BUSINESS MEETING ITEM COVER SHEET

DEPARTMENT County Attorney

DIVISION

TITLE Resolution 2009-72 (LUC Text Amendments to Articles 2, 3, 4, 5, 6, 7, 8 & 18)

DOCUMENT TYPE Resolution

SUBTYPE DC-09-001

BUSINESS MEETING DATE 05/26/09

COMMISSIONERS' ACTION ☒ Approved ☐ Denied ☐ Other

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AGENDA ITEM NUMBER 1

COMMENTS Will be recorded first

RESOLUTION 2009-72

A RESOLUTION APPROVING BOULDER COUNTY LAND USE DOCKET #DC-09-001: PROPOSED "CLEAN-UP" TEXT AMENDMENTS TO ARTICLES 2, 3, 4, 5, 6, 7, 8 AND 18 OF THE BOULDER COUNTY LAND USE CODE, TO CORRECT CERTAIN CLERICAL ERRORS, UPDATE CERTAIN PROVISIONS WITH REGARD TO CURRENT TERMINOLGY, AND CONFORM CERTAIN WORDING WITH PREVAILING ADMINISTRATIVE INTERPRETATION TO AVOID CONFUSION IN CODE MEANING

WHEREAS, pursuant to C.R.S. Sections 30-28-112 and -116, as amended, the Board of County Commissioners of Boulder County ("the Board") is authorized to amend the text of County's Zoning Regulations in accordance with the procedures set forth in those provisions and the applicable County regulations; and

WHEREAS, pursuant to C.R.S. Section 30-28-133, as amended, the Board is authorized to amend the text of the County's Subdivision Regulations in accordance with the procedures set forth in those provisions and the applicable 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-09-001 ("the Docket"), the Boulder County Land Use Department proposed certain additional text amendments, this time to "clean up" certain outdated and erroneous portions of the Code, and clarify certain other provisions in accordance with prevailing administrative interpretation in order to avoid confusion over the meaning of the Code, ("the Proposed Clean-up Amendments"), all as explained in the memorandum and recommendation of the County Land Use Department dated May 21, 2009 ("the Staff Recommendation"); and

WHEREAS, the Boulder County Planning Commission ("the Planning Commission") held a duly-noticed public hearing on the Proposed Clean-up Amendments on March 18 and April 15, 2009, and recommended approval of the amendments and certified the Docket for action to

the Board; and

WHEREAS, on May 21, 2009, the Board held a duly noticed public hearing on the Docket as certified to it by the Planning Commission ("the Public Hearing"), at which time the Board considered the documents and testimony presented by the County Land Use Department staff, with no members of the public being present to speak to the Docket; and

WHEREAS, based on the Public Hearing, the Board finds that the Proposed Clean-up Amendments, specifically in the form as recommended by the Planning Commission and as set forth in Exhibit A incorporated into this Resolution, below, 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; the Proposed Clean-up Amendments are not contrary to the intent and purpose of the Land Use Code; and the Proposed Clean-up Amendments are in accordance with the Boulder County Comprehensive Plan, all as set forth in and supported by the record of the Public Hearing; and

WHEREAS, the Board thus determines that the Proposed Clean-up Amendments, as set forth in Exhibit A incorporated below, should be approved for incorporation into the Land Use Code.

NOW, THEREFORE, BE IT RESOLVED that **the Proposed Clean-up Amendments, specifically as set forth in Exhibit A incorporated into this Resolution, below, are hereby approved for incorporation into the Land Use Code, to be effective beginning on the date of adoption of this Resolution, as set forth below.**

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 the Proposed Clean-up Amendments (Docket #DC-09-001), as set forth above, was made at the Public Hearing by Commissioner Domenico, seconded by Commissioner Toor, and passed by a 3-0 vote.

ADOPTED and effective on this 26th day of May, 2009.

BOARD OF COUNTY COMMISSIONERS OF BOULDER COUNTY:

Ben Pearlman, Chair

(EXCUSED)
Cindy Domenico, Vice Chair

Will Toor, Commissioner

ATTEST:

Clerk to the Board

A (10 pages)
RES. 2009-72

Articles 3, 5, 6 and 8 - Deletion of References to the Colorado Land Use Commission

Discussion: There are 21 references to the "Colorado Land Use Commission" and "Land Use Commission" in the current text. This body was established by C.R.S. 24-65-103 and assumed its duties in 1970. Its purpose was to "...develop and hold hearings upon state land use plans and maps and related implementation techniques". The Commission's primary responsibilities were to review and act on matters pertaining to Areas and Activities of State Interest, a.k.a. 1041 regulations (Article 8-200 of the Land Use Code) and to receive copies of Final Plats (Article 5-306 of the Land Use Code). The Commission ceased meeting in 1998 and was dissolved by the state legislature in 2005. This text amendment would remove reference to the "Colorado Land Use Commission" and "Land Use Commission" in the Table of Contents, Articles 5-306 and 8-307 of the Land Use Code as well as in:

Secs. 5-306 and 5-306 A;
Sec. 8-203 B;
Sec. 301 C (two occurrences);
Sec. 302 A (two occurrences);
Sec. 304 B;
Secs. 307 (three occurrences), A. (two occurrences), and B. (two occurrences);
Sec. 309 A;
Sec. 509 A; and
Sec. 601 E.

Policy Change: None

Article 4 – Change in Terminology from "Undesirable Plant Management Plan" to "Noxious Weed Management Plan"

Change this terminology in three places within the Land Use Code to "noxious weed management plan" in order to be consistent with the language used by the State of Colorado in C.R.S. 35-5.5-101 et seq.

Discussion: C.R.S. 35-5.5-105. requires that the Board of County Commissioners of each county in the state adopt a noxious weed management plan for all of the unincorporated lands within the county. Boulder County adopted such a plan in 1992. In 2003 the state legislature adopted HB 03-1140 which, among other things, changed the terminology from "undesirable plant" to "noxious weed". This text amendment would apply to Sections 4-804 C. 13, 4-904 O. and 4-905 A. 11 of the Land Use Code.

Policy Change: None

Articles 3, 4, 7, 8, and 18 – Change in Terminology from "Septic System" to "Onsite Wastewater System" or "OWS"

Change this terminology in 10 places within the Land Use Code to reflect the current standard used by County Public Health.

Discussion: A "septic system" is but one type of onsite waste treatment systems which are not connected to a central sewer system. The regulatory definition of an Onsite Wastewater System or OWS is " an absorption system of any size or flow or a system or facility for collecting, storing, treating, neutralizing, stabilizing, or disposing of sewage which is not a part of or connected to a sewage treatment works". This text amendment would replace "septic" and "septic system" with "onsite wastewater system" in:

Sections 3-203 E. 4. m (ii) and E. 6. c (xi);
Section 4-403 A. 5;
Section 4-804 C. 7;
Section 7-401 D;
Sections 7-402 B. 2 and 3;
Sections 8-511 K. 2. (i) and L. 4; and
Section 18-195.

Policy Change: None

Article 4-516 E. and Article 4 Zoning Table – Corrections to Accessory Horse Keeping

There a several discrepancies in the Land Use Code regarding the keeping of horses in the General Industrial, Light Industrial, Multi-Family, and Suburban Residential zoning districts. The proposed corrections are to (1) add the keeping of horses, with limitations, under the SR and MF zones in the Article 4 Zoning Table; and (2) add the LI and GI zones into Section 4-516 E. - Accessory Horse Keeping.

Discussion: The Code is not consistent in defining and noting which zoning districts allow accessory horse keeping. This is likely attributable to editing and proof-reading oversights when the Subdivision Regulations and Zoning Resolution were consolidated into one Land Use Code in 1994. One horse per ½ acre of pasturage was allowed in the MF and SR zones by amendment to the Zoning Resolution on December 17, 1985, and was kept in the text during the Code consolidation.. In addition, accessory horse keeping is allowed in the GI and LI districts, but these districts are not included in Section 4-516 E. The following portion of the staff memo breaks down the discrepancies and proposed corrections.

A. EXISTING CODE TEXT

4-105. E. SR District Text (Additional Requirements)

3. "Riding horses for use of occupants of a lot and their guests may be kept as permitted accessory uses provided at least one-half acre of pasture is available for each horse". NO CHANGE

4-106. F. MF District Text (Additional Requirements)

4. "Riding horses for use of occupants of a lot and their guests may be kept as permitted accessory uses provided at least one-half acre of pasture is available for each horse". NO CHANGE

4.111. F. LI District Text (Additional Requirements)

1. "Animal units...Four animal units per acre". NO CHANGE

4-112. F GI District Text (Additional Requirements)

1. "Animal units...Four animal units per acre". NO CHANGE

4-516. E. Accessory Horse Keeping

1. Definition: The keeping and use of horses on a parcel where such keeping and use is not the principal use of the parcel.
2. Districts Permitted: By right in F, A, RR, ER, SR, MF, and MI
3. Parking Requirements: None
4. Loading Requirements: None
5. Additional Provisions:
    a. The number of horses is controlled by each zoning district
    b. The term horses shall include horses, mules, and donkeys.

B. PROPOSED CODE TEXT

4-516. E. Accessory Horse Keeping

1. Definition: The keeping and use of horses on a parcel where such keeping and use is not the principal use of the parcel.
2. Districts Permitted: By right in F, A, RR, ER, SR, MF, MI, GI and LI
3. Parking Requirements: None
4. Loading Requirements: None
5. Additional Provisions:
    a. The number of horses is controlled by each zoning district.
    b. The term horses shall include horses, mules, and donkeys.
    c. A minimum of one-half acre of pasture per horse is required for horse keeping in the SR and MF zoning districts.

A. EXISTING CODE ZONING TABLE

Article 4: Zoning Table – SR and MF Highlighted

District	Lot Size		Setbacks			Height	Additional Restrictions
	Subdivided with Water & Sewer in a Community Service Area	Unsubdivided	Front	Side	Rear		
Forestry F	35 acres	35 acres	15'	25'	15'	30'	2 animal units/acre
Agricultural A	35 acres	35 acres	35'	7'	15'	30'/50'	4 animal units/acre
Rural Residential RR	1 acre	35 acres	25'	7'	15'	30'	2 animal units/acre
Estate Residential ER	1 acre	35 acres	35'	10'	25'	30'	2 animal units/acre
Suburban Residential SR	7,500 sq. ft.	35 acres	25'	7'	15'	30'	No animal units/acre

Multifamily MF	7,500 sq. ft. 15,000 sq. ft.	35 acres	25'	7'	15'	50'	Within Community Service Areas - Maximum dwelling units on subdivided land - 9/acre. No animal units/acre
Manufactured Home Park MH	35 acres	35 acres	25'	7'	15'	30'	No animal units/acre
Transitional T	15,000 sq. ft.	35 acres	25'	7'	15'	50'	Within Community Service Areas - Maximum dwelling units on subdivided land - 9/acre. No animal units/acre
Business B	No minimum Requirement	35 acres	*60'	0' or 12'	20'	50'	Within Community Service Areas - Maximum dwelling units on subdivided land - 9/acre. No animal units/acre
Commercial C	No minimum Requirement	35 acres	*60'	0' or 12'	20'	50'	Within Community Service Areas - Maximum dwelling units on subdivided land - 9/acre. No animal units/acre
Light Industrial LI	No minimum Requirement	35 acres	*60'	0' or 12'	20'	50'	4 animal units/acre

B. PROPOSED CODE ZONING TABLE

Article 4: Zoning Table – SR and MF Highlighted

District	Lot Size		Setbacks			Height	Additional Restrictions
	Subdivided with Water & Sewer in a Community Service Area	Unsubdivided	Front	Side	Rear		
Forestry F	35 acres	35 acres	15'	25'	15'	30'	2 animal units/acre
Agricultural A	35 acres	35 acres	35'	7'	15'	30'/50'	4 animal units/acre
Rural Residential RR	1 acre	35 acres	25'	7'	15'	30'	2 animal units/acre
Estate Residential	1 acre	35 acres	35'	10'	25'	30'	2 animal units/acre

ER							
Suburban Residential SR	7,500 sq. ft.	35 acres	25'	7'	15'	30'	~~No animal units/acre~~ **1 horse per ½ acre of pasturage**
Multifamily MF	7,500 sq. ft. 15,000 sq. ft.	35 acres	25'	7'	15'	50'	Within Community Service Areas - Maximum dwelling units on subdivided land - 9/acre. ~~No animal units/acre~~ **1 horse per ½ acre of pasturage**
Manufactured Home Park MH	35 acres	35 acres	25'	7'	15'	30'	No animal units/acre
Transitional T	15,000 sq. ft.	35 acres	25'	7'	15'	50'	Within Community Service Areas - Maximum dwelling units on subdivided land - 9/acre. No animal units/acre
Business B	No minimum Requirement	35 acres	*60'	0' or 12'	20'	50'	Within Communi' Service Areas - Maximum dwelling units on subdivided land - 9/acre. No animal units/acre
Commercial C	No minimum Requirement	35 acres	*60'	0' or 12'	20'	50'	Within Community Service Areas - Maximum dwelling units on subdivided land - 9/acre. No animal units/acre
Light Industrial LI	No minimum Requirement	35 acres	*60'	0' or 12'	20'	50'	4 animal units/acre
General Industrial GI	No minimum Requirement	35 acres	*60'	0' or 12'	20'	50'	4 animal units/acre
Mountain Institutional MI	35 acres	35 acres	15'	25'	15'	30'	2 animal units/acre

*From centerline of existing roadway

Policy Change: None

Article 2-800 B. 3 – Board of Adjustment Appointments

Appointments are currently limited to one year terms. Staff recommendation is to amend for three year terms.

Discussion: The current Land Use Code limits appointments to one year terms. State statute only requires that one member be up for replacement/reappointment annually. One year terms require Board members to reapply and interview every year if he or she wishes to retain a seat on the Board. This is an inefficient and time-consuming process for staff, the Board of Adjustment members, and the Board of County Commissioners. Three year terms, which are consistent with most board and commission appointments, are more reasonable. Suggested language follows:

Section 2-800 (B)(3) Membership, Selection and Term - 3. The term of regular members is ~~one~~ **three** years.

Policy Change: None

Article 4-600 Uses Permitted By Special review and Limited Impact Special review – Development Agreement

Section 4-601 C. implies that a Development Agreement must be submitted and approved for both Special Use and Limited Impact Special Use Reviews. Limited Impact Special Use reviews should not be categorically held to this criterion since this has not been the intention of this Article.

Discussion: The state vested rights statute (C.R.S. 245-68-101 et seq) gives local governments the discretion to decide what land use processes can statutorily vest rights. Boulder County decided many years ago that only Special Uses and Final Plats would be eligible for this treatment (typically given a three-year term) with the vesting incorporated into a Development Agreement, in part because these projects typically are more complex and require more time to be developed under the criteria set by Articles 4 and 5 and any additional conditions set by the County Commissioners as part of the approval process. Limited Impact Special Uses are usually of lower impact and less involved, and can be completed within a shorter time period.

Section 4-601 C. **An application for a use by special review shall include** a development agreement **which** must be submitted and approved by the Board.

Policy Change: None

Article 18-206 – Change in the Definition of "Substantial Improvement" as Related to the Flood Plain Overlay District

Amend the definition of Substantial Improvement to include the adjective "cumulative".

Discussion: This section is unclear in defining the baseline metric from which an improvement can be determined to be "substantial" or "unsubstantial for flood proofing purposes. County policy since 1983, when the Floodplain Overlay District was incorporated into the Land Use Code, has been to use a cumulative improvements approach rather than considering each improvement to a structure or building as being distinct or separate from the overall structure. This interpretation is consistent with Activity 430, Section 431 c and d of the Community Rating System and Community Substantial Impact rules of the National Flood Insurance Program, which the county became a member of in October 1991. Boulder County receives credits for keeping track of improvements that singly or cumulatively equal a substantial improvement.

Article 18-206 Substantial Improvement

A. Any cumulative repair, reconstruction, or improvement of a building or other structure, the market value of which equals or exceeds 50 percent of the market value of the structure either before the improvement or repair is started, or if the structure has been damaged and is being restored, before the damage occurred. Substantial improvements are calculated on a cumulative basis, beginning with improvements commenced on or after November 1, 1991.

B. The term substantial improvement does not include:

1. Either any project for improvement of a structure to comply with existing state or local health, sanitation, safety, or building code specifications which are solely necessary to assure safe living conditions; or
2. Any alteration of a structure listed on the National Register of Historic Places or on the Colorado State Historical Society's list of historic places.

Policy Change: None

Article 4-405 C. 2 Floodproofing

Change the adjective "improvement" to "structure" for consistency and to meet the intent of Article 4.

Discussion: Section 4-405 C. 2 is not consistent with Section 4-408 A. 2 in that it uses the term "improvement" vs. "structure". All improvements to structures located within a regulatory floodplain are required to comply with floodproofing requirements of Article 4-405. However, a "substantial improvement" to a nonconforming structure in the regulatory floodplain requires that the **entire** structure be elevated to the flood protection elevation rather than just the improvement. This is consistent with FEMA's regulations per 44 CFR, PArt 60.3(C)(2).

Article 4-405 C. 2

Substantial improvements of any building or other structures shall have the lowest floor of the ~~improvement~~ structure elevated to or above the flood protection elevation.

Policy Change: None

Article 6- 800 - Revised Conservation Easement Standards

The recommendation is to amend the current language relating to conservation easement dedications in Nonurban Planned Unit Developments, Noncontiguous Nonurban Planned Unit Developments, or Transferable Development Right Planned Unit Developments to reflect the county Parks and Open Space Department's policies.

Discussion: The current text uses terms that are no longer current or applicable in describing the purposes of conservation easements. References to the IRS Code are out of date. The terms/conditions for transfer or termination have been sharpened and separated in the reformatting to make their respective distinctions more clear. Existing Section 6-800 B. 4 is proposed for deletion because its provisions are covered in proposed Section 6-800 B. 1 – 3 dealing with termination or transfer of a conservation easement. Other specific changes have been made for greater precision.

A. EXISTING TEXT

6-800 Conservation Easement

A. Before the Board of County Commissioners may approve a NUPUD, a NCNUPUD, or a TDR/PUD the applicant shall agree to grant to Boulder County a conservation easement in gross

pursuant to Article 30.5 of Title 38, C.R.S., as amended, protecting the preserved land from development in accordance with the approved preservation purposes. Conservation easements on required outlots shall provide for long-term preservation and appropriate management of the resource and shall be granted in perpetuity, subject to transfer or termination only pursuant to the express terms of these regulations and the governing easement grant.

B. The conservation easement shall include the following terms:

1. The easement shall limit future County transfer, or termination of the easement to situations where:
   a. the proposed development and/or land use is consistent with the current Comprehensive Plan and this Code; or
   b. the proposed development and/or land use is consistent with a management or land use plan contractually agreed to by the County and other interested governmental entity; or
   c. in situations where the proposed transfer or termination is not in accordance with an intergovernmental land use or management plan under subsection (b) above, the County may require compensation from the transfer proponent or potential recipient in an amount sufficient to offset any loss of the resource being preserved or protected by the easement. Determination of the amount and form of compensation shall be made on a case-by-case basis.

2. Where the easement is proposed for transfer, the following additional requirements shall apply:
   a. The recipient of any transferred interests must be a governmental entity, or a charitable organization, exempt under Section 501(c)(3) of the Internal Revenue Code of 1954, created at least two years prior to the proposed transaction and/or the owner of fee title.
   b. Where the easement is not transferred to the owner of fee title, the County will require either the consent of the owner or compensation to the owner in an amount satisfactory to the parties, less the costs of transfer.

3. The preserved area shall be managed as a single agricultural unit, except where multiple outlots are approved or where areas are specifically withdrawn from or are unsuitable for agricultural uses. These areas would include natural areas, wildlife preserves, trails, or other identified environmental or open lands resources.

4. No conservation easement shall be released for development until the developer satisfies the current land dedication requirements benefiting the residential area of the NUPUD or NCNUPUD. The developer shall satisfy these requirements either by dedicating land from the easement, or in some other manner which meets the applicable dedication requirements.

5. The conservation easement for a TDR/PUD sending site shall include a reference to the extinguishment of the development rights transferred off that site. If additional rights are transferred after the recordation of the conservation easement, the easement shall be amended to reflect the extinguishment of those additional rights and recorded.

B. PROPOSED TEXT

Article 6-800 Conservation Easement

A. Before the Board of County Commissioners may approve a NUPUD, a NCNUPUD, or a TDR/PUD the applicant shall agree to grant to Boulder County a deed of conservation easement in gross pursuant to Article 30.5 of Title 38, C.R.S., as amended, protecting the preserved land from development in accordance with the approved ~~preservation purposes~~ conservation values. Conservation easements ~~on~~ encumbering required outlots shall provide for long-term preservation and appropriate management of the ~~resource~~ property's conservation values and shall be granted in perpetuity, subject to transfer or termination only pursuant to the express terms of these regulations and the governing conservation easement ~~grant.~~

B. The conservation easement shall include the following terms:

1. The easement shall limit future County ~~transfer, or~~ termination of the easement to situations where:
   a. the ~~proposed development and/or land use transfer or~~ termination is consistent with the current Comprehensive Plan and this Code; ~~or~~ and
   b. the ~~proposed development and/or land use transfer or~~ termination is consistent with a management or land use plan contractually agreed to by the County and another interested governmental entity or entities. ~~Or~~

2. If termination of the conservation easement is proposed, ~~transfer for termination is not in accordance with an intergovernmental land use or management plan under subsection (b) above,~~ the County may require compensation ~~from the transfer proponent or potential recipient~~ in an amount sufficient to offset any loss of ~~the resource being preserved or protected by the easement~~ public benefit resulting from the proposed easement termination. Determination of the amount and form of compensation shall be made on a case-by-case basis by the Board.

3. ~~Where~~ If transfer of the conservation easement is proposed, ~~for transfer the following additional requirements shall apply: T~~ the recipient of any transferred interests must be a governmental entity, or a charitable organization, ~~exempt under Section 501(c)(3)~~ defined as a "qualified organization" under Section 170(h) of the Internal Revenue Code of 195486, as amended. ~~created at least two years prior to the proposed transaction and/or the owner of fee title.~~
   ~~a. Where the easement is not transferred to the owner of fee title, the County will require either obtain the consent of the owner, which shall not be unreasonably withheld or compensation to the owner in an amount satisfactory to the parties, less the costs of transfer.~~

4. The ~~lot~~ parcel preserved ~~area~~ by the conservation easement shall be managed as a single agricultural unit, ~~except where~~ unless multiple outlots are approved or ~~where if~~ to separate areas of the parcel or parcels that ~~are specifically withdrawn from or~~ are unsuitable for agricultural uses. These areas would include natural areas, wildlife preserves, trails, or other identified environmental or open lands resources.

~~4. No conservation easement shall be released for development until the developer satisfies the current land dedication requirements benefiting the residential area of the NUPUD or NCNUPUD. The developer shall satisfy these requirements either by dedicating land from the easement, or in some other manner which meets the applicable dedication requirements.~~

5. The conservation easement for a TDR/PUD sending site shall include a reference to the extinguishment of the development rights transferred off that site. If additional rights are transferred after the recordation of the conservation easement, the easement shall be amended to reflect the extinguishment of those additional rights and the amendment shall be recorded.
(added language)