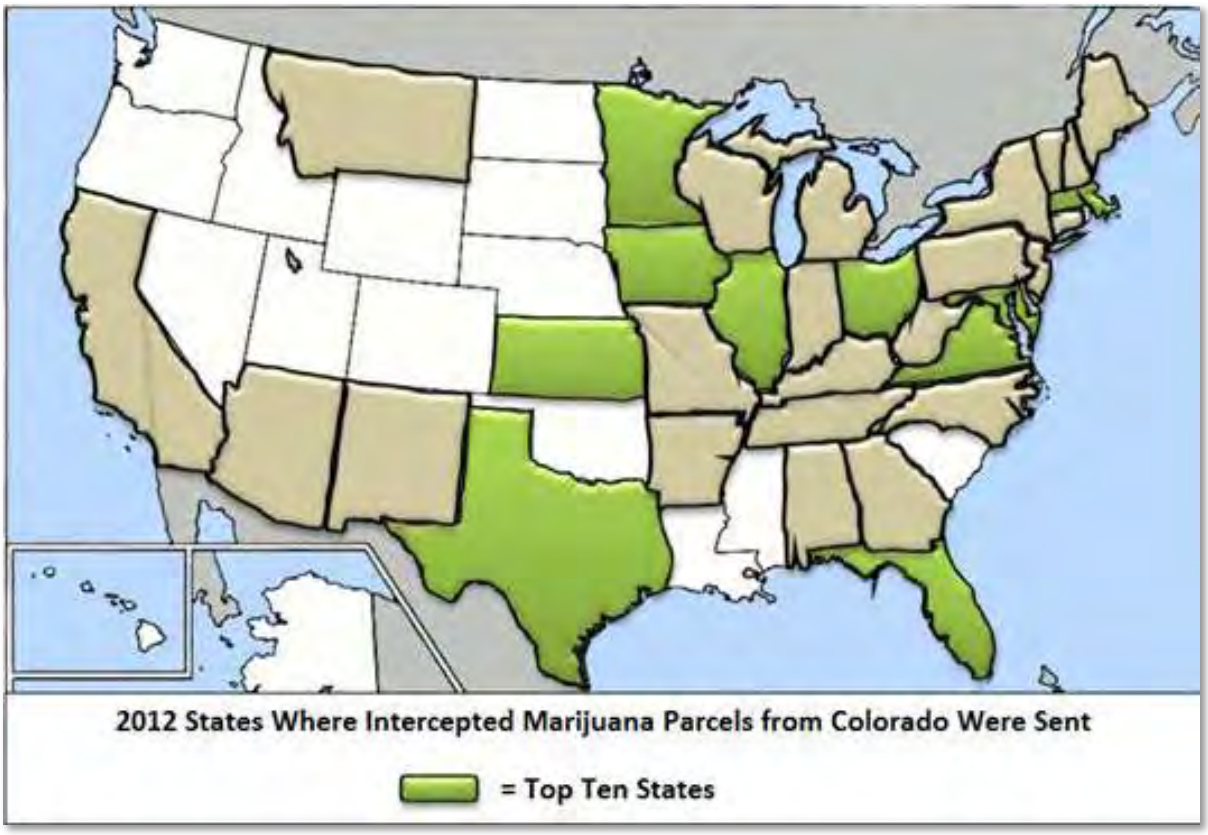
NOTE: When a state is destined to receive more than one package, it is only counted once.

Related Material:

Shipments of marijuana from Colorado generally are destined for locations east of Colorado. According to the PMN data, in 2012:

- **The 2012 top ten states where intercepted marijuana parcels from Colorado were destined:**

1. Illinois
2. Texas
3. Florida
4. Ohio
5. Minnesota
6. Maryland
7. Iowa
8. Massachusetts
9. Kansas
10. Virginia



Some Case Examples:

Over 100 Pounds Mailed from Aurora, CO: On December 27, 2012, USPIS and Aurora (Colorado) Police Department arrested three persons for cultivation and distribution of marijuana from Aurora. Law enforcement executed search warrants and seized $95,000 in cash, 500 mature marijuana plants and 10 pounds of bulk marijuana. These medical marijuana cardholders were responsible for distributing over 100 pounds of marijuana to various cities throughout the United States. The USPIS was able to identify over 100 Express Mail Service mailings associated with this group as well as the seizure of outbound marijuana and inbound cash payments.

Arvada, Colorado to Warrensburg, MO: January 10, 2013, a parcel package was intercepted at a mail facility in Warrensburg, **MISSOURI**. The package, containing .99 pounds of marijuana, originated from Arvada, Colorado. A follow up investigation was conducted.[2]

High-Grade Colorado Marijuana Mailed to West Virginia and Tennessee: On January 18, 2013, USPIS, working with the Northern Colorado Drug Task Force, arrested three subjects for cultivation and distribution of marijuana. These medical marijuana cardholders developed a network mailing high-grade marijuana from Colorado to **WEST VIRGINIA** and **TENNESSEE**. They received the money from the sales back through the U.S. mail. Law enforcement served a search warrant in Fort Collins, Colorado, locating two marijuana grows, seizing over 150 marijuana plants and $25,000 in cash.

Aurora, Colorado to Kansas City, Missouri: January 10, 2013, a postal package was intercepted containing .63 pounds of marijuana. When the addressee was contacted, the individual denied knowledge of the package. The package originated in Aurora, Colorado with a Kansas City, **MISSOURI** destination.[2]

Breckenridge, Colorado to Bonner Springs, Kansas: January 31, 2013, a package was intercepted at a mail facility that originated in Breckenridge, Colorado with a destination of Bonner Springs, **KANSAS**. The package contained 9 pounds of marijuana.[1]

Aurora, Colorado to Milwaukee, Wisconsin: February 1, 2013, a package was intercepted at a mail facility in Milwaukee, **WISCONSIN** that contained 2.48 pounds of marijuana. The origination address was Aurora, Colorado with a destination address of Milwaukee, WISCONSIN.[2]

Ten Arrested Shipping Marijuana: During a one-week period, USPIS and Summit County (Colorado) Sheriff's Department conducted an operation. Traffickers were shipping marijuana from different post offices in Summit County to other states in the country. This week-long operation resulted in the arrest of ten individuals and seizures of over $29,000 in cash and 13-1/2 pounds of marijuana and marijuana edibles.

Glenwood Springs, Colorado: March 28, 2013**,** a package containing 13.2 pounds of hydroponic marijuana was seized, destined for an unknown address, due to a bad street name. The sender was from Glenwood Springs, Colorado.[1]

Aurora, Colorado: April 17, 2013, a package containing 1.8 pounds of hydroponic marijuana from Aurora, Colorado was seized. The marijuana was destined for Jacksonville, **FLORIDA**.[1]

Comments

"At least 50 percent of everything I get is from one of those states where it is legal to grow – Colorado and California – and marked with kid-catchy names like "Purple Haze" and "Orange Crush." Officers seize at least one package coming from California or Colorado every day.

Sgt. Brad Williams, Chicago (Illinois) Police Department[3]

"The Chicago Police Department Package Interdiction Team (PIT) is reporting that the CO "medical" marijuana industry has been making its way to Chicago via USPS, FedEx, and UPS parcels. Compared to previous years, marijuana from Colorado is steadily becoming just as prevalent as marijuana from California and Oregon. Marijuana from Colorado has been arriving in bulk amounts (usually about 1-2 pound shipments). As of May 2012, the PIT has seized nearly 10,000 grams of "medical" marijuana."

Mary B. Kenney, Investigative Support Center Manager, Chicago, Illinois

Sources:

[1] United States Postal Inspection Service – Postal Inspectors case database; statistical information on intercepted packages related to Prohibited Mailing of Narcotics (PMN) drug database

[2] El Paso Intelligence Center (EPIC) – National Seizure System (NSS) data

[3] LexisNexis – Marijuana "The Rush is On" article 11-03-2011

[4] *"Colorado's Medical Marijuana – Are Regulations Working or is 'Medical' Marijuana Being Diverted?"*, Rocky Mountain High Intensity Drug Trafficking Area, 2012

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