

RESOLUTION 95-240

**A RESOLUTION APPROVING AN "INTERGOVERNMENTAL AGREEMENT FOR CITY OF LAFAYETTE - BOULDER COUNTY TDR COMPREHENSIVE DEVELOPMENT PLAN," BETWEEN THE CITY OF LAFAYETTE AND THE COUNTY OF BOULDER**

**WHEREAS**, the Board of County Commissioners of the County of Boulder ("the Board") and the City Council of the City of Lafayette ("the City") (jointly, "the Parties") are authorized to enter into intergovernmental agreements to plan for and regulate land uses pursuant to C.R.S. §§ 29-20-101, et seq.; and

**WHEREAS**, the Parties believe that a comprehensive development plan which provides for binding commitments by the Parties for the preservation of certain rural lands in the vicinity of the City, through a program which allows for the transfer of development rights ("TDR") from lands designated to be preserved as sending sites, to approved receiving sites, is in the best interests of the citizens of each of the Parties; and

**WHEREAS**, to this end, the Parties, through their designated representatives, have negotiated an "Intergovernmental Agreement for City of Lafayette - Boulder County TDR Comprehensive Development Plan" ("the TDR IGA"), the most recent draft of which has been approved by the City following a duly noticed public hearing, and is attached to and incorporated into this Resolution as "Exhibit A"; and

**WHEREAS**, on October 12, 1995, the County's Board of County Commissioners ("the Board") held a duly noticed public hearing on the TDR IGA ("the Public Hearing"), at which Hearing the Board considered the recommendation and testimony of the County's Land Use Department Director and the City's Planning Director, and the testimony of one member of the public; and

**WHEREAS**, based on the Public Hearing, the Board determined that it was appropriate to approve the TDR IGA in concept, in the form presented to the Board at that time, subject to final approval by the City, which approval was not expected to result in any substantive changes by the City; and

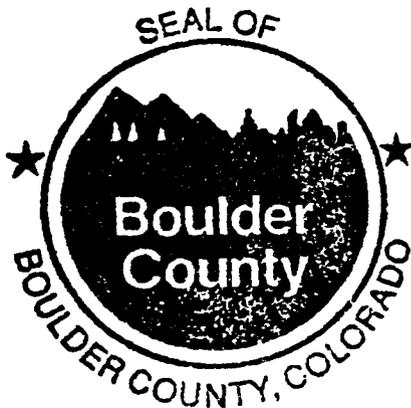
**WHEREAS**, at a duly noticed public business meeting on November 21, 1995, following a public hearing where the City approved the TDR IGA in the form attached hereto as Exhibit A, the Board reviewed the final TDR IGA (Exhibit A), and determined that it was consistent with the Board's approval at the Public Hearing on October 12, 1995, and voted to adopt the TDR IGA (Exhibit A) as a binding intergovernmental agreement between the County and the City.

Lafayette TDR IGA

NOW, THEREFORE, BE IT RESOLVED that the Board approves the TDR IGA, as set forth in Exhibit A hereto, and authorizes the Chair of the Board and the County Attorney to sign the original of the TDR IGA (Exhibit A).

A motion to approve the TDR IGA, as set forth in Exhibit A hereto, was made at the November 21, 1995 business meeting by Commissioner Danish, seconded by Commissioner Mendez, and passed by a 3-0 vote.

ADOPTED this 4th day of January, 1996, nunc pro tunc the 21st day of November and the 12th day of October, 1995.



BOARD OF COUNTY COMMISSIONERS  
OF BOULDER COUNTY:

*Ronald K. Stewart*

Ronald K. Stewart, Chair

*Jana L. Mendez*

Jana L. Mendez, Vice Chair

*Paul D. Danish*

Paul D. Danish, Commissioner

ATTEST:

*Susan M. Ashcraft*  
Clerk to the Board

- EXHIBIT A -

INTERGOVERNMENTAL AGREEMENT  
FOR  
CITY OF LAFAYETTE, BOULDER COUNTY TDR  
COMPREHENSIVE DEVELOPMENT PLAN

This Intergovernmental Agreement, by and between the City of Lafayette, a Colorado home rule municipal corporation ("Lafayette"), and the County of Boulder, a body politic and corporate of the State of Colorado ("Boulder County") (collectively the "Parties"), made to be effective on the \_\_\_\_ day of \_\_\_\_\_, 1995,

WITNESSETH:

WHEREAS, §29-20-101 et seq., C.R.S., as amended, enables the Parties to enter into Intergovernmental Agreements to plan for and regulate land uses, in order to minimize the negative impacts on the surrounding areas and protect the environment, and specifically authorizes local governments to cooperate and contract with each other for the purpose of planning and regulating the development of land by means of a "comprehensive development plan;" and

WHEREAS, §29-1-201, et seq., C.R.S., as amended, authorizes the Parties to cooperate and contract with one another with respect to functions lawfully authorized to each of the Parties, and the people of the State of Colorado have encouraged such cooperation and contracting through the adoption of Colorado Constitution, Article XIV, §18(2); and

WHEREAS, the functions described in this Agreement are lawfully authorized to each of the Parties which perform such functions hereunder, as provided in article 20 of title 29; part 1 of article 28 of title 30; §31-12-101, et seq.; and parts 2 and 3 of article 23 of title 31, C.R.S., as amended, and the Home Rule Charter of the City of Lafayette; and

WHEREAS, the Parties have previously entered into an intergovernmental agreement which includes the Municipality of Erie to plan for ~~central~~ land uses in the "East Central Boulder County Comprehensive Development Plan area; and

WHEREAS, the Intergovernmental Cooperative Agreement recorded at Reception No. 661331, dated 12/10/84, amended 4/22/86, and the East Central Boulder County Comprehensive Development Plan, dated 12/22/94, provide commitments by Lafayette and Boulder County for the preservation of the rural character of designated lands; and

WHEREAS, the Open Space Advisory Committee for the City of Lafayette has designated certain riparian corridor areas and other lands within ~~and outside~~ the City limits as appropriate for preservation; and

WHEREAS, the Parties have previously entered into an Intergovernmental Agreement Northwest Parkway Comprehensive Development Plan (now expired) which designated certain lands appropriate for open space acquisition; and

WHEREAS, the Parties believe that this City of Lafayette-Boulder County TDR Comprehensive Development Plan, will implement the Parties' commitments made in the above mentioned agreements by preserving the rural character of the Plan Area as shown on Exhibit A, attached hereto and

incorporated herein by this reference (hereinafter, the "Plan Area") through the use of the County's non-urban planned unit development ("NUPUD") and transferrable development right ("TDR") programs, combined with a commitment by Lafayette for accommodation of development from transferred development rights within or adjacent to Lafayette's Comprehensive Plan Area, as defined by Lafayette, and is in the best interests of and will serve the economic and civic interests of the citizens of each of the Parties; and

WHEREAS, the Parties desire to enter into this Intergovernmental Agreement in order to plan for and regulate the use of the lands within the Plan Area through joint adoption of a mutually binding and enforceable TDR program to accomplish the foregoing purposes; and

WHEREAS, the Parties find it desirable to monitor the progress of such TDR program in order to assure that timely modifications to the program can be made in an expedited fashion, when necessary; and

WHEREAS, the Parties have each held hearings after proper public notice for the consideration of entering into this Agreement and the adoption of an intergovernmental TDR program for the Plan Area;

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

1. DEFINITIONS:

As used in this Agreement, the following terms are intended to have the meanings as set forth herein:

**DEVELOPMENT:** Construction or establishment of structures, parking areas, and/or surfaced vehicular roadways (except expansion of existing roads), or establishment of new land uses.

**PLAN:** This Agreement

**PLAN AREA:** All properties included within the boundaries of the designated Plan Area as set forth in Exhibit A, excluding all properties located within the municipal boundaries of the City of Lafayette.

**STRUCTURE:** Any thing which is built or constructed above or below the ground, including but not limited to an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner, but excluding fences, retaining walls under 6 feet in height, and buried utility lines.

All other terms, not specifically defined herein, shall have the same meaning as that ascribed to them in Article 6, PLANNED UNIT DEVELOPMENT DISTRICTS, of the Boulder County Land Use Code, as amended.

## 2. CONTROLLING REGULATIONS.

For purposes of this Agreement, the "Regulatory Party" is that Party having regulatory jurisdiction over the subject property at the time or seeking to acquire such jurisdiction through annexation. A Party shall be deemed to be "seeking" annexation as of the date when an annexation petition is filed. This Plan is intended only to apply to the identification of sending and receiving sites, and to the regulation and implementation of Boulder County's TDR program within the Plan Area. No Party shall agree with any landowner or other person or entity interested in any parcel within the Plan Area to allow its inclusion within the TDR program except as provided herein, without first obtaining a Plan Amendment as set forth herein. The existing local land use regulations of the Regulatory Party having jurisdiction over the property as amended from time to time shall control all other development within the Plan Area. ~~No Party shall agree with any landowner or other person or entity interested in any parcel within the Plan Area to allow any use or development which does not comply with the Plan without first obtaining a Plan Amendment as set forth herein.~~

~~Restrictions on the properties labeled property #1 and property #2 on Exhibit A are described herein. These properties are recognized as being within the land use jurisdiction of the City of Lafayette. The City of Lafayette may allow development of these properties under its Development and Zoning Regulations. The City of Lafayette, as regulatory party, shall be the sole regulatory agent for review and approval of development which may occur on these properties. However, development rights from these properties may be transferred within or without the municipal boundaries to receiving sites as hereinafter defined. Approval of receiving sites outside the municipal boundary of the City of Lafayette requires the joint approval of Boulder County and the City of Lafayette.~~

The Parties each agree to undertake all steps to adopt procedures, plans, policies, and ordinances or other regulations as may be necessary to implement and enforce the provisions of this Plan after giving the other Party 30 days to comment upon said procedures, plans, policies and ordinances of that Party ~~which may affect this agreement.~~

~~To the extent that this Plan is silent as to a particular land use matter, existing local land use regulations of the Regulatory Party having jurisdiction over the property as amended from time to time shall control.~~

Boulder County agrees that, within the Plan Area, its review and approval of any planned unit development involving transferred development rights or its designation of any property as a TDR sending or receiving site, ~~proposed use, development or annexation of any portion of the parcels within the Plan Area shall, at a minimum, be subject to the review and approval of Lafayette and shall conform to the provisions of this Agreement, require review and approval of Lafayette and shall conform to the provisions of this Agreement, or, where not in conformity with this Plan, shall require amendment of the Plan in the manner provided in this Agreement.~~

## 3. TDR SENDING SITES WITHIN THE PLAN AREA.

The Parties agree that those properties designated as sending sites within the Plan Area, and only those properties, shall be permitted to participate as sending sites within the Plan Area in the TDR program which has been adopted by Boulder County. Upon confirmation by Boulder County that a property is a designated sending site, ~~TDR sending sites within the Plan Area shall be permitted to participate in the TDR program which has been adopted by Boulder County, and after issuance and recordation of the Certificate(s) of Development Rights, Boulder County and Lafayette may approve the~~

location and development of any unit(s) represented by the Certificate(s) of Development Rights upon land which is currently within Lafayette or which is being contemporaneously annexed in accordance with the provisions of all intergovernmental agreements entered into by the parties or upon other lands within the Plan Area which have been reviewed and approved by both Parties as a receiving site, or may market the Development Rights to others. Boulder County and Lafayette, ~~A proposal to locate unit(s) represented by the Certificate(s) upon land located within the municipal boundary of the City of Lafayette is subject to approval by Lafayette alone.~~ either individually or collectively, upon acquisition of Development Rights from lands within the Plan Area, shall be entitled to market those rights to others who may seek to locate and develop any unit(s) represented by the Certificate(s) within or outside of the Plan Area.

#### 4. TDR RECEIVING SITES

Approval of receiving sites upon land located within the municipal boundary of the City of Lafayette is subject to approval by Lafayette alone. Approval of receiving sites outside the municipal boundary of Lafayette requires the joint approval of Boulder County and Lafayette.

Boulder County and Lafayette may approve locating Development Rights units within the Plan Area. ~~Upon confirmation by Boulder County that a property is a designated sending site, after proper application and review in accordance with existing regulations and regulations to be developed and adopted concerning annexation and approval of receiving sites located within the Plan Area. Only Development Rights units from sending sites within the Plan Area may be accepted on receiving sites within the Plan Area.~~

Receiving sites which are located outside the municipal boundaries of Lafayette may be extended municipal water and sewer service, if determined appropriate by the Parties through the review process.

#### 5. CONSERVATION EASEMENTS

Within the Plan Area, Boulder County shall obtain conservation easements as required by its TDR regulations and shall require said easements to be granted to both Boulder County and Lafayette, jointly.

#### 6. AMENDMENTS.

This Plan contains the entire agreement between the Parties. ~~Any proposed amendment of regulations and/or plans affecting the jurisdiction over lands or the development regulation of lands must be referred to the other Party by the Regulatory Party. Any proposed amendment of the Plan affecting the jurisdiction over lands or the development regulation of lands must be referred to the other Party by the Regulatory Party.~~ Amendment of the Plan shall take place only upon approval by resolution or ordinance adopted by the governing body of each of the Parties, after notice and hearing as may be required by law. The Regulatory Party shall not approve nor permit any development or change of use of any parcel in the Plan Area by any means in a manner inconsistent with this Agreement until and unless the Plan has been amended so that the proposed development or use of such parcel is consistent with the Plan.

#### 7. SEVERABILITY.

If any portion of this Plan is held by a court in a final, non-appealable decision to be invalid or unenforceable as to any Party, the entire Agreement and the Plan shall be terminated, it being the

understanding and intent of the Parties that every portion of the Agreement and Plan is essential to and not severable from the remainder.

8. BENEFICIARIES.

The Parties, in their corporate and representative governmental capacities, are the only entities intended to be the beneficiaries of the Plan and this agreement, and no other person or entity is so intended.

9. ENFORCEMENT.

Any one or more of the Parties may enforce this Agreement by any legal or equitable means including specific performance, declaratory and injunctive relief. No other person or entity shall have any right to enforce the provisions of this Agreement.

10. DEFENSE OF CLAIMS.

If any person allegedly aggrieved by any provision of the Plan and who is not a Party to the Plan should sue any Party concerning such Plan provision, Boulder County shall, and any other Party may, and the City of Lafayette may, defend such claim upon receiving timely and appropriate notice of pendency of such claim. Defense costs shall be paid by the Party providing such defense.

~~In the event that any person not a Party to the Plan should obtain a final money judgment against any Party who is in the Regulatory Party for the diminution in value of any regulated parcel resulting from regulations in the Plan or regulations adopted by such Party implementing the Plan, ——— h to cat that any person not a Party to the Plan should obtain a final money judgment against any Party who is Party to the Plan for the diminution in value of any regulated parcel resulting from implementation of the Plan, Boulder County shall, to the extent permitted by law, indemnify such Party for the amount of said judgment. indemnify such Party for the amount of said judgement.~~

11. GOVERNING LAW AND VENUE.

This Agreement shall be governed by the laws of the State of Colorado, and venue shall lie in the County of Boulder.

12. TERM AND EFFECTIVE DATE.

This Agreement shall become effective upon signature of an authorized representative of the governing bodies of each of the Parties. Except as provided herein, this Agreement shall remain in effect for a period of ten (10) years from the effective date, unless terminated prior thereto by agreement of each of the Parties or pursuant to the terms of Section 7 above.

13. PARTY REPRESENTATIVES.

Referrals made under the terms of this Agreement shall be sent to the Parties' representatives as follows:

LAND USE DIRECTOR OF BOULDER COUNTY  
P.O. Box 471  
Boulder, CO 80306-0471

**CITY ADMINISTRATOR OF LAFAYETTE**  
1290 South Public Road  
Lafayette, CO 80026

**CITY OF LAFAYETTE**  
**BY: MAYOR**

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Date

**ATTEST:**

**APPROVED AS TO FORM:**

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Deputy City Clerk

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City Attorney

**COUNTY OF BOULDER**  
**BY: BOARD OF COUNTY COMMISSIONERS**

\_\_\_\_\_

Chair

\_\_\_\_\_

Date

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_

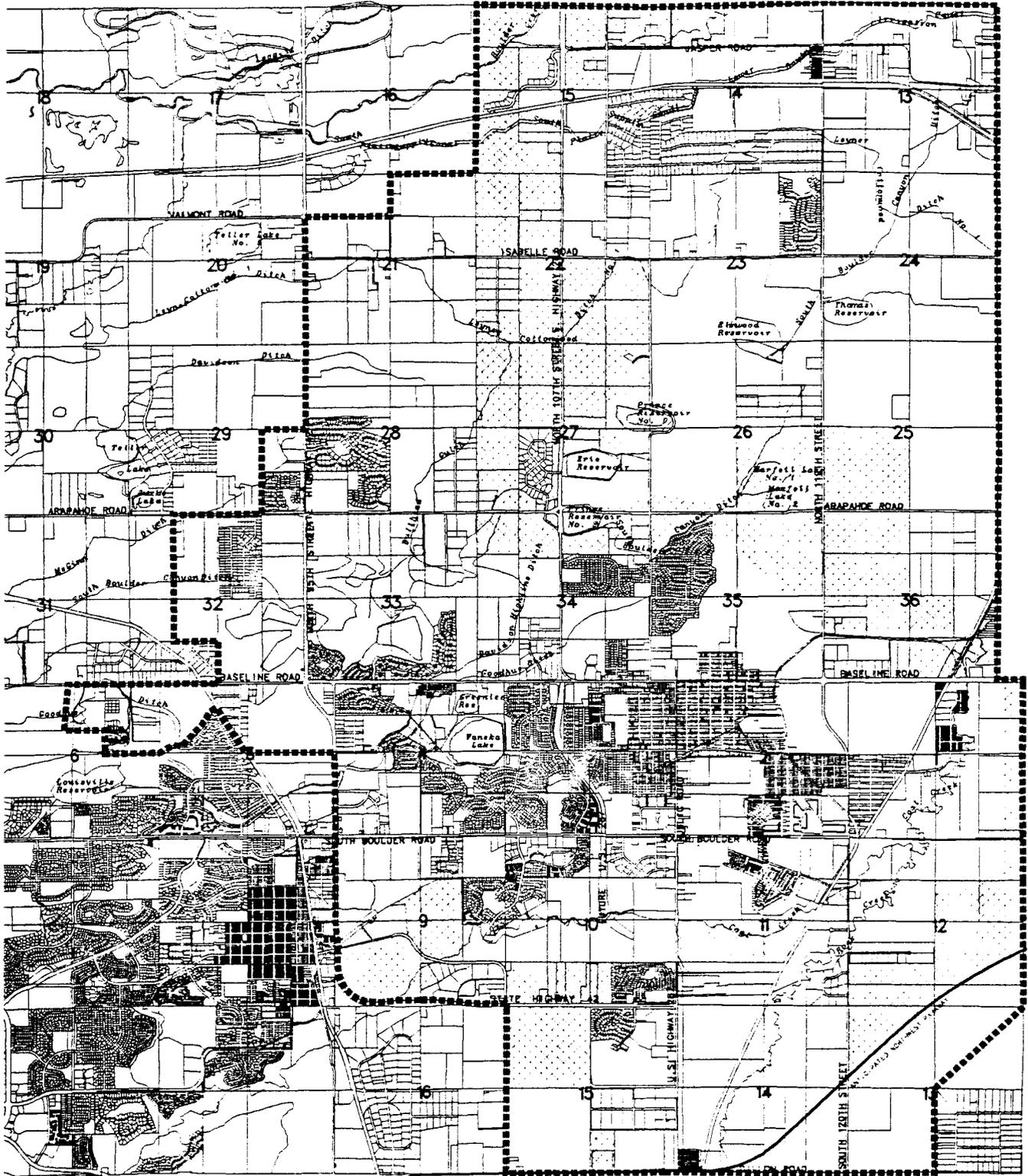
Clerk to the Board

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H. Lawrence Hoyt  
County Attorney

# EXHIBIT A

## Comprehensive Development Plan



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 This Map is For Illustrative Purposes Only.

Sending Sites  
 Plan Area Boundary

Map compiled: 11/6/95  
 Boulder County Land Use Dept.