

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

**THIS FIFTH AMENDMENT** to Intergovernmental Agreement between the Town of Nederland, a Colorado municipal corporation (“the Town”) and the County of Boulder, State of Colorado, a body politic and corporate (“the County”) (collectively hereinafter referred to as the “Parties”) is executed to be effective the 10<sup>th</sup> day of November, 2009.

**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, recorded December 21, 1999, at Reception No. 2008471”) (“the Agreement”), as amended by that certain Amendment to Intergovernmental Agreement: Boulder County and the Town of Nederland for the Mud Lake Property, effective July 24, 2001 and recorded August 30, 2001 at Reception No. 2180976, the Second Amendment to Intergovernmental Agreement: Boulder County and the Town of Nederland for the Mud Lake Property effective the 1<sup>st</sup> day of December, 2002, and recorded December 31, 2002, at Reception No. 2378808; the Third Amendment to Intergovernmental Agreement: Boulder County and the Town of Nederland for the Mud Lake Property effective the 6th day of July, and recorded July 13, 2004, at Reception No. 2606701, and as further amended by the Fourth Amendment to Intergovernmental Agreement: Boulder County and the Town of Nederland for the Mud Lake Property effective the 1st day of December, 2005, and recorded on December 2, 2005, at Reception No. 2741675 (collectively, the “IGA”).

B. The functions described in this Fifth Amendment 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; part 1 of article 12 of title 31; and parts 2 and 3 of article 23 of title 31, C.R.S., as amended; and

C. Sections 29-1-201, *et seq.*, C.R.S., as amended, authorize 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

D. The Parties desire to amend the IGA pursuant to the provisions of Section 29-20-105, C.R.S., as amended, to temporarily adjust the Open Space Management Plan as described in Paragraph 7 of the IGA as to a portion of the Ridge Road Property, as that term is defined by Recital III of the Agreement.

E. The Parties have each provided proper notice and opportunity for public comment for the consideration of entering into this Fifth Amendment and have determined that this amendment is necessary in order to allow the County to appropriately respond to an unprecedented epidemic of bark beetles infesting pine trees in Boulder County.

NOW, THEREFORE, in consideration of the recitals and the mutual promises, covenants and undertakings hereinafter set forth, and other good and valuable consideration, which is hereby acknowledged and receipted for, the Parties hereby agree that the IGA shall be and hereby is amended to alter, on a temporary basis, the management of a portion of the Ridge Road Property, as described below.

1. The Parties recognize that Boulder County is in the midst of a landscape-wide infestation of bark beetle that are projected to kill approximately 95% of all mature lodgepole pine and a substantial, but undetermined, portion of Ponderosa pine in Boulder County within the next 5-10 years.

2. The County has established a Forest Health Initiative to promote forest health and increase public awareness of issues associated with the bark beetle infestation. To support the Forest Health Initiative, the County desires to establish two community forestry sort yards ("Sort Yards") at which private property owners may drop off biomass cleared as a part of treatment of their land. Wood collected at the Sort Yards will be sorted according to size and economic value. The County will sell wood for which there is an economic value. Wood with no economic value may either be incinerated in an air curtain burner or ground into wood chips at the Sort Yards.

3. In 2008, the County established a Sort Yard in Meeker Park to serve the northern portion of Boulder County. The Parties have determined that, despite its designation as open space, the Ridge Road Property is the most appropriate site for a Sort Yard to serve the southern portion of Boulder County including the Town of Nederland and have agreed to amend Paragraph 7 of the IGA to permit use of that portion of the Ridge Road Property as depicted on Exhibit A (the "Sort Yard Property") as a Sort Yard on a temporary basis.

4. After execution of this Agreement by both parties and before the conditions required by this Section 4 are met, the County may begin preparing the Sort Yard Property for Sort Yard operations. Before the County can establish a Sort Yard on the Sort Yard Property, the County must do the following:

- a. Comply with all applicable provisions of the Boulder County Land Use Code as outlined in Docket LU-09-0010, approved by the Board of County Commissioners on August 4, 2009 or as may be determined through an amendment to Docket LU-09-0010, as depicted in Exhibit B, the Resolution of Approval for LU-09-010.
- b. Provide \$20,000 to the Town of Nederland to be used for the completion of a Community Wildfire Protection Plan for the Nederland Area.
- c. Agree to release the Town of Nederland from their obligation to either provide lots to build 12 units of affordable housing or pay the County \$12,000 per unit (\$144,000 total) as required by Paragraph 8(b) of the Agreement.
- d. Pay the Town of Nederland \$75,000 for the right to salvage usable parts from the existing biomass heating unit owned by the Town to be used as part of a biomass heating unit at a Boulder County facility.

- e. Convey to the Town title to that parcel commonly known as the "Town Shop Parcel," as required by the Purchase and Sale Agreement and Division of Land executed by the Parties contemporaneously with their execution of this Agreement.

5. Use of the Sort Yard Property as a Sort Yard shall be a temporary use which shall only be permitted during the period the Sort Yard is needed to respond to the current bark beetle infestation. It is contemplated that the Sort Yard Property may be required for a period of approximately 8-12 years from execution of this Fifth Amendment; in any event, operation of the Sort Yard is subject to the County's special use review and approval. At such time as the Sort Yard Property is no longer required as a Sort Yard, the Sort Yard Property shall be restored to a condition suitable for use as open space and the Sort Yard Property shall once again be subject to the use and management restrictions of Paragraph 7 of the IGA.

6. This Fifth Amendment to the IGA only applies to the Sort Yard Property portion of the Ridge Road Property. Except as specifically amended by this Amendment, the IGA remains in full force and effect.

7. 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.

8. This Amendment shall be recorded in the office of the Clerk and Recorder of Boulder County, Colorado.

9. 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.

**IN WITNESS WHEREOF**, the Town and the County have executed this Fifth Amendment on the dates set forth in their respective acknowledgments intending that this Agreement be effective as of the day and year first above set forth.

[SEAL]



Board of County Commissioners of the County of Boulder, State of Colorado

ATTEST:

Jana Petersen  
Jana Petersen, Deputy Clerk

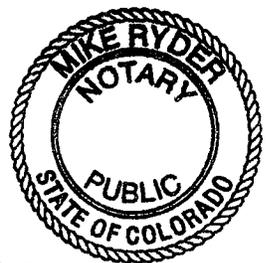
By: Ben Pearlman  
Ben Pearlman, Chair

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF BOULDER    )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of November, 2009, by Ben Pearlman, Chair of the Board of County Commissioners of Boulder County, Colorado, a body corporate and politic.

Witness my hand and official seal.  
My Commission Expires: \_\_\_\_\_

6/8/2011  
Mike Ryder  
Notary Public



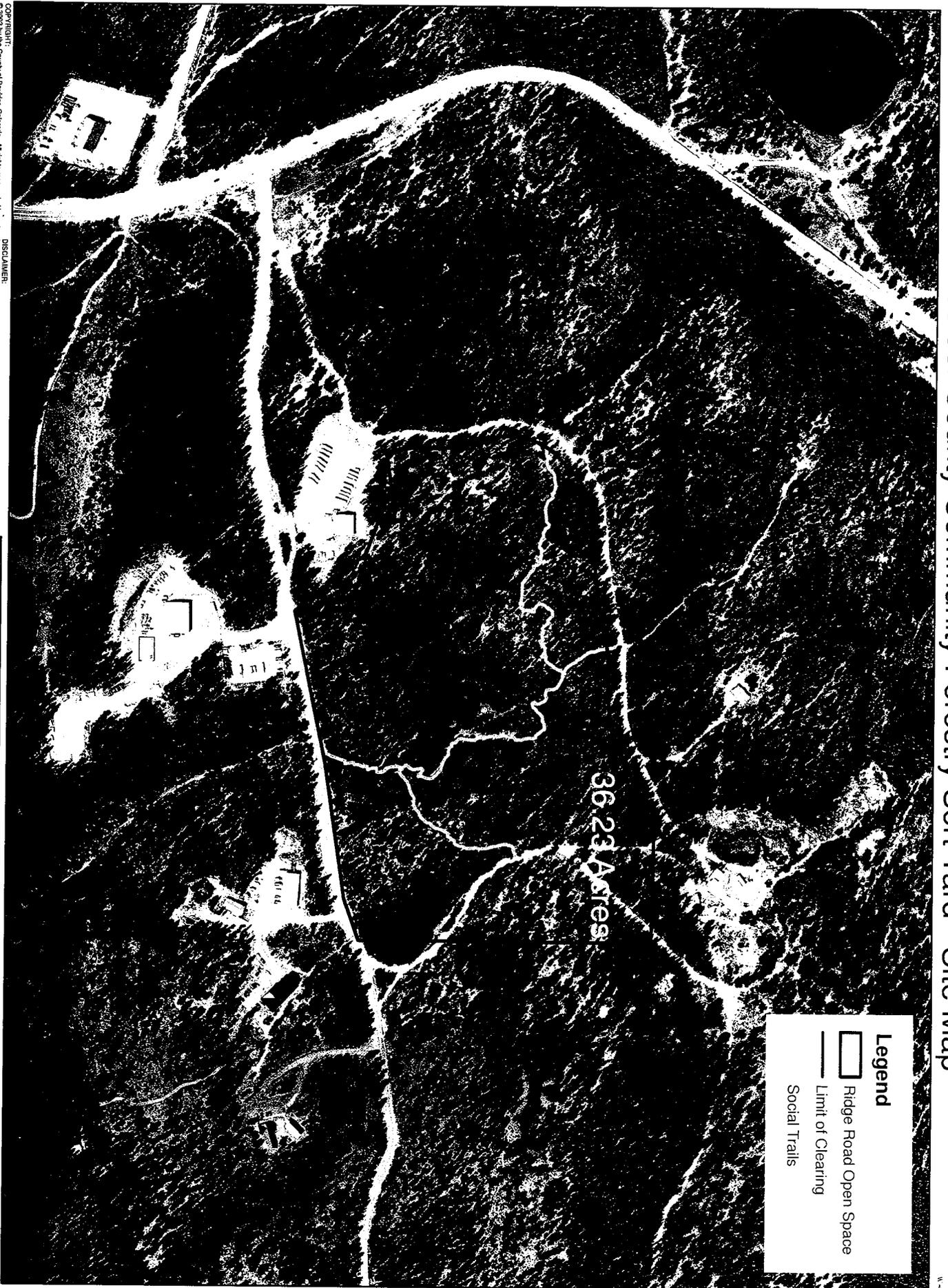
My Commission Expires 06/08/2011

# Boulder County Community Forestry Sort Yard - Site Map



**Legend**

-  Ridge Road Open Space
-  Limit of Clearing
-  Social Trails

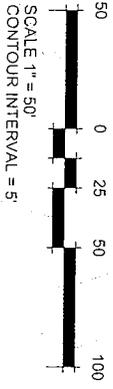


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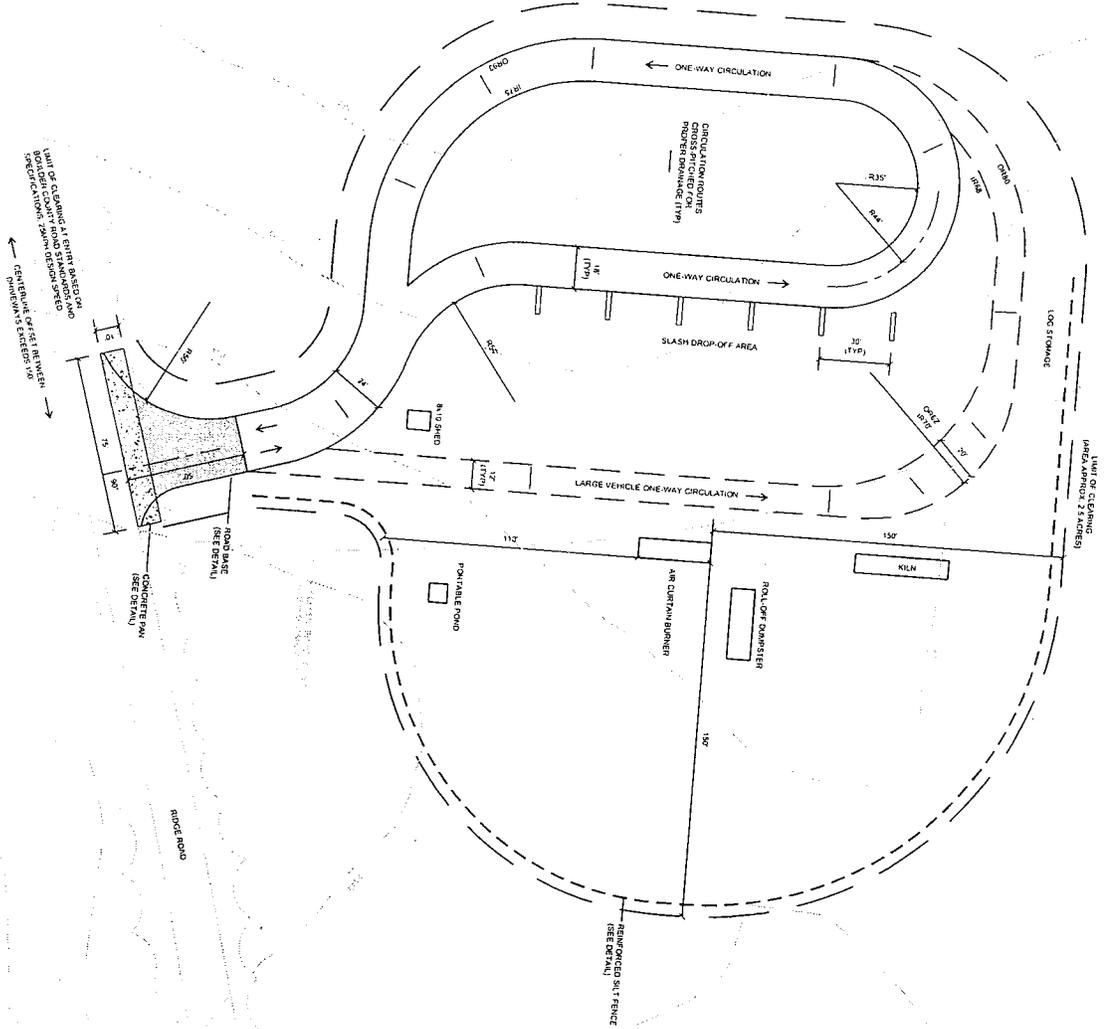
**DISCLAIMER:**  
This map is for illustrative purposes only, and is not suitable for general specific decision making. The areas depicted here are approximate. More site specific studies may be required to draw accurate conclusions.



Map by: VLM/JH - 05/09



NOTE: EXISTING CONTOUR DATA INTERPOLATED FROM USGS 40 FOOT CONTOUR INTERVAL DATA



NOTE: CLEARING TO BE BASED ON LIMIT OF CLEARING (BASED ON 25 ACRES) AND DITCHES TO BE PLACED AT PROPER SPACING (175') FROM CENTERLINE OF EACH VEHICLE DRIVEWAY

	<p>Boulder County Parks &amp; Open Space 5201 St. Vrain Road Longmont, CO 80503 Phone: (303) 578-4330 Fax: (303) 578-4386 www.BoulderCounty.org</p>	<p><b>Site Plan Schematic</b> <b>Community Forestry Sort Yard</b> <b>Ridge Road (CR128e), Nederland</b></p>	<p>DATE: May 22, 2009 SCALE: 1" = 50' DRAWN BY: JH CHECKED BY: JH/WH DATE: TG</p>	<p>DESIGNER: CH CONSULTANT: CH PROJECT: CH</p>	<p>SHEET: 1 OF 2 <b>L1</b></p>
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## EXHIBIT B

Resolution 2009-113

A RESOLUTION APPROVING BOULDER COUNTY LAND USE DOCKET #LU-09-0010 ("BOULDER COUNTY FORESTRY PROCESSING AND SORT YARD LIMITED IMPACT SPECIAL REVIEW"): A REQUEST FOR A LIMITED IMPACT SPECIAL USE REVIEW FOR A FORESTRY PROCESSING AND SORT YARD, ON PROPERTY LOCATED AT 291 RIDGE ROAD, NORTH OF AND ADJACENT TO RIDGE ROAD, APPROXIMATELY 0.15 MILE EAST OF HIGHWAY 72 (PEAK TO PEAK HIGHWAY), IN THE SE 1/4 OF SECTION 12, TOWNSHIP 13S, RANGE 73W, UNINCORPORATED BOULDER COUNTY

**WHEREAS**, the Boulder County Parks and Open Space Department ("Applicant") has requested approval for a limited impact special use permit pursuant to Article 4 of the Boulder County Land Use Code ("the Land Use Code"), for a Forestry Processing and Sort Yard under Article 4-504.B. of the Land Use Code, on the property which is located as generally described in the caption to this Resolution, above ("the Subject Property"), in the Forestry Zoning District in unincorporated Boulder County; and

**WHEREAS**, due to the current Mountain Pine Beetle epidemic, there is a growing need in Boulder County for a facility to sort and process woody biomass that is being removed from forested landscapes, and that is not suitable for processing by sawmills (and/or the small-diameter sawmills are too far away to transport the material to); and

**WHEREAS**, additionally, beetle-infested trees require certain disposal methods to help reduce the spread of the beetles; and

**WHEREAS**, in an effort to aid landowners in their forest management efforts, Boulder County has purchased an air curtain burner ("ACB") to process woody biomass materials that, once removed from a property, are otherwise difficult for residents to effectively handle; and

**WHEREAS**, the Subject Property proposed for the ACB and its associated activities is a 36.32-acre parcel owned by Boulder County, and the Applicant indicates that a maximum of five acres of this parcel may be cleared for the proposed use (with the initial size of the clearing expected to be approximately 2.5 acres, though if demand requires a larger clearing for the

facility, the Applicant would like the ability to expand the clearing to up to five acres); and

**WHEREAS**, access to the facility will be from Ridge Road, with internal one-way circulation routes to be created for small and large trucks, and drop-off areas to be designated beside the internal roads; and

**WHEREAS**, the eastern portion of the clearing on the Subject Property is where the sorting and processing activities will take place, and where the ACB, dumpster, kiln, and portable pond will be located, as shown on the submitted site plan; and

**WHEREAS**, the ash resulting from the incineration of disposed wood in the ACB will be stored in the dumpster until it is removed and the Applicant expects that much of this ash will be reused by local recyclers/landscapers as a soil amendment; and

**WHEREAS**, the kiln will allow beetle-infested wood to be heat treated and sanitized so that it may be reused as firewood; and

**WHEREAS**, chippers, grinders, and debarkers will also be used on the site, as they are needed to process wood in instances when the volume of wood being dropped off at the yard exceeds the ACB's capability to process material, or when the ACB is not able to be used (the ACB will be the primary method for treating slash and beetle infested wood, but chipping and/or grinding may also be used when there is a demand for the resulting biomass product); and

**WHEREAS**, the Mountain Pine Beetle flight period is from approximately July 15<sup>th</sup> to September 15<sup>th</sup> and the proposed facility will not be accepting wood infested with Mountain Pine Beetles during this time; moreover, all the Mountain Pine Beetle infested wood dropped off at the site prior to July 15<sup>th</sup> will be sanitized before beetle flight time begins; and

**WHEREAS**, Ips beetle infested wood will still be accepted and processed at the site during the Mountain Pine Beetle flight time, as the application materials note that pheromone traps used at the Meeker Park sort yard have been successful in preventing the spread of the Ips Beetle to the surrounding forests; and

**WHEREAS**, the Applicant proposes that the facility operate from April through November, six days (Monday to Saturday) per week, from 7:30 a.m. to 6:00 p.m., and that within this time span the facility will be open to the public for eight hours; and

**WHEREAS**, a minimum of one employee will staff the facility, and a temporary shelter/office for the staff may be provided (identified on the submitted site plan as a shed); and

**WHEREAS**, once the facility is no longer needed, the Applicant will remove the structures and reclaim the site by revegetating the disturbed areas; and

**WHEREAS**, the above-described request was processed and reviewed as Boulder County Land Use Docket #LU-09-0010 ("the Docket"), all as further described in the Boulder County Land Use Department Planning Staff's Memorandum and written recommendation to the Boulder County Board of County Commissioners ("the Board") dated August 4, 2009, with its attachments ("the Staff Recommendation"); and

**WHEREAS**, on August 4, 2009, the Board held a duly-noticed public hearing on the Docket ("the Public Hearing"), at which time the Board considered the Staff Recommendation, and also considered the documents and testimony presented by the County Land Use Department Planning Staff, representatives of the Applicant, and several members of the public, all as further reflected on the official record of the Public Hearing; and

**WHEREAS**, based on the Public Hearing, the Board finds that the Docket meets the criteria for special use approval set forth in Article 4 of the Land Use Code, and therefore approves the request in the Docket, subject to the conditions stated below.

**NOW, THEREFORE, BE IT RESOLVED** that the Docket is hereby approved, subject to the following conditions:

1. The Applicant shall obtain the necessary grading and building permits from the County Land Use Department prior to the commencement of any construction activities.
2. Prior to the issuance of a grading permit, the Applicant shall submit a copy of the Stormwater Discharge Permit

and stormwater management plan to the County Land Use and Transportation Departments.

3. The proposed driveway and access shall conform to Section 4.5 and Standard Drawings 5, 12, 14, and 15 of the Boulder County Road Standards and Specifications.
4. At the end of the first operational season, the Applicant shall provide the County Land Use and Transportation Departments with a report detailing the total trips to and from the Subject Property/site, as well as turning movement counts at the access. The data shall be collected each week on the three busiest consecutive days of the week. This information will be reviewed to determine if additional road and/or site changes are necessary. Any recommended road or site changes shall be made prior to operation of the facility the following season.
5. During the second and third year of operation, the Applicant shall collect daily data on the number of vehicles accessing the Subject Property/site. This information shall be provided to the County Land Use Department at the end of each seasonal operating period.
6. As estimated, the sound levels generated at the facility are acceptable; however, a sound level meter shall be used to measure, at each Subject Property line, the noise level generated at the facility while the loudest machinery is in use. This information shall be submitted with the application materials at the three- year review (see Condition #13, below).
7. Site restoration, revegetation, and weed management shall occur as outlined in the application materials to ensure that the facility does not have a long term negative impact on the land.
8. Pheromone traps shall be used at the Proposed Processing and Sort Yard to prevent the Ips Beetle from impacting the adjacent forests.
9. The Applicant shall install a portable pond of approximately 3, 000 gallons as required by the County Wildfire Mitigation Coordinator.

10. The proposed fencing shall be installed prior to the facility commencing operations.
11. All woody biomass collected at the facility shall be removed from the Subject Property at the end of each operational season, by the last day of November.
12. The Applicant shall be subject to the terms, conditions, and commitments of record in the official Docket file, including but not limited to the maintenance of tree screening, the use of the ember screen during windy conditions, and adherence to proposed months and daily hours of operation.
13. This facility is approved for operation for three years from the opening date. Prior to any use of the facility beyond these three years, the facility shall be reviewed and approved through the Limited Impact Special Review process, to determine if the Special Use criteria in the Land Use Code continue to be met, and if the facility continues to be needed by the community.

A motion to approve the Docket on the basis stated above, was made by Commissioner Pearlman, seconded by Commissioner Domenico, and passed by a 2-0 vote, with Commissioner Toor being excused.