

**AMENDMENT TO INTERGOVERNMENTAL AGREEMENT:
BOULDER COUNTY AND THE TOWN OF NEDERLAND
FOR THE MUD LAKE PROPERTY**

THIS AMENDMENT to Intergovernmental Agreement between the Town of Nederland, a Colorado municipal corporation, Post Office Box 396, Nederland, Colorado 80466 ("the Town") and the County of Boulder, a body corporate and politic, Post Office Box 471, Boulder, Colorado 80306 ("the County") is executed to be effective the 24th day of July, 2001.

RECITALS

A. The Town and the County previously entered into that certain Intergovernmental Agreement: Boulder County and the Town of Nederland For the Mud Lake Property, effective December 17, 1999 ("the Agreement"), recorded December 21, 1999 at Reception No. 2008471.

B. Based on events that occurred and circumstances that changed subsequent to the effective date of the Agreement, the Town and the County agree that it is in their mutual interest to amend the Agreement. Those changed circumstances include, but are not limited to (1) the Town's outright purchase of the Ridge Road Property, rather than through the use of escrowed funds; and (2) the creation of a parcel slightly over 6 acres rather than 4 acres in size for the relocation of the BVSD bus barn to the Ridge Road Property.

NOW THEREFORE, in consideration of the recitals, promises, payments, covenants and undertakings hereinafter set forth, and other good and valuable consideration, which is hereby acknowledged and receipted for, the Town and the County agree that the Agreement shall be and hereby is amended as follows:

1. On page 4 of the Agreement, Sections III.B. and III.C. are amended to read as follows:
 - B. The Ridge Road Purchase Agreement provides for the purchase of the Ridge Road Property on or before December 31, 2000 for \$250,000. The Town has completed this purchase utilizing Town funds.
 - C. The parties anticipate that the Boulder Valley School District ("BVSD") will exchange its existing site in the Town of Nederland for approximately 6.21 acres of the Ridge Road Property, for the relocation of the BVSD bus barn. Of this 6.21 acre parcel, approximately 4 acres will be used for the BVSD bus

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barn and approximately 2.21 acres on the west end of the 6.21 acre parcel shall be preserved in its natural condition. The remaining approximately 36.58 acres of the Ridge Road Property ("County Open Space Parcel") will be conveyed to the County and preserved as open space.

2. On page 4 of the Agreement, Section IV.B. is amended to read as follows:

B. The creation of the affordable housing parcel and the relocation of the fire station are contingent upon BVSD exchanging the current bus barn site for the proposed 6.21 acre site on the Ridge Road Property.

3. On pages 8 and 9 of the Agreement, Section 5. Ridge Road Property is amended to read as follows:

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5. Ridge Road Property.

(a) It is anticipated that BVSD will acquire 6.21 acres of the Ridge Road Property ("the BVSD Ridge Road parcel") for location of the new BVSD bus barn and BVSD shall convey its existing bus barn site ("the Existing Bus Barn Parcel") to the Town. If BVSD agrees to such exchange, the Town anticipates using the Existing Bus Barn Parcel for the location of the new Town fire station of the Nederland Fire Protection District. The Town will be responsible for negotiating all agreements with BVSD and preparing all conveyance documents.

(b) The Town has acquired title to the Ridge Road property in accordance with the Ridge Road Purchase Agreement. The County held a public hearing on December 17, 2000 to consider the division of land to create the BVSD Ridge Road Parcel and approved the division of land subject to the following contingencies:

1. the recording in the Boulder County Clerk and Recorder's Office of a special warranty deed from Town to the County for the County Open Space Parcel, with the deed executed in accordance with the provisions of this IGA and with the Town bearing the cost of title insurance; and

2. the recording in the Boulder County Clerk and Recorder's Office of a deed from the Town to the Town conveying the BVSD Ridge Road Parcel using the legal description as set forth on



Exhibit 1; and

- 3. the Town's conveyance to the County of a Deed of Conservation Easement in the form attached hereto as Exhibit 2 over the BVSD Ridge Road Parcel, with the town bearing the cost of title insurance, and the recording of that Deed of Conservation Easement in the Boulder County Clerk and Recorder's Office.

The Town agrees to satisfy the contingencies of this Paragraph. When the contingencies of this Paragraph have been met, the County will record a notice stating that the contingencies have been satisfied and that the BVSD Ridge Road Parcel is a legal lot.

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- (c) Provided agreement is reached with BVSD for the proposed exchange and the BVSD Ridge Road Parcel is conveyed to BVSD, no application for a Special Use Review will be needed for the BVSD bus barn on the BVSD Ridge Road Parcel.

- 4. An incorrect map was attached as Exhibit B to the Agreement. Exhibit B of the Agreement is replaced with the Attached Exhibit B.
- 5. Except as specifically amended by this Amendment to Agreement, the Agreement remains shall remain in full force and effect.
- 6. Counterparts. This Amendment may be executed in counterparts, which when combined shall be deemed a complete original, and all of which shall constitute one and the same agreement. Facsimile signatures shall be acceptable to and binding upon all parties.
- 7. Recording. This Amendment shall be recorded in the office of the Clerk and Recorder of Boulder County, Colorado.
- 8. Severability. If any part of this Amendment is found, decreed or held to be void or unenforceable such finding, decree or holding shall not affect the other remaining provisions of this Agreement which shall remain in full force and effect.
- 9. Survival. The parties agree that, except for such of the terms, conditions, covenants and agreements included herein which are, by their very nature fully and completely performed upon the closing of the purchase-sale transactions provided for in this Amendment, all of the terms, conditions, representations, warranties, and covenants

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this 1st day of August, 2001 by James R. Miller, Mayor, Town of Nederland, a Colorado municipal corporation.

Witness my hand and official seal.

My Commission Expires: September 28, 2004

Patricia A. Melvin
Notary Public

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Exhibit 1
BVSD Ridge Road Parcel

A Tract of Land in Section 12, Township 1 South, Range 73 West of the 6th P.M., County of Boulder, State of Colorado, described as follows:

BEGINNING at the Southeast corner of said Section 12, thence North 00°01'28" East 1467.51 feet along the East line of said Section 12 (with all bearings herein used related to said East line as being North 00°01'28" East) to a point on the North right of way line of Boulder County Road 128E,
 thence South 67°14'59" West 188.77 feet along the North right of way line of Boulder County Road 128E;
 thence South 81°10'29" West 429.21 feet along the North right of way line of Boulder County Road 128E;
 thence South 77°54'48" West 501.36 feet along the North right of way line of Boulder County Road 128E; to the TRUE POINT OF BEGINNING;
 thence South 77°54'48" West, 255.60 feet along the North right of way line of Boulder County Road 128E;
 thence South 78°05'36" West 275.47 feet along the North right of way line of Boulder County Road 128E;
 thence South 84°13'11" West 263.82 feet along the North right of way line of Boulder County Road 128E;
 thence North 77°18'07" West 192.25 feet along the North right of way line of Boulder County Road 128E;
 thence North 88°11'02" West 197.28 feet along the North right of way line of Boulder County Road 128E;
 thence South 87°41'30" West 42.67 feet along the North right of way line of Boulder County Road 128E to a point on the centerline of Boulder County Road 103 (according to the Boulder County Road Map);
 thence North 69°15'54" East 43.43 feet along the centerline of Boulder County Road 103;
 thence North 59°21'34" East 101.07 feet along the centerline of Boulder County Road 103;
 thence Northeasterly 59.60 feet along the centerline of Boulder County Road 103, and along the arc of a curve to the right having a radius of 211.56 feet and a central angle of 16°08'30" to a point tangent;
 thence North 75°30'04" East 128.05 feet along the centerline of Boulder County Road 103;
 thence Northeasterly 78.04 feet along the centerline of Boulder County Road 103, and along the arc curve to the left having a radius of 144.40 feet and a central angle of 30°58'00" to a point tangent;
 thence North 44°32'04" East 54.88 feet along the centerline of Boulder County Road 103;
 thence Northeasterly 96.13 feet along the centerline of Boulder County Road 103, and along the arc of a curve to the right having a radius of 142.53 feet and a central angle of 38°39'45" to a point tangent;
 thence North 83°11'49" East 24.75 feet along the centerline of Boulder County Road 103;
 thence Northeasterly 184.63 feet along the centerline of Boulder County Road 103, and along the arc of a curve to the left having a radius of 125.40 feet and a central angle of 84°21'30" to a point tangent;
 thence North 80°59'25" East 167.94 feet;
 thence South 70°59'19" East 240.90 feet;
 Thence South 38°51'38" East, 293.69 feet, TO THE TRUE POINT OF BEGINNING.

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Exhibit 2
Deed of Conservation Easement in Gross

This Deed of Conservation Easement in Gross (hereinafter referred to as the "Agreement" or the "Easement") is granted by **Town of Nederland**, a Colorado municipal corporation (hereinafter referred to as "Grantor") on the ____ day of _____, 2001, to the **County of Boulder**, a body corporate and politic (hereinafter referred to as "Grantee").

WHEREAS, Grantor is the owner of the property legally described in Exhibit 1 attached hereto and made a part hereof (the "Property"); and

WHEREAS, the Grantor and Grantee intend to preserve the Property in its present form and prohibit any further development on the Property, except as expressly permitted in this Easement; and

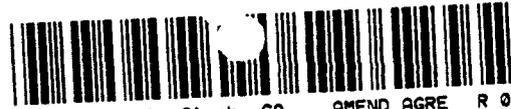
WHEREAS, Grantor and Grantee anticipate that the Property will be conveyed to the Boulder Valley School District ("BVSD") for use as a school bus barn.

NOW, THEREFORE, in consideration of the sum of TEN DOLLARS (\$10.00) and of the mutual covenants contained herein, Grantor does hereby convey to Grantee a perpetual Conservation Easement in Gross (hereinafter, the "Easement"), an immediately vested interest in real property defined by Colorado Revised Statute Sections 38-30.5-101 et seq., and consisting of the rights hereinafter enumerated, over and across the Property.

The terms of the Easement are as follows:

1. **USE OF THE PROPERTY.** The purpose of this Easement is to limit the uses of Area A of the Property as designated on the map attached hereto as Exhibit 2 and incorporated herein by reference, in perpetuity, to a school bus barn, structures accessory to a bus barn, or to other uses permitted by this Easement. Provided BVSD is the owner of the Property, the development of the Property shall be limited to one school bus barn, structures accessory to the bus barn on Area A, and other school district uses provided BVSD complies with the requirements of Section 22-32-124, C.R.S. In the event that Area A ceases to be used as a bus barn or by BVSD for another use, it may be used for other public or private purposes, subject to the zoning of the Property.

This Easement shall limit the uses of Area B, as shown on Exhibit 2, to open space and natural habitat preservation only and no construction or grading of any kind shall take place upon Area B.



2. **CONSTRUCTION OF BUILDINGS AND OTHER STRUCTURES.** At the time of the execution of this Easement there are no structures on the Property.

a. **SCHOOL BUS BARN CONSTRUCTION.** Grantor and/or BVSD may construct a bus barn, parking areas for school buses, structures accessory to a bus barn or other uses permitted by this Easement in Area A. If Area A is no longer used for a bus barn or other School District uses, provided BVSD complies with the requirements of Section 22-32-124, C.R.S, other structures for use in conjunction with other public or private uses of Area A may be constructed, provided said proposed structures and uses are subject to the zoning of the Property.

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b. **FUTURE RESIDENTIAL USE.** If at some time, the Property ceases to be used for a bus barn, the Property may be used for one single family dwelling.

c. **CONDITIONS.** Grantor shall not erect any new structures of any kind on the Property, except as permitted by this Easement. For the purposes of this Easement, structures shall mean a combination of materials forming an edifice or building of any kind, but excluding the following: fences not over six feet in height; retaining walls or other landscaping; platforms or decks not more than 30 inches above grade; utility mains, lines and underground facilities; and yard and play equipment. The construction, remodel or replacement of any structure shall be in accordance with all Boulder County Land Use Regulations in effect at the time the proposed construction, razing or remodeling is to take place, and all required permits and approvals must be obtained.

3. **MINING.** The mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel, or any other mineral substance is prohibited on the Property.

4. **SUBDIVISION.** Any subdivision of the Property (whether or not a subdivision as defined by state law) without the express consent of the Grantee, or by operation of law, is strictly prohibited. The conditions of this Easement shall attach to the land and shall survive any division of the Property which the Grantee may approve or which may occur by operation of law. The Property shall be held as one unit and the Grantor may not convey a portion of the Property, except as may be allowed by law, as such conveyance would constitute an impermissible division of the Property under this Easement.

5. *TELECOMMUNICATIONS.* The erection, construction, installation, relocation or use of a communication facility, a telecommunication facility, a network element, telecommunication equipment, or any other equipment (except for Customer Premises Equipment) or material that may be used for telecommunications or to provide telecommunications services as such terms are defined in the Federal Telecommunications Act of 1996, is prohibited.

6. *GRANTEE'S RIGHT OF ENTRY.* Grantee shall have the right to enter upon the property at reasonable times, upon 48 hours prior notice to Grantor to inspect for violations of the terms and covenants of this Easement, when Grantee has a good faith belief that the terms and covenants of this Easement are being violated, and to remove or eliminate any conditions or operations which violate the same. Upon 10 days' written notice, Grantee may make an annual inspection of the Property. No further right of access, entry or possession is conveyed hereby. 179

7. *ENFORCEMENT.* In the event of a violation of any term, condition, covenant, or restriction contained in this Easement, after thirty (30) days' notice of violation to the Grantor, the Grantee may institute a suit to enjoin by temporary and/or permanent injunction such violation, or for damages for breach of covenant, or may take such other action as it deems necessary to insure compliance with the terms, conditions, covenants and purposes of this Easement; provided, however, that any failure to so act by the Grantee shall not be deemed to be a waiver or a forfeiture of the right to enforce any term, condition, covenant, or purpose of this Easement in the future.

8. *RESTORATION.* Grantor further intends that should any prohibited activity be undertaken on the Property, the Grantee shall have the right to cause the restoration of that portion of the Property affected by such activity to the condition that existed prior to the undertaking of such prohibited activity. In such case, the cost of such restoration shall be born by Grantor, its successor, or assigns, against whom a judgment is entered. Nothing contained herein shall be construed to preclude Grantor from exhausting all legal remedies that may be available in determining whether the proposed activity to which the Grantee has objected is consistent with the Easement.

9. *UPKEEP, MAINTENANCE, LIABILITY AND INDEMNIFICATION.* Grantor agrees to bear all costs of operation, upkeep, and maintenance of the Property and does hereby indemnify the Grantee therefrom. Grantor shall indemnify and reimburse Grantee for any damages resulting from personal injury or property damage that occurs on the Property, arising from the actions of Grantor, or a guest or invitee of Grantor. In addition, Grantor agrees to pay any and all real property taxes and assessments levied by competent authority on the Property.

10. *GRANT IN PERPETUITY.* This Easement and the covenants as set forth herein shall run with the land and be binding upon all parties thereto, their heirs, successors, representatives, and assigns, and all persons who may hereafter acquire an interest in the Property. It is intended that this Easement and any other interests created under this Easement vest immediately. Pursuant to Colorado Revised Statute Section 15-11-1102(1)(a) and (b), if any nonvested property interests conveyed to the Grantee under this Easement do not vest within 90 years after the date of execution of this Easement by both parties, said interests shall automatically be severed from the remainder of the interests conveyed herein and shall automatically terminate.

11. *SEVERABILITY.* If any provision of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

12. *AMENDMENT OF EASEMENT.* If circumstances arise under which an amendment would be appropriate, Grantor and Grantee may jointly amend the Easement. Any such amendment shall be consistent with the purpose of the Easement, shall not affect its perpetual duration, shall not permit additional developments or improvements currently prohibited by the Easement, and shall not impair any of the significant conservation values of the Property. Any such amendment shall be recorded in the official records of Boulder County, Colorado.

In giving this Easement, the Grantor has considered the possibility that uses prohibited by the terms of this Easement may become more economically valuable than permitted uses and that neighboring properties may in the future be put entirely to such prohibited uses. It is the intent of both the Grantor and the Grantee that any such changes shall not be deemed circumstances justifying the termination or extinguishment of this Easement. In addition, the inability of the Grantor, or the Grantor's heirs, successors or assigns, to conduct or implement any or all of the uses permitted under this Easement, or the unprofitability of doing so, shall not impair the validity of this easement or be considered grounds for its termination or extinguishment.

13. *GRANTOR'S WARRANTY OF TITLE.* Grantor warrants that Grantor has good and sufficient title to the Property and hereby promises to defend the same against all claims from persons claiming by, through or under Grantor.



14. *GRANTOR'S ENVIRONMENTAL WARRANTY.* Grantor warrants that Grantor has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property.

15. *ANNEXATION.* Grantor shall not apply/petition for, or consent to, the annexation of the Property to any municipality without the consent of the Grantee.

16. *NOTICES.* Whenever notice is required to be given hereunder, it shall be in writing and may be sent by facsimile or delivered to the party entitled thereto or mailed to the party entitled thereto, by registered or certified mail, return receipt requested. If delivered or sent by facsimile, said notice shall be effective and complete upon delivery or transmission of the facsimile. If mailed, said notice shall be effective and complete as of the date of mailing. Until changed by notice in writing, notice shall be given as follows:

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To the Grantee: The Director
Boulder County Parks and Open Space
P.O. Box 471
Boulder, Colorado 80306
Facsimile number: 303-441-4594

With copy to: The Boulder County Attorney's Office
P.O. Box 471
Boulder, Colorado 80306
Facsimile number: 303-441-4794

To the Grantor: Mayor, Town of Nederland
145 East First Street
P.O. Box 396
Nederland, Colorado 80466
Facsimile number: 303-258-1240

17. *SUBSEQUENT LIENS ON PROPERTY.* No provisions of this Deed of Conservation Easement should be construed as impairing the ability of the Grantor to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such borrowing is subordinated to this Easement.

18. *COUNTERPARTS.* This Easement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute



one and the same agreement. Facsimile signatures shall be acceptable to and binding upon all parties.

19. *CONDEMNATION.* In the event of condemnation of all or a portion of the Property, the Grantee shall be entitled to a share of the proceeds of the condemnation award, based on the value, at the time of the taking.

20. *INTERPRETATION.* This Easement shall be liberally construed in favor of the Easement to effect the purpose of the Easement and the policies and purpose of C.R.S. § 38-30.5-101 et seq.

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21. *ENTIRE AGREEMENT.* This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an Amendment that complies with Paragraph 14.

22. *CAPTIONS.* The captions in this instrument have been inserted solely for convenience of reference and are not part of this instrument and shall have no effect upon construction or interpretation.

23. *TRANSFER OF PROPERTY.* The Grantor agrees that reference to this Easement will be made in any subsequent deed, or other legal instrument, by means of which Grantor conveys any interest in the property (including a leasehold interest) and that Grantor will attach a copy of this Deed of Conservation Easement in Gross thereto.

24. *HEIRS, SUCCESSORS, ASSIGNS.* The terms "Grantor" and "Grantee," whenever used herein, and any pronouns used in place thereof, shall mean and include the above-named Grantor and Grantor's heirs, personal representatives, executors, successors and assigns and the above named Grantee and its successors and assigns, respectively



Exhibit 1
Legal Description

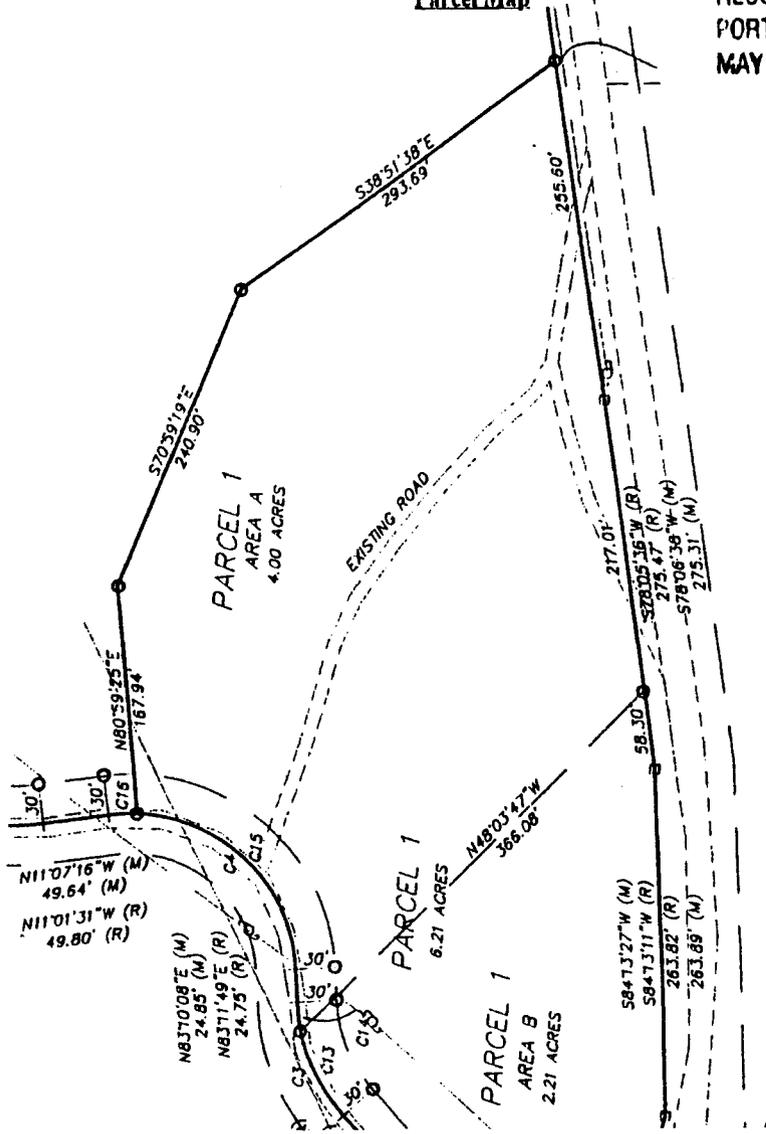
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 Thence South 38°51'38" East, 293.69 feet, TO THE TRUE POINT OF BEGINNING.

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**Exhibit A
 Parcel Map**

RECORDER'S NOTE: 8-3-01
 PORTION OF RECORDED DOCUMENT
 MAY NOT REPRODUCE LEGIBLY.



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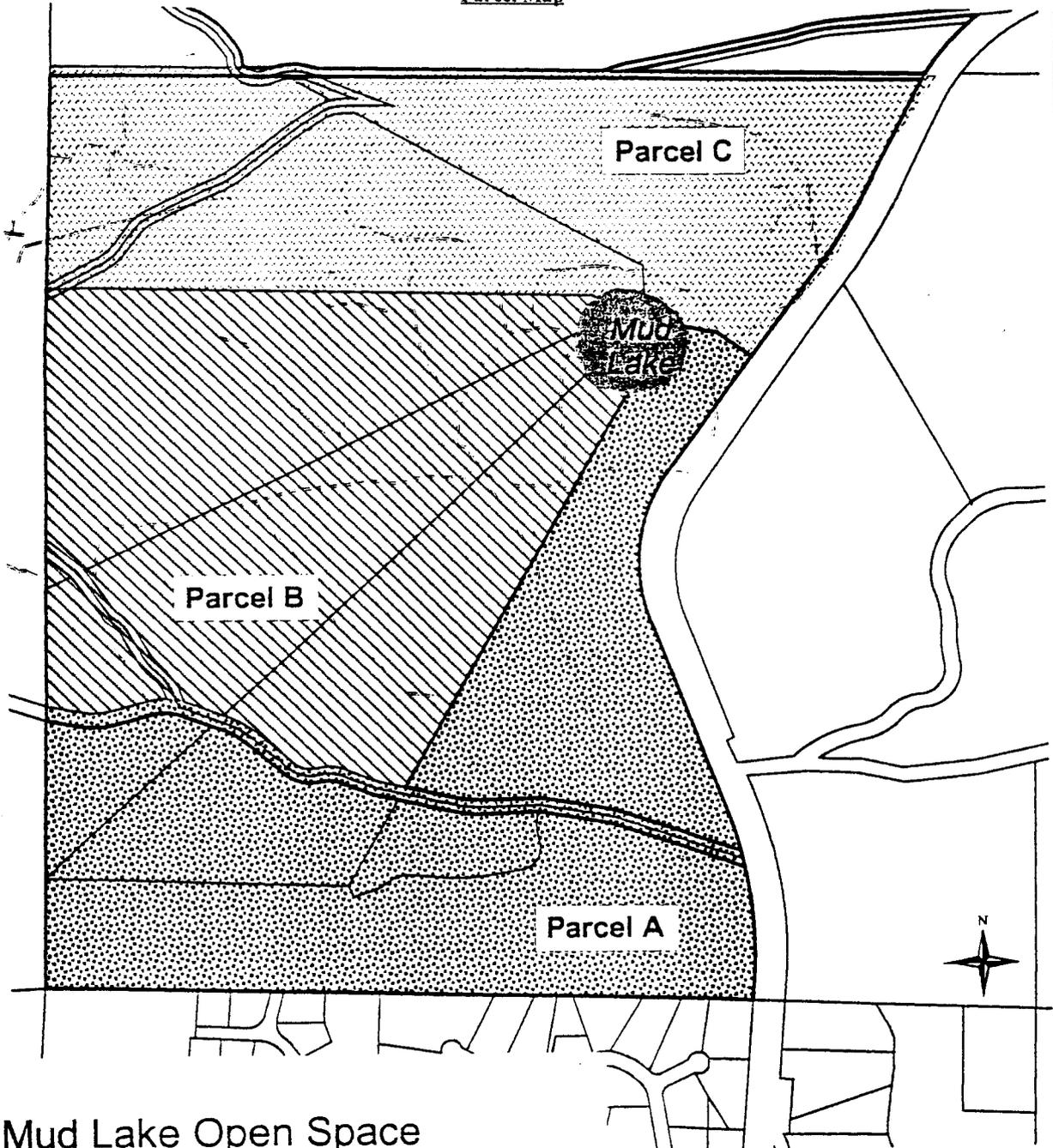
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Boulder County Clerk, CO

AMEND AGRE R 0.00

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Exhibit B
Parcel Map



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Mud Lake Open Space

GPS'd Roads



Parcel A
Parcel B
Parcel C

0 500 Feet



DISCLAIMER
This map is for illustrative purposes only, and is not suitable for parcel-specific decision making. The areas depicted here are approximates. More site-specific studies may be required to draw accurate conclusions.

December 12, 2000