

RESOLUTION 2008-72

A RESOLUTION APPROVING BOULDER COUNTY LAND USE DOCKET #DC-05-002H ("EXPANDED TRANSFER OF DEVELOPMENT RIGHTS (TDR) PROGRAM, INCLUDING STRUCTURE SIZE CONSIDERATIONS"): PROPOSED AMENDMENTS TO THE ZONING REGULATIONS OF ARTICLE 4 OF THE BOULDER COUNTY LAND USE CODE, WITH RELATED AMENDMENTS TO THE DEFINITIONS CONTAINED IN ARTICLE 18 OF THE LAND USE CODE, TO FULFILL THE GOALS AND POLICIES OF THE SUSTAINABILITY ELEMENT OF THE BOULDER COUNTY COMPREHENSIVE PLAN AS ADOPTED MAY 16, 2007, BY: SETTING A COUNTY-WIDE MAXIMUM SIZE THRESHOLD FOR SINGLE-FAMILY RESIDENCES; CREATING A PROGRAM OF TRANSFERABLE DEVELOPMENT CREDITS TO ALLOW INDIVIDUAL RESIDENCES TO EXCEED THE SIZE THRESHOLD (SUBJECT TO SITE PLAN REVIEW) WHILE PRESERVING OTHER RESIDENCES AT A SMALLER SIZE, THUS ASSURING A DIVERSITY OF HOUSE SIZES IN THE UNINCORPORATED COUNTY AND PREVENTING CONTINUING EXCESSIVE HOUSE SIZE EXPANSION THROUGHOUT THE COUNTY; ENACTING AMENDMENTS TO THE SITE PLAN REVIEW REGULATIONS IN ARTICLE 4-800 TO BETTER DEFINE THE APPLICABLE "NEIGHBORHOOD" FOR PURPOSES OF DETERMINING HOUSE SIZE COMPATIBILITY, TO SPECIFY PRESUMPTIVE APPROPRIATE HOUSE SIZES WITHIN NEIGHBORHOODS, AND TO ADD CRITERIA TO PROTECT THE VISUAL BEAUTY OF THE PEAK-TO-PEAK SCENIC CORRIDOR; ADDING A DEFINITION OF "RESIDENTIAL FLOOR AREA" FOR PURPOSES OF ADMINISTERING THE HOUSE SIZE AND RELATED SITE PLAN REVIEW ZONING AMENDMENTS; AND MODIFYING THE DEFINITION OF "FLOOR AREA" TO EXCLUDE COVERED PORCHES

WHEREAS, pursuant to C.R.S. §§30-28-112 and 30-28-116, and the other applicable provisions of the County Planning Act (Part 1 of Article 28, Title 30, C.R.S., as amended ("Planning Act")), the Board of County Commissioners of the County of Boulder ("the Board") is authorized to amend the text of County's Zoning Regulations in accordance with the procedures set forth in the Planning Act and the governing County regulations; and

WHEREAS, pursuant to C.R.S. §30-28-133 and the other applicable provisions of the Planning Act, as amended, the Board is authorized to amend the text of the County's Subdivision Regulations in accordance with the procedures set forth in the Planning Act and the governing County regulations; and

WHEREAS, pursuant to other statutory authority, the Board is empowered to adopt additional regulations which are related to the control of land use, including but not limited to Article 65.1 of Title 24 (Areas and Activities of State Interest); Articles 67 and 68 of Title 24 (Planned Unit Developments and Vested Rights, respectively); Article 20 of Title 29 (Local Land Use Enabling Act); Articles 11 and 15 of Title 30 (County Powers and Police Power, respectively); Article 1 of Title 32 (Special District Control); and Article 2 of Title 43 (County Highways), C.R.S.; and

**WHEREAS**, pursuant to the above-referenced authority, by Resolution 94-185 adopted October 18, 1994, effective October 19, 1994, the Board approved a unified Boulder County Land Use Code ("the Land Use Code"), which the Board first amended by Resolution 95-27 effective March 9, 1995, and has amended on subsequent occasions thereafter; and

**WHEREAS**, in Docket #DC-05-002H ("the Docket"), the Boulder County Land Use Department proposed certain additional comprehensive zoning text amendments, with associated implementing maps, to Articles 4 and 18 of the Land Use Code, to: (1) add a new Article 4-1300 establishing a County-wide maximum size threshold for single-family residences, and establishing a program of transferable development credits to allow individual residences to exceed the size threshold (subject to site plan review) while preserving other houses at a smaller size, thus assuring a diversity of house sizes in the unincorporated County and preventing continuing excessive house size expansion throughout the County; (2) amend the site plan review regulations in Article 4-800 to better define the applicable "neighborhood" for purposes of determining house size compatibility, to specify presumptive appropriate house sizes within neighborhoods, and to add criteria to protect the visual beauty of the Peak-to-Peak Scenic Corridor (accompanied by proposed maps showing the townsites neighborhoods of Allenspark, Eldora, Eldorado Springs, Gold Hill, Raymond, and Riverside, as well as the area of the Peak-to-Peak Scenic Corridor); and (3) add into Article 18 a definition of "residential floor area" for purposes of administering the house size and related site plan review zoning amendments, and amend the existing definition of "floor area" to exclude covered porches; and

**WHEREAS**, the Land Use Department developed and proposed the Docket to implement the Sustainability Element of the Boulder County Comprehensive Plan ("Comprehensive Plan"), which the County Planning Commission ("Planning Commission") adopted on May 16, 2007 following numerous public meetings and hearings held before both the Planning Commission and the Board on concerns related to house size expansion in the unincorporated County, the resulting incremental loss of rural and unique community character in the County, the resulting diminishing stock of smaller-sized and more affordable housing in the County, and the relationship between growing house size and additional energy usage, traffic generation, and materials consumption and waste in this recognized age of global warming, energy source scarcity, and other dwindling resources; and

**WHEREAS**, the Comprehensive Plan's Sustainability Element explicitly seeks to preserve the precious open-land and ecologically sound and diverse, natural qualities of the unincorporated County, as well as the unique character of the

County's many rural and historic townsite communities, and recognizes that the increase in average single-family home size in the County from 3,881 square feet in 1990 to 5,929 square feet in 2005 represents a threat to these essential community assets; and

**WHEREAS**, the Sustainability Element's stated Goals encourage the development of innovative regulatory programs on several fronts, to protect the County's increasingly valued resources of open rural lands and distinct community character, to reduce the waste of resources and materials, and to encourage long-term sustainable development throughout the County; and

**WHEREAS**, the Sustainability Element's stated Policies envision the development of an expanded transferable development rights program and the implementation of structure size regulations to maintain established rural community character, provide incentives for the retention of a diverse housing stock, and preserve scenic vistas and significant environmental resources throughout the unincorporated County; and

**WHEREAS**, following the Planning Commission's adoption of the Comprehensive Plan's Sustainability Element on May 16, 2007, the Planning Commission held multiple public meetings and public hearings on the Docket, including on June 20, 2007; July 18, 2007; August 15, 2007; August 29, 2007; September 19, 2007; October 17, 2007; December 5, 2007; December 19, 2007; January 9, 2008; January 16, 2008; February 6, 2008; February 20, 2008; and March 19, 2008; and

**WHEREAS**, the Planning Commission, following a final public hearing held on the Docket on February 6, 2008, met publicly again on February 20, 2008 to discuss the Docket, and voted to recommend to the Board that part of the Docket's amendments be considered for approval at this time, and part of the amendments not be approved but be deferred or reconsidered after further planning studies (such as neighborhood planning within the County's main townsite communities) could be conducted; and

**WHEREAS**, the Board, following an initial public meeting on the Docket held on June 5, 2007 and a public hearing held on July 10, 2007, and following the Planning Commission's recommendation and official certification of the Docket to the Board for action on February 20, 2008, met again in a public meeting/study session on the Docket on March 4, 2008, conducted another lengthy public hearing on the Docket on March 6, 2008, and convened another public meeting to provide direction on the Docket on March 10, 2008; and

**WHEREAS**, at its March 10, 2008 public meeting on the Docket, the Board specified certain changes which it desired to see made in the proposed amendments, and, at a public business meeting on March 13, 2008, voted to refer those changes back to the Planning

Commission for its consideration and approval, disapproval, or suggestions; and

**WHEREAS,** at a public meeting held on March 19, 2008, the Planning Commission reviewed and offered suggestions concerning the Board's specified changes to the Docket; and

**WHEREAS,** following the Planning Commission's March 19, 2008 transmittal of its suggestions to the Board, the Board held yet another public hearing on the Docket on April 8, 2008, at which time the Board considered the Land Use Department's memorandum and recommendation dated April 8, 2008, as well as the testimony presented by the County Land Use Department staff and by many members of the public speaking both for and against the Docket; and

**WHEREAS,** following its public hearing on April 8, 2008, the Board held another public meeting/study session on the Docket on June 12, 2008, and at that time approved the Docket as then revised and presented to it by the Land Use Department in accordance with the Board's direction at the April 8, 2008 public hearing, including a few specified changes which the Board determines, given the scope of the Docket and the massive public process surrounding it over the past year and more, are not substantial changes from the Docket as considered by the Planning Commission on March 19, 2008 and do not require further input from the Planning Commission; and

**WHEREAS,** at a duly noticed public meeting of the Board held on August 4, 2008, the Land Use Department presented a final draft of the Docket's approved amendments to the Board for final adoption; and

**WHEREAS,** based on the extensive public hearings and other proceedings on the Docket over the past year and more, the Board finds that the proposed amendments in the Docket, specifically in the form set forth in Exhibit A hereto, meet the criteria for text amendments contained in Article 16 of the Land Use Code, in that the existing text is in need of amendment to conform with and implement the Sustainability Element of the Comprehensive Plan; the Proposed Amendments are not contrary to the intent and purpose of the Land Use Code; and the Proposed Amendments are in accordance with the Comprehensive Plan (in particular with the Sustainability Element), all as set forth in and supported by the voluminous record underlying and comprising the Docket; and

**WHEREAS,** based on the extensive public hearings and other proceedings on the Docket over the past year and more, the Board finds that the townsite neighborhood maps and the Peak-to Peak Scenic Corridor map which support the implementation of the Docket's amendments to the site plan review regulations of Article 4-800, and which are attached as part of Exhibit B hereto, meet the

applicable criteria for comprehensive map amendments contained in Article 4-1102 of the Land Use Code, in that a public need exists for these map amendments to support the operative text amendments and implement the Sustainability Element of the Comprehensive Plan; the maps are consistent with and further the stated intent and purposes of the Land Use Code (including the amendments in the Docket); the maps conform with the Comprehensive Plan (in particular with the Sustainability Element); and the maps are not detrimental to the public health, safety, or welfare, all as also set forth in and supported by the voluminous record underlying and comprising the Docket; and

**WHEREAS**, the Board therefore determines that the proposed amendments in the Docket, as set forth in Exhibit A hereto, should be approved for incorporation into the Land Use Code.

**NOW, THEREFORE, BE IT RESOLVED** that the proposed amendments in the Docket, specifically in the form of Exhibit A attached hereto and incorporated herein by this reference, are hereby approved for incorporation into the Land Use Code, to be effective beginning on Friday, August 8, 2008.

**BE IT FURTHER RESOLVED** that the Boulder County Development Credits Clearinghouse, as authorized in Articles 4-1303 through 4-1305 of the amendments approved in the Docket, shall operate in accordance with those provisions, as well as the administrative procedures for the Clearinghouse reviewed and approved by the Board at its August 4, 2008 public meeting as they may be duly modified or amended from time to time.

**BE IT FURTHER RESOLVED** that, pursuant to C.R.S. Section 30-28-125, the Board authorizes the Clerk to the Board to arrange for the immediate transmittal of this Resolution, with its Exhibit A, to the County Clerk and Recorder, for filing and appropriate indexing with that official, so that the Clerk and Recorder may make this Resolution, with its Exhibit A, accessible to the public. This transmittal should state recording Reference **No. 2735571**, the recording of the Boulder County Land Use Code on November 4, 2005, which this transmittal supplements and amends.

A motion to approve in final form and adopt the Docket, as set forth above, was made at the duly convened public meeting of the Board on August 4, 2008 by Commissioner Toor, seconded by Commissioner Domenico, and passed by a 3-0 vote.

**ADOPTED** on this 5th day of August, 2008, to be effective on and after the 8<sup>th</sup> day of August, 2008.

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

  
\_\_\_\_\_  
Ben Pearlman, Chair

  
\_\_\_\_\_  
Will Toor, Vice Chair

  
\_\_\_\_\_  
Cindy Domenico, Commissioner

ATTEST:

  
\_\_\_\_\_  
Clerk to the Board

## Exhibit A – Resolution 2008-72

As finally approved August 4, 2008

To be effective August 8, 2008

### 4-1300 – Expanded TDR Program and Structure Size Thresholds for Single Family Uses

#### A. Introduction and Purposes

1. This Section 4-1300 establishes a structure size threshold for single family residences, above which additional Development Credits must be obtained to offset the impacts of larger scale homes, and below which Development Credits can be severed to preserve a supply of smaller scale homes. These regulations also provide for the transfer of Development Credits to maintain rural character through the preservation of vacant land.
2. These regulations are adopted to implement the goals and policies in the Sustainability Element of the Boulder County Comprehensive Plan. Those goals and policies include:
  - a. Preserving the rural character of unincorporated Boulder County, especially those areas with particular historic or contextual character;
  - b. Promoting more sustainable development through incentives, education and regulation;
  - c. Allowing for the impacts of larger scale home development to be offset through the preservation of vacant land and smaller scale residential development elsewhere in the County;
  - d. Providing flexibility for property owners to build and keep smaller scale homes which will help provide a diversity of housing stock in unincorporated Boulder County; and
  - e. Promoting and preserving vacant land by creating incentives for property owners to leave land undeveloped.

### 4-1301 – Division of the County into Geographic Areas

#### A. For purposes of this Article 4-1300, unincorporated Boulder County is divided into the following two geographic areas:

1. Mountain Area – The Mountain Area includes the mountainous areas of the County as defined in the Land Use Code Section 18-178A (the area west of CO 93 from its intersection with the south county line to the City of Boulder, west of the City of Boulder city limits, west of US 36 from the City of Boulder to CO 66, and west of the St. Vrain Supply Canal from CO 66 to its intersection with the north county line).
2. Plains Area – The Plains Area includes all areas of the County that are not included in the Mountain Area.

### 4-1302 – Single Family Residential Size Threshold

#### A. The Size Threshold is the measure of single family residential floor area that is allowed on a legal building lot without having to purchase Development Credits, as further provided below. Building lots with residential floor area at a specified level less than the Size Threshold may sell Development Credits, as further provided below.

1. Size Threshold to be applied county-wide
  - a. Total residential floor area, as defined in Article 18-190, equal to 6,000 square feet.
  - b. This total floor area includes all residential floor area as defined in Article 18-190.

- B. Structures exempt from the Size Threshold are manufactured homes located in a zoned Manufactured Home Park; nonresidential structures including agricultural accessory structures such as barns and loafing sheds; and Agricultural, Family Care and Historic Accessory Dwelling Units that are approved through a special review process.

#### 4-1303 –Conveyance and Severance of Development Credits

- A. Development Credits may be conveyed either in a private market transaction or through the County Clearinghouse (see Section 4-1305, below).
  - 1. For Development Credits conveyed through private market transactions, the parties must obtain Development Credit Certificates from the County Clearinghouse in advance of conveyance.
    - a. Adequate documentation of private transactions, such as purchase agreements or bills of sale, must be submitted to the County Clearinghouse within five business days after the closing of the transaction, for registration purposes.
    - b. The County Clearinghouse may request information as necessary to provide adequate evidence of the private transaction.
  - 2. Boulder County may sell or donate Development Credits to the County Clearinghouse from properties purchased by the Boulder County Parks and Open Space Department under the rules and policies governing the operation of the Clearinghouse, contained in Section 4-1305, below, and the purchase of properties by the Parks and Open Space Department.
- B. Severance of Development Credits from Vacant Building Lots Where No Development is to Occur
  - 1. Development Credits may be severed from vacant building lots, and any future development potential removed from the subject lot, based on the following:
    - a. In the Plains Area
      - i. The parcel must be a building lot.
      - ii. The building lot must have legal access.
      - iii. The property owner may offer to grant a conservation easement, or other preservation instrument, on the property to either the County or another land preservation entity approved by the County, keeping the property vacant in perpetuity. If such offer is accepted, the property owner retains fee title to the lot and will receive ten Development Credits, which may then be held by the property owner or sold to either the County Clearinghouse or on the private market.
      - iv. The property owner may offer to convey the lot in fee to either the County or another land preservation entity approved by the County. If such offer is accepted, the property owner will receive as compensation twelve Development Credits, which may then be held by the property owner or sold to either the County Clearinghouse or on the private market.
    - b. In the Mountain Area
      - i. The parcel must be a building lot.
      - ii. The building lot must have legal access.
      - iii. The property owner may offer to grant a conservation easement, or other preservation instrument, on the property to either the County or another land preservation entity approved by the County, keeping the property vacant in

perpetuity. If such offer is accepted, the property owner retains fee title to the lot and will receive five Development Credits which may then be held by the property owner or sold to either the County Clearinghouse or on the private market.

- iv. The property owner may offer to sell the lot in fee to either the County or another land preservation entity approved by the County. If such offer is accepted, the property owner will receive seven Development Credits, which may then be held by the property owner or sold to either the County Clearinghouse or on the private market.

C. Severance of Development Credits from Vacant or Developed Building Lots Where Development is to be Restricted

1. Development Credits may be severed from either vacant or developed building lots, except as provided in 4-1303.C.4, below, with any future development limited to a single-family, size-restricted residential use on the subject lot, based on the following:
  - a. The parcel must be a building lot.
  - b. The building lot must have legal access.
  - c. For developed Building Lots, only detached single family residential floor area is eligible to sever Development Credits.
  - d. The property owner must restrict residential floor area on the lot to the size, measured in square feet of residential floor area, and receive the designated Development Credits as specified in this subsection:
    - i. For development restricted to 2,000 square feet of residential floor area, the owner may receive two Development Credits.
    - ii. For development restricted to 1,500 square feet of residential floor area, the owner may receive three Development Credits.
    - iii. For development restricted to 1,000 square feet of residential floor area, the owner may receive four Development Credits.
2. The owners of eligible lots shall receive the authorized number of Development Credits upon the granting of a restrictive covenant or other county approved preservation instrument to assure that the restriction imposed on the size of future development will run with the property in perpetuity.
3. A developed lot, whose owner restricts the size of development on that property under this Section, may develop or redevelop to the maximum size included in that deed restriction.
4. Residential development restricted to a size of less than 2,000 square feet by a Conservation Easement recorded on or before the effective date of these regulations and held by either the County or another preservation entity, is not eligible to participate in the severance of Development Credits under this Section 4-1303.

D. Additional Development Credits may be awarded for either vacant or developed building lots from which Development Credits are conveyed, as a bonus for significant conservation values found to exist on such lots, subject to the provisions of this subsection.

1. Properties owned or under contract for purchase by Boulder County on the effective date of these regulations, or being purchased by the Boulder County Parks and Open Space without property owner participation in this Article 4-1300, are not eligible for Bonus Development Credits.

2. Bonus Development Credits may be awarded to a particular lot based on a site-specific assessment of the parcel by the County Parks and Open Space Department.
    - a. The availability of Bonus Development Credits will be based on the number and extent of significant conservation values which the Parks and Open Space Department in its sole discretion finds associated with the specific building lot.
    - b. Such review will be undertaken upon request of the building lot owner.
    - c. The award of Bonus Development Credits is limited to a maximum of five Development Credits per building lot.
      - i. Significant conservation values based on which the County Parks and Open Space Department may award Bonus Development Credits include:
        - (a) Preservation of Resources – The lot(s) contains natural, cultural or ecological resources as outlined in the Boulder County Comprehensive Plan that would be preserved through a restriction on development on the lot. These resources include, but are not limited to, mapped environmental conservation areas, natural landmarks, natural areas, significant natural communities, rare plant areas, critical wildlife areas, significant riparian corridors, open roadside corridors or significant agricultural lands of national importance, significant wetlands, and historic or archaeological resources.
        - (b) Agricultural Water Rights – The lot(s) have agricultural water for irrigation tied to the land to be preserved.
        - (c) Urban Shaping – The lot(s) helps to create significant buffer zones between communities or between residential and nonresidential uses, including, but not limited to, rural preservation areas specified in County intergovernmental comprehensive planning agreements with municipalities.
        - (d) Other Open Space Benefits – The lot(s) offers desired linkages to trails or other open space properties, provides desired access to public lakes, streams or other usable open space properties, or eliminates private property enclaves.
- E. Limitations on the Use of Development Credits on Preserved Lots
1. Once a property owner has severed the Development Credits from a vacant lot under Section 4-1303.B, above, Development Credits may not be repurchased to allow development on that lot.
  2. Once a property owner has severed Development Credits from a lot where development has been restricted under Section 4-1303.C., above, the preservation instrument restricting development on that lot may be amended to allow the purchase and use of Development Credits to increase the floor area allowed on that lot up to a maximum of 2,000 square feet.
    - a. Prior to the issuance of a building permit for the allowed increase in floor area, the owner must execute and record an amended preservation instrument approved by the Clearinghouse to memorialize the new restricted floor area.
    - b. The property owner shall submit the required Development Credit Certificates along with building permit application for construction of the additional square footage.

4-1304 – Acquisition and Use of Development Credits for Construction of Residential Floor Area

- A. Requirement for Acquisition of Development Credits – For residential floor area approved through the Site Plan Review process or other applicable County review process, which exceeds the Size Threshold in Section 4-1302, above, Development Credits must be acquired prior to the issuance of a building permit for the approved development.
- B. Development Credits must be obtained for development of residential floor area greater than the Size Thresholds in Section 4-1302 according to the following table. This table shall be applied cumulatively to residential floor area subject to this Article 4-1300.

Number of square feet	Number of Credits	Total Additional Square Footage	Total Credits for Additional Square Footage
1 <sup>st</sup> 500	1	500	1
2 <sup>nd</sup> 500	1	1000	2
3 <sup>rd</sup> 500	2	1500	4
4 <sup>th</sup> 500	2	2000	6
5 <sup>th</sup> 500	3	2500	9
Each additional 500 square feet	3		

- C. Process for the Acquisition of Development Credits
  - 1. In the case of either a private transaction or purchase from the Clearinghouse, the Clearinghouse shall issue the appropriate Development Credit certificates. Certificates may be acquired in a private transaction at any time, and applicants purchasing Credits prior to a site plan review approval do so at their own risk. Certificates may not be acquired from the Clearinghouse for development exceeding the applicable size threshold until the development has received final County Site Plan Review approval.
  - 2. Any building permit application for a single family residential structure greater than the applicable Size Threshold shall not be considered complete without the submission of the necessary Development Credit certificates and completion of any required land use process.
- D. Relationship between Size Thresholds and Existing Single Family Residential Structures
  - 1. Single family residential structures existing on the effective date of these regulations are not subject to the Size Threshold requirement in this Article 4-1300; however, any addition of residential floor area to an existing structure which increases the total residential floor area to a size greater than the specified size threshold, will be subject to a requirement to purchase Development Credits to offset the portion of that additional residential floor area above the threshold.

#### 4-1305 – Boulder County Development Credits Clearinghouse

##### A. Short Title

1. The Boulder County Development Credits Clearinghouse (also referred to as the “Clearinghouse”) shall be established to assist in the administration of this Article 4-1300.

##### B. Duties and Responsibilities

1. Purchase and Sale of Development Credits – The Clearinghouse will have the ability to purchase Development Credits from willing sellers, and to sell Credits to willing buyers needing additional floor area for their single family residential development.
2. Registration of the Development Credits – The Clearinghouse will maintain a registration of the Development Credits available for purchase either through private market transactions or through the Clearinghouse, and of Development Credits that have been purchased and sold.
3. Issuance of Development Credit Certificates – The Clearinghouse shall be responsible for the issuance of Development Credit Certificates to be used in both private and Clearinghouse transactions to convey or acquire Development Credits.
4. Recordation – The Clearinghouse shall oversee the recordation of the necessary approved documents to assure that development size limitations and vacant land preservation encumbrances on specific lots associated with the transfer of Development Credits are maintained as required in this Article 4-1300.

#### 4-1306 – Application of Article 4-1300

##### A. The following development shall be exempt from compliance with the Size Threshold outlined in Section 4-1302 to the extent noted below:

1. The specific development recognized in any land use approval granted prior to the effective date of these regulations, which on the effective date of these Regulations, is within the statutory vesting period granted under Section 3-207 of the Land Use Code (codifying Part 1 of Article 68, Title 24, C.R.S.). The applicable statutory vesting period is specified in the Commissioners’ resolution approving the subject development. Once the statutory vesting period for these developments expires, an additional three years shall be added to that original vesting period before the development will be subject to these regulations. After this vesting period expires, any development covered by this Subsection A.1., which is also an approved PUD subdivision, shall be exempted from the Size Thresholds on the same basis as Transfer of Development Rights PUD subdivisions (i.e., up to a total residential floor area of 9,000 square feet per lot - see Subsection A.4., below.)
2. The specific development for which a complete application for a County building permit has been submitted prior to the effective date of these regulations. If any building permit issued under this subsection expires or is not lawfully pursued, the development becomes subject to these regulations.
3. The specific development approved as a site plan review under Article 4-800 of this Code (whether approved solely as a site plan review request, or as a site plan review request combined with another form of land use review), pursuant to a complete application submitted on or before September 7, 2007. This exemption lasts for the three-year period specified in Section 4-810.A., after which the site plan review approval expires and the development becomes subject to these regulations.

4. Development in a Transfer of Development Rights Planned Unit Development Subdivision approved and recorded under Article 6-700 of this Code will be exempted from the Size Threshold up to a total residential floor area of 9,000 square feet per lot. Residential floor area greater than 9,000 square feet per lot will be subject to the requirement to purchase additional Development Credits for the floor area greater than 9,000 square feet.
  5. The specific development recognized in a Commissioners' authorization for a firm, numerical house size to be built as stated in a land use approval granted pursuant to a complete application submitted on or before September 7, 2007, and for which a recorded conservation easement was required or agreed to as part of the approval. This exemption does not apply, however, where the conservation easement was anticipated or required under the general land use regulations governing the development, such as PUD, NUPUD, and TDR sending site regulations. This exemption also does not apply where the house size allowance in the subject approval is stated presumptively (as opposed to authorizing a definite size), or where the size allowance applies to multiple structures (making it difficult to determine the particular size authorized for the residence itself).
  6. The restoration of a structure under Section 4-802.B.3, where a structure has been damaged or destroyed by causes outside the control of the property owner or agent.
- B. For purposes of interpreting the exemptions contained in Section A, above, the following additional provisions shall govern:
1. The effective date of these regulations shall be the effective date stated in the Commissioners' resolution approving the regulations.
  2. Approvals granted prior to the effective date of these regulations shall be approvals that have a final Commissioners' vote of approval before the regulations' effective date.
  3. A requirement for a complete application to be filed, means a complete application as determined by the Director with reference to this Code's or the Building Code's submittal requirements for the application in question.
  4. The reference to an exemption applying to the "specific development" in a submitted or approved application means the exact development in the submitted or approved application, with only minor modifications being allowed in the discretion of the Land Use Director.
- C. The Land Use Director is empowered to make interpretations regarding the application of the exemptions stated in Section A., above, to specific development. In making interpretations, the Land Use Director shall consider the purposes of the regulations in this section, as well as the principles of interpretation and rules of construction contained in Article 1 of this Code. Any aggrieved party may appeal the Director's final interpretation under this Section to the Board of County Commissioners, provided that any such appeal shall be in writing, and shall be filed with the Land Use Director no later than 30 days following the date of the Director's final interpretation.

#### 4-1307 – Review and Amendment of These Regulations

- A. The Board of County Commissioners will undertake a review of this Article 4-1300, including the Size Threshold and the operation of the Clearinghouse, six months after the effective date of these regulations.

- B. After that initial review, the Board may establish a regular time interval for continued review of this program.
- 

#### 4-802 Applicability and Scope of the Site Plan Review Process for Development

- A. Site plan review shall be required for (unless not required or waived pursuant to sections B and C below):
1. Any development requiring a building permit on vacant parcels in unincorporated Boulder County
  2. For residential development, Site Plan Review shall be required for the more restrictive of either any cumulative increase in residential floor area of more than 1,000 square feet on a parcel over that existing as of September 8, 1998 or any cumulative increase in residential floor area which results in a total residential floor area of a size greater than 125% of the median residential floor area for the defined neighborhood in which the subject parcel is located.
    - a. In calculating the 1,000 square foot threshold or determining if the proposed development is greater than 125% of the residential median floor area, any demolition and rebuilding of any existing residential structure or any portions thereof, shall be counted toward the threshold
    - b. Any construction of residential floor area not legally existing as of September 8, 1998 shall be counted toward the threshold
    - c. Applies to all parcels in unincorporated Boulder County
    - d. Applies to all residential floor area, as defined in Article 18-190.
  3. Any cumulative increase in nonresidential floor area of more than 1,000 square feet on a parcel over that existing as of September 8, 1998
    - a. In calculating this 1,000 square foot threshold, any demolition and rebuilding of any existing nonresidential structure or any portions thereof, shall be counted toward the threshold
    - b. Any construction of nonresidential floor area not legally existing as of September 8, 1998 shall be counted toward the threshold
    - c. Applies to all parcels in unincorporated Boulder County
    - d. Applies to all principal or accessory nonresidential structures
  4. New structures of any size requiring a building permit when the site is located within a Natural Landmark or Natural Area as described in the Environmental Resources Element of the Comprehensive Plan and shown on the Zoning District Maps of Boulder County
  5. New structures 500 square feet or more in the 250' buffer associated with a Natural Landmark or Natural Area, as described in the Environmental Resources Element of the Comprehensive Plan and shown on the Zoning District Maps of Boulder County
  6. New structures or additions to existing structures of any size on conservation easements held by Boulder County
  7. Development occurring in a Rural Community District
  8. Any development or earthwork requiring a floodplain development permit
  9. Any Boulder County access permit issued by the Transportation Department
  10. Any grading permit for over 50 cubic yards of earthwork

11. A change in use of a parcel, except to residential
  12. A commercial telecommunications facility utilizing an existing structure and meeting the height requirements of the district in which the facility is located
  13. Any proposal which is eligible to be waived from site plan review, but for which a waiver was not granted
- B. (No proposed changes to current language)
- C. Site plan review may be waived for the following circumstances if the Land Use Director determines that there is no potential for any significant conflict with the criteria listed in Article 4-806 of this Code:
1. Any increase in the total residential floor area to a size less than 125% of the median residential floor area for the defined neighborhood in which the subject parcel is located, up to an increase of 2,000 square feet.
    - a. This provision includes instances in which site plan review would be required because the floor area exceeds the cumulative threshold specified in this section A(2) and B(2)(a)
  2. In the plains, any nonresidential accessory structure less than 5,000 square feet
  3. In the mountainous areas, any nonresidential accessory structure less than 2,000 square feet
  4. Any grading permit involving under 500 cubic yards of earthwork

In considering a waiver determination, the Director shall notify adjacent property owners. The Director shall not issue the determination for seven days following such notification and shall consider any comments received by the public. In waiving any requirement for site plan review as authorized under this section 4-802, the Director may impose written terms and conditions on the waiver as may be reasonably necessary to ensure that the regulatory basis for the waiver is not contravened once the subject use or construction is commenced.

#### 4-806 Site Plan Review Standards

- A. All site plan review applications shall be reviewed in accordance with the following standards which the Director has determined to be applicable based on the nature and extent of the proposed development. When two or more of the standards listed below conflict, the Director shall evaluate the applicability and importance of each of the conflicting standards under the facts of the specific application and make a reasonable attempt to balance the conflicting standards in reaching a site plan decision.
1. To provide a greater measure of certainty as to the applicable neighborhood or surrounding area, the following definition of neighborhood or surrounding area shall be used to review proposed Site Plan Review applications:
    - a. For applications inside platted subdivisions, which have seven or more developed lots, the neighborhood or surrounding area is that platted subdivision.
    - b. For applications within the mapped historic townsites of Allenspark, Eldora, Eldorado Springs, Gold Hill, Raymond and Riverside, the neighborhood or surrounding area is defined as the mapped townsite.
    - c. For applications outside of platted subdivisions with seven or more developed lots or the mapped townsites of Allenspark, Eldora, Eldorado Springs, Gold Hill,

Raymond and Riverside, the defined neighborhood or surrounding area is the area within 1500 feet from the applicable parcel. The neighborhood or surrounding area shall not include any parcels inside municipal boundaries, platted subdivisions with seven or more developed lots, or the mapped townsites of Allenspark, Eldora, Eldorado Springs, Gold Hill, Raymond and Riverside.

2. The size of the proposed development must be compatible with the general character of the defined neighborhood or surrounding area.
  - a. In determining size compatibility of residential structures with the defined neighborhood, it is presumed that structures of a size within the larger of a total residential floor area of either (1) 125% of the median residential floor area for that defined neighborhood or area or (2) of a total residential floor area of 1,500 square feet in the mapped townsites of Allenspark, Eldora, Eldorado Springs, Gold Hill, Raymond, and Riverside, or 2,500 square feet for other areas of the County, are compatible with that neighborhood.
    - i. The Boulder County Assessor's Records will be the source of data to determine both the median size within that defined neighborhood or area as well as the existing residential floor area on a given parcel.
    - ii. Median floor area will include the total residential floor area, as defined in Section 18-190.
  - b. Either the applicant or the Director may demonstrate that this presumption does not adequately address the size compatibility of the proposed development with the defined neighborhood or area.
    - i. Factors to be considered when determining the adequacy of this presumption include:
      - (a) The visibility of the proposed structure(s) from other private parcels within the defined neighborhood or area, as well as visibility from either public roads or open space both within and outside that defined neighborhood or area.
        - (i) To overcome this size presumption, the structure must be minimally visible from other private parcels within the defined neighborhood or area, as well as public roads and open space both within and outside that defined neighborhood or area.
        - (ii) Mitigation factors to be considered in determining the visibility of the proposed development include the use of topography or underground construction to screen the proposed development and distance of the proposed development from other private parcels, public roads and open spaces.
      - (b) The distribution of home sizes within the defined neighborhood, taking into consideration the home sizes most closely adjacent to the subject property.
      - (c) For properties which are encumbered by a conservation easement that specifies an allowable house size on that parcel, that specified home size is a factor to be considered in rebutting a size presumption which is smaller than the house size defined in the conservation easement.
      - (d) Significant adverse impacts demonstrated according to Standards 3 through 16 of this Section 4-806.A.

3. The location of existing or proposed buildings, structures, equipment, grading, or uses shall not impose an undue burden on public services and infrastructure.
4. Plans for the proposed development have satisfactorily mitigated any geologic hazards, such as expansive soils, subsiding soils, questionable soils where the safe-sustaining power of the soils is in doubt, or contaminated soils, landslides, unstable slopes, rockfalls, and avalanche corridors, as identified in the Comprehensive Plan, or through the site plan review process.
5. The site plan shall satisfactorily mitigate the risk of wildfire both to the subject property and those posed to neighboring properties in the surrounding area by the proposed development. In assessing the applicable wildfire risk and appropriate mitigation measures, the Director shall consider the referral comments of the County Wildfire Mitigation Coordinator and the applicable fire district, and may also consult accepted national standards as amended, such as the 2003 Urban-Wildland Interface Code; NFPA / 80A, 299, 1231; 2003 International Fire Code; and the 2003 International Building Code.
6. The proposed development shall not alter historic drainage patterns and/or flow rates or shall include acceptable mitigation measures to compensate for anticipated drainage impacts.
7. The development shall avoid significant natural ecosystems or environmental features, including but not necessarily limited to riparian corridors and wetland areas, plant communities, and wildlife habitat and migration corridors, as identified in the Comprehensive Plan or through the site plan review process. Development within or affecting such areas may be approved, subject to acceptable mitigation measures and in the discretion of the Director, only if no other sites on the subject property can be reasonably developed, or only if reasonably necessary to avoid significant adverse impacts based upon other applicable site plan review criteria.
8. The development shall avoid flash flood corridors, alluvial fans, floodplains, and unique geologic, geomorphic, paleontological, or pedologic features, as identified in the Comprehensive Plan or through the site plan review process. Development within or affecting such hazards may be approved, subject to acceptable mitigation measures and in the discretion of the Director, only if no other sites on the subject property can be reasonably developed, or only if reasonable necessary to avoid significant adverse impacts based upon other applicable site plan review criteria.
9. The development shall avoid agricultural lands of local, state or national significance as identified in the Comprehensive Plan or through the site plan review process. Development within or affecting such lands may be approved, subject to acceptable mitigation measures and in the discretion of the Director, only if no other sites on the subject property can be reasonably developed, or only if reasonably necessary to avoid significant adverse impacts based upon other applicable site plan review criteria.
10. The development shall avoid significant historic or archaeological resources as identified in the Comprehensive Plan or the Historic Sites Survey of Boulder County, or through the site plan review process. Development within or affecting such resources may be approved, subject to acceptable mitigation measures and in the discretion of the Director, only if no other sites on the subject property can be

reasonably developed, or only if reasonably necessary to avoid significant adverse impacts based upon other applicable site plan review criteria.

11. The development shall not have a significant negative visual impact on the natural features or neighborhood character of surrounding area. Development shall avoid prominent, steeply sloped, or visually exposed portions of the property. Particular consideration shall be given to protecting views from public lands and rights-of-way, although impacts on views of or from private properties shall also be considered. Development within or affecting features or areas of visual significance may be approved, subject to acceptable mitigation measures and in the discretion of the Director, only if no other sites on the subject property can be reasonably developed, or only if reasonably necessary to avoid significant adverse impacts based upon other applicable site plan review criteria.
    - a. In reviewing development proposals in the Peak-to-Peak Scenic Corridor Area, special attention will be paid to the visibility of the development from the Peak-to-Peak Highway, with the intent to ensure development is minimally visible from the Highway.
    - b. For development anywhere in the unincorporated areas of the county, mitigation of visual impact may include changing structure location, reducing or relocating windows and glazing to minimize visibility, reducing structure height, changing structure orientation, requiring exterior color and materials that blend into the natural environment, and/or lighting requirements to reduce visibility at night.
  12. The location of the development shall be compatible with the natural topography and existing vegetation and the development shall not cause unnecessary or excessive site disturbance. Such disturbance may include but is not limited to long driveways, oversized parking areas, or severe alteration of a site's topography. Driveways or grading shall have a demonstrated associated principal use.
  13. Runoff, erosion, and/or sedimentation from the development shall not have a significant adverse impact on the surrounding area.
  14. The development shall avoid Natural Landmarks and Natural Areas as designated in the Goals, Policies & Maps Element of the Comprehensive Plan and shown on the Zoning District Maps of Boulder County. The protection of Natural Landmarks and Natural Areas shall also be extended to their associated buffer zones. Development within or affecting such Landmarks or Areas may be approved, subject to acceptable mitigation measures and in the discretion of the Director, only if no other sites on the subject property can be reasonably developed, or only if reasonably necessary to avoid significant adverse impacts based upon other applicable site plan review criteria.
  15. Where an existing principal structure is proposed to be replaced by a new principal structure, construction or subsequent enlargement of the new structure shall not cause significantly greater impact (with regard to the standards set forth in this Section 4-806) than the original structure.
  16. The proposal shall be consistent with the Comprehensive Plan, any applicable intergovernmental agreement affecting land use or development, and this Code.
-

18-100 Above Grade - Amended into and replaced by Article 18-162. See Article 18-162.

18-114 Basement – Amended into and replaced by Article 18-162. See Article 18-162.

18-162 – Floor Area – The area of a building or structure, existing or new, including basements and attached garages calculated without deduction for corridors, stairways, closets, the thickness of interior walls, columns, or other features as measured from the exterior face of the exterior walls. Floor area does not include the area of any covered porch. (For Residential Structures, see also Article 18-190.)

A. Above Grade Floor Area      Any floor area in which the floor is higher than existing grade, plus a portion of basement floor area in cases where any part of the basement story is higher than existing grade. The first two vertical feet of any basement story that are exposed above existing grade are excluded from the above grade floor area calculation. The above grade portion of the basement floor area is calculated by multiplying the total basement floor area by the percentage of the volume of the basement story that is higher than existing grade.

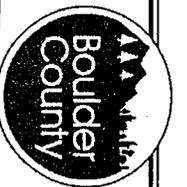
1. If the finished floor surface of the main story of a residence is partially or completely above finished grade, then all floor area in the main story will be considered above grade floor area. All floor area in any stories above the main story will also be considered above grade floor area. The main story is defined as the story that includes, but is not limited to the kitchen, dining room, and living room.

B. Below Grade Floor Area      Excepting the portion that is defined as above grade floor area, a portion of the basement floor area in which all or part of the floor is below existing grade. The first two vertical feet of any basement story that are exposed above existing grade are included in the below grade floor area calculation. Below grade floor area is calculated by multiplying the total floor area of the basement by the percentage of the volume of the basement that is below existing grade.

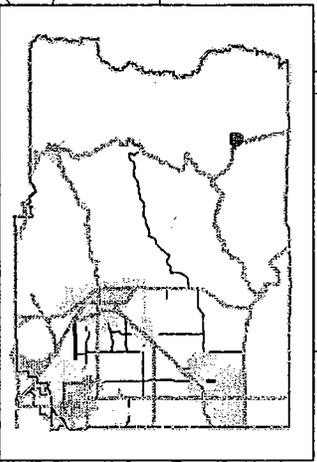
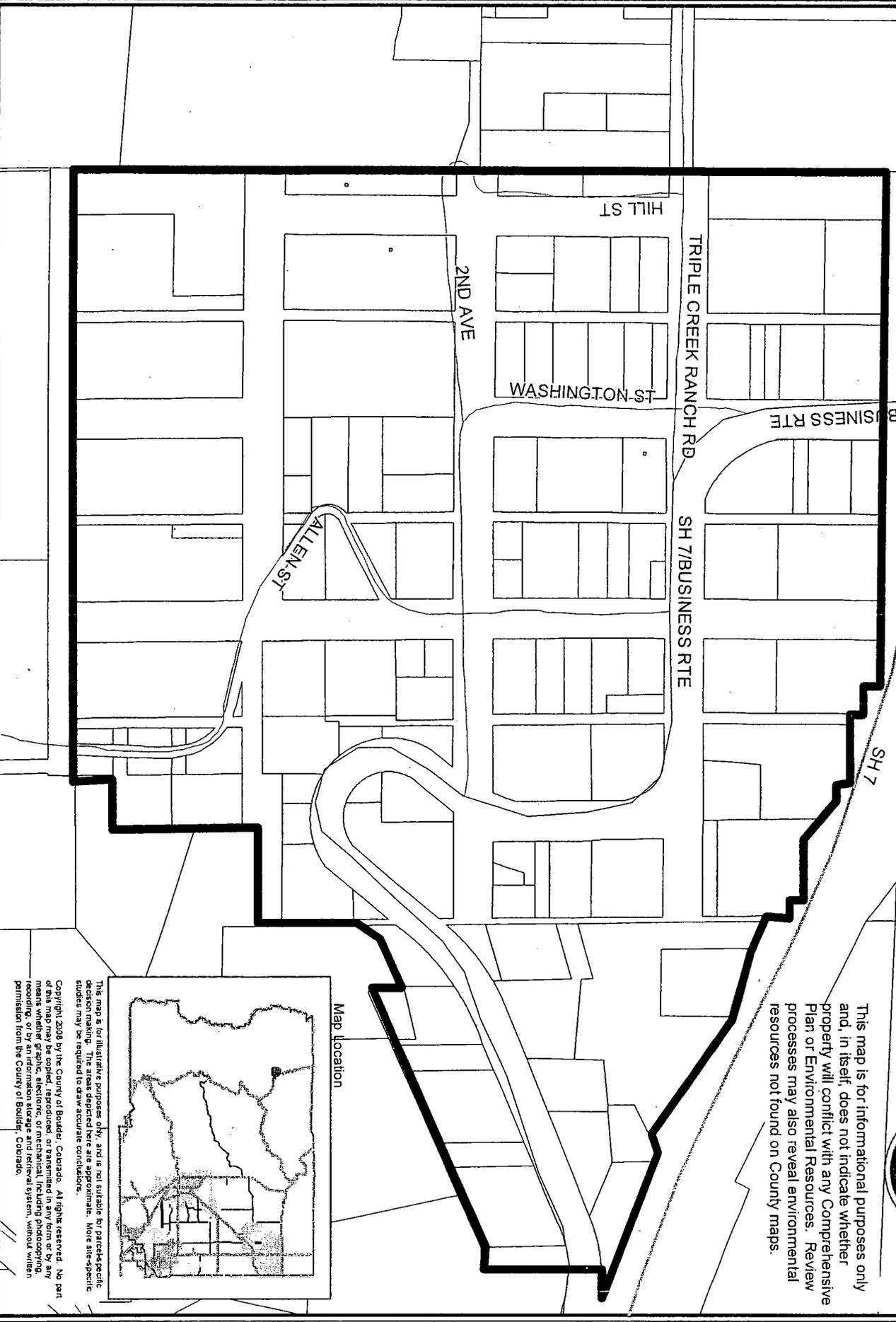
18-189D – Residential Floor Area – For the purposes of Site Plan Review and the presumptive size thresholds associated with the Expanded Transfer of Development Rights Program, Residential Floor Area includes all attached and detached floor area (as defined in 18-162) on a parcel including principal and accessory structures used or customarily used for residential purposes, such as garages, studios, pool houses, home offices, and workshops.

# Allenspark Townsite (Land Use Code 4-806)

## Exhibit B - Resolution 2008-72



This map is for informational purposes only and, in itself, does not indicate whether property will conflict with any Comprehensive Plan or Environmental Resources. Review processes may also reveal environmental resources not found on County maps.

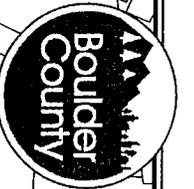


This map is for illustrative purposes only, and is not suitable for parcel-specific decision making. The areas depicted here are approximate. More site-specific studies may be required to draw accurate conclusions.

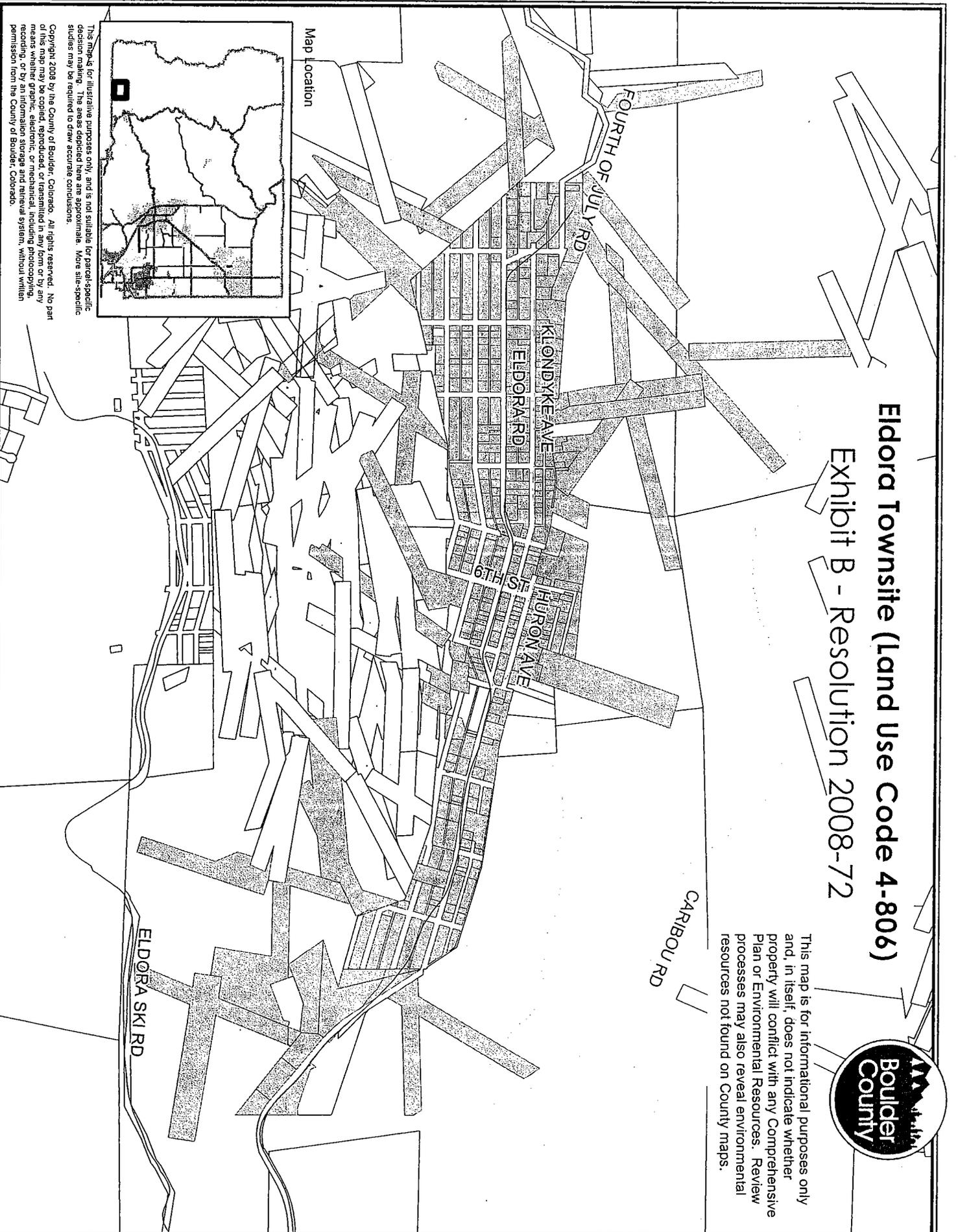
Copyright 2008 by the County of Boulder, Colorado. All rights reserved. No part of this map may be copied, reproduced, or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system, without written permission from the County of Boulder, Colorado.

# Eldora Townsite (Land Use Code 4-806)

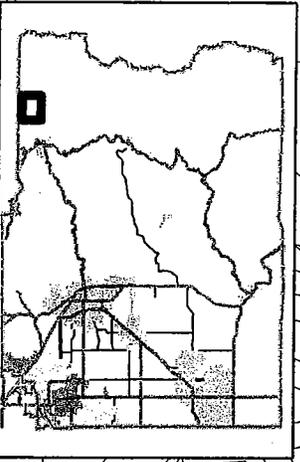
## Exhibit B - Resolution 2008-72



This map is for informational purposes only and, in itself, does not indicate whether property will conflict with any Comprehensive Plan or Environmental Resources. Review processes may also reveal environmental resources not found on County maps.



Map Location

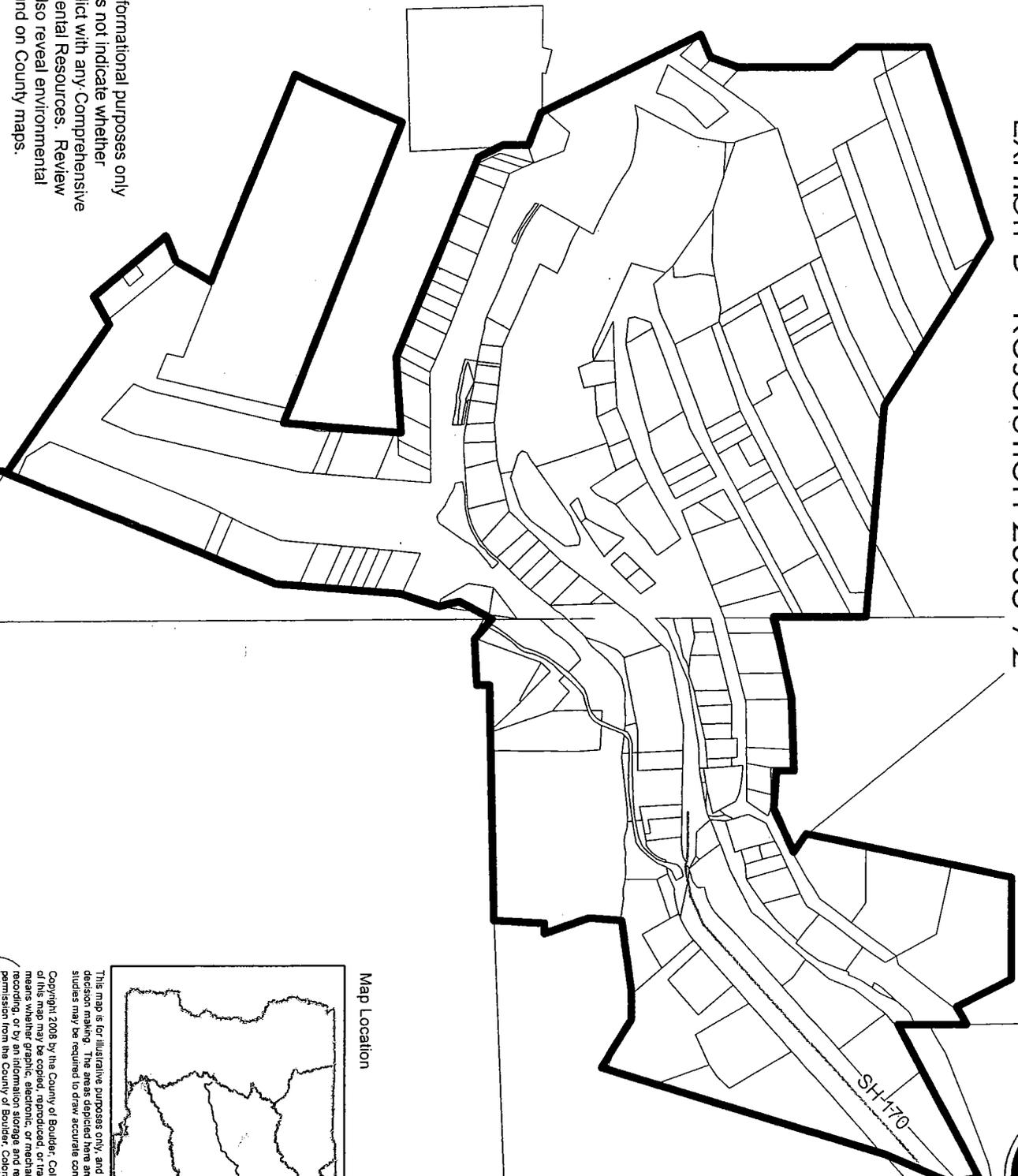
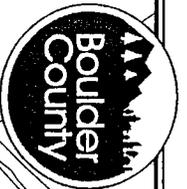


This map is for illustrative purposes only, and is not suitable for parcel-specific decision making. The areas depicted here are approximate. More site-specific studies may be required to draw accurate conclusions.

Copyright 2008 by the County of Boulder, Colorado. All rights reserved. No part of this map may be copied, reproduced, or transmitted in any form or by any means, whether graphic, electronic, or mechanical, including photocopying, recording, or by an information storage and retrieval system, without written permission from the County of Boulder, Colorado.

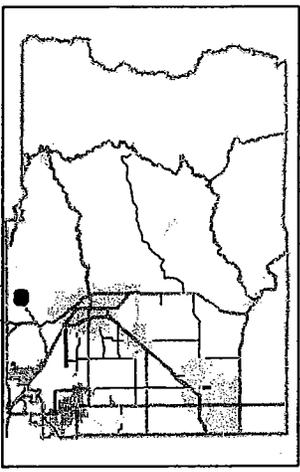
# Eldorado Springs Townsite (Land Use Code 4-806)

## Exhibit B - Resolution 2008-72



This map is for informational purposes only and, in itself, does not indicate whether property will conflict with any Comprehensive Plan or Environmental Resources. Review processes may also reveal environmental resources not found on County maps.

Map Location

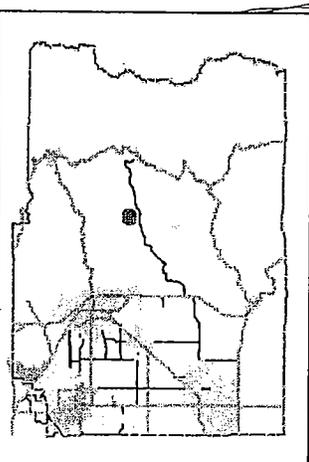
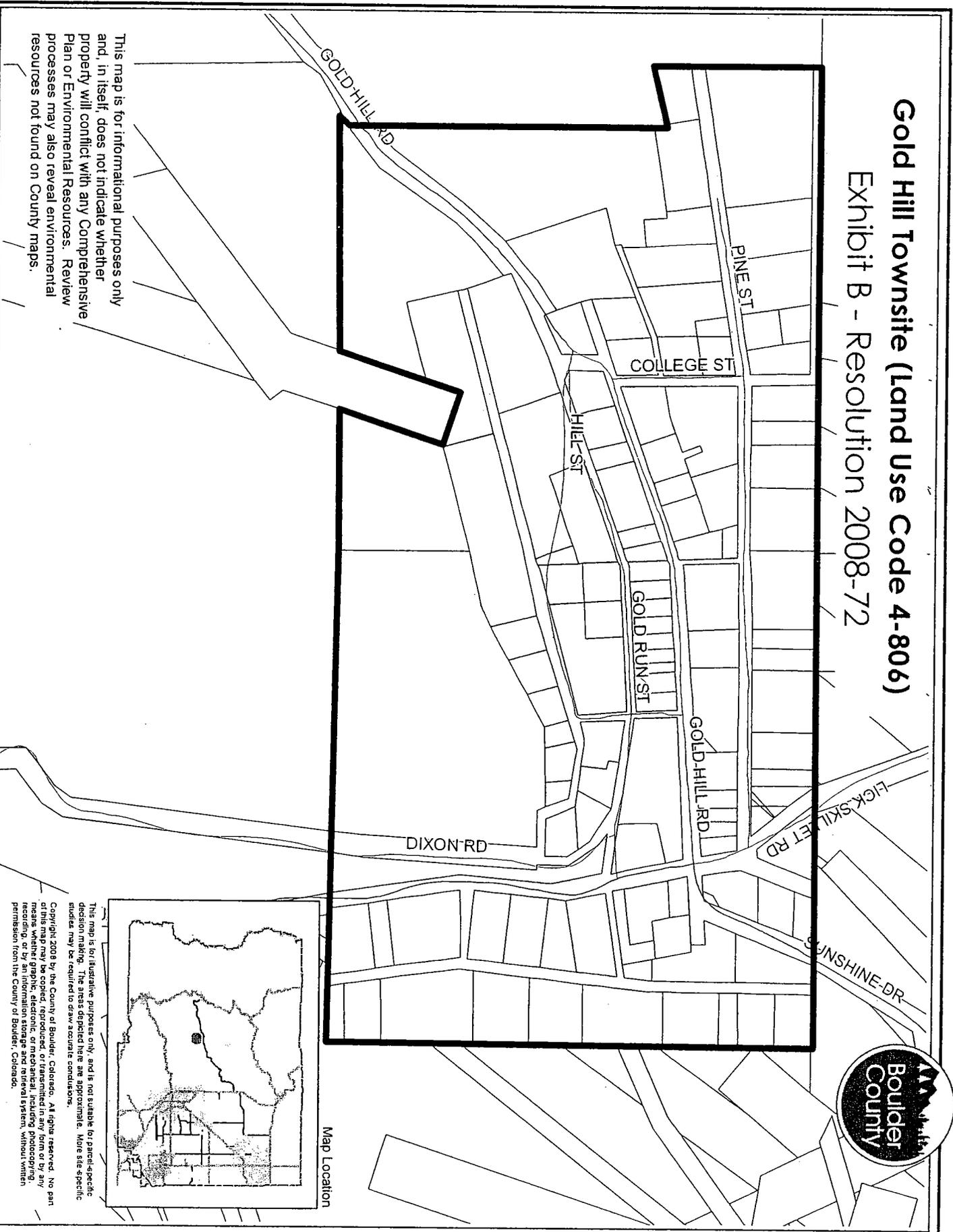
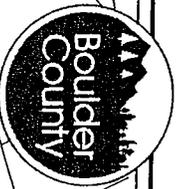


This map is for illustrative purposes only, and is not suitable for parcel-specific decision making. The areas depicted here are approximate. More site-specific studies may be required to draw accurate conclusions.

Copyright 2008 by the County of Boulder, Colorado. All rights reserved. No part of this map may be copied, reproduced, or transmitted in any form or by any means, whether graphic, electronic, or mechanical, including photocopying, recording, or by an information storage and retrieval system, without written permission from the County of Boulder, Colorado.

# Gold Hill Townsite (Land Use Code 4-806)

## Exhibit B - Resolution 2008-72



Map Location

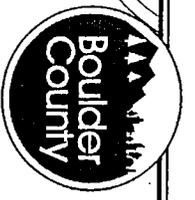
This map is for informational purposes only and, in itself, does not indicate whether property will conflict with any Comprehensive Plan or Environmental Resources. Review processes may also reveal environmental resources not found on County maps.

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

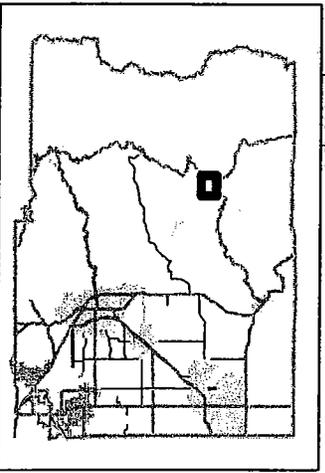
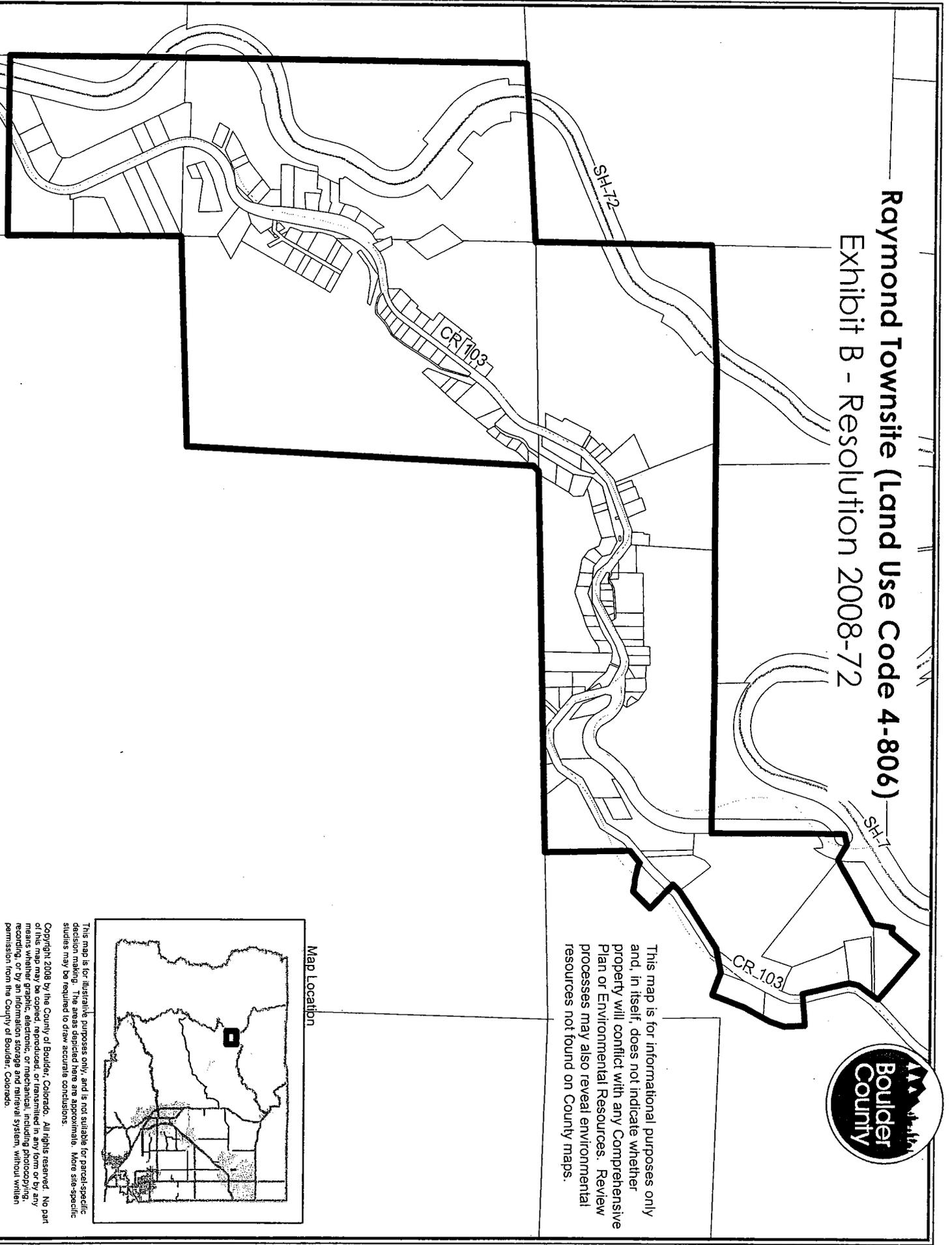
Copyright 2008 by the County of Boulder, Colorado. All rights reserved. No part of this map may be copied, reproduced, or transmitted in any form or by any means, whether graphic, electronic, or mechanical, including photocopying, recording, or by an information storage and retrieval system, without written permission from the County of Boulder, Colorado.

# Raymond Townsite (Land Use Code 4-806)

## Exhibit B - Resolution 2008-72



This map is for informational purposes only and, in itself, does not indicate whether property will conflict with any Comprehensive Plan or Environmental Resources. Review processes may also reveal environmental resources not found on County maps.



Map Location

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

Copyright 2008 by the County of Boulder, Colorado. All rights reserved. No part of this map may be copied, reprinted, or transmitted in any form or by any means whether graphic, electronic, or mechanical, including photocopying, recording, or by an information storage and retrieval system, without written permission from the County of Boulder, Colorado.

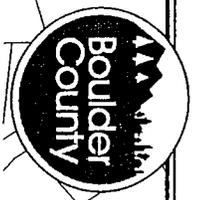
# Riverside Townsite (Land Use Code 4-806)

## Exhibit B - Resolution 2008-72

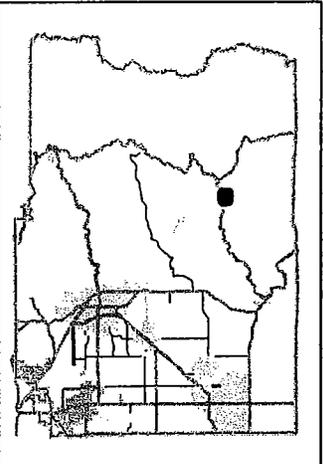
SH 7

CR-103

This map is for informational purposes only and, in itself, does not indicate whether property will conflict with any Comprehensive Plan or Environmental Resources. Review processes may also reveal environmental resources not found on County maps.



Map Location



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

Copyright 2008 by the County of Boulder, Colorado. All rights reserved. No part of this map may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, without the prior written permission of the County of Boulder, Colorado.

# Peak to Peak Scenic Corridor Area (Land Use Code 4-806)

## Exhibit B – Resolution 2008-72

