

**INTERGOVERNMENTAL AGREEMENT**  
**Nederland Area Boulder County**  
**Comprehensive Development Plan**

This Intergovernmental Agreement by and between the Town of Nederland, a Colorado municipal corporation (Nederland); and the County of Boulder, a body politic and corporate of the State of Colorado (Boulder County); (collectively the "Parties") is made to be effective on the \_\_\_\_ day of \_\_\_\_\_, 2001.

WITNESSETH:

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

WHEREAS, in order to ensure that the unique and individual character of Nederland is preserved, the Parties believe that a Comprehensive Development Plan which recognizes the annexed areas and development approved by Nederland, accompanied by binding commitments by the responsible jurisdictions for the preservation of the rural character of surrounding lands within the Plan Area, is in the best interest of the citizens of each of the Parties; and

WHEREAS, the prohibition of rezoning or other discretionary land use approvals by Boulder County and of annexation or development of certain lands within the Plan Area by Nederland is intended to preclude unplanned development and urban sprawl which, if permitted in the unincorporated area, require the provision of urban services by Boulder County, in contravention of provisions of the Boulder County Comprehensive Plan; and

WHEREAS, the Parties find that designating a portion of the Plan Area to remain as rural preservation for the purpose of preserving a community buffer serves the economic and civic interests of their citizens and meets the goals of the Boulder County Comprehensive Plan; and

WHEREAS, with respect to the annexation provisions herein, the Town of Nederland declares that the rural preservation designations and land use regulations contained in this Agreement affect its future development. Consistent with the municipal annexation, utility service, and land use laws of the State of Colorado, this Agreement, including specifically the annexation and utility service portions hereof, is intended to encourage the natural and well-ordered future development of each Party; to promote planned and orderly growth in the affected areas; to distribute fairly and equitably the costs of government services among those persons who benefit therefrom; to extend government services, and facilities to the affected areas in a logical fashion; to simplify providing utility services to the affected areas; to simplify the governmental structure of the affected areas; to reduce and avoid, where possible, friction between the Parties; and to promote the economic viability of the Parties; and

WHEREAS, the functions described in this Agreement are lawfully authorized to each of the Parties which perform such functions hereunder, as provided in article 20 of title 29; part 1 of article 28 of title 30; 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

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

WHEREAS, the Parties have each held hearings after proper public notice for the consideration of entering into this Agreement and the adoption of a comprehensive development plan for the subject lands, hereinafter referred to as the "Plan Area", as shown on the map attached hereto and incorporated herein as Exhibit A .

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

1. DEFINITIONS:

As used in this Agreement, the following terms shall be defined as indicated:

- DEVELOPMENT: Construction or establishment of structures, parking areas, and/or surfaced vehicular roadways (except expansion of existing roads), or establishment of new land uses.
- PLAN AREA: Lands included within the boundaries of the designated Plan Area as set forth on the Map attached as Exhibit A, including right-of-way, setback areas, and parcels subject to the Plan's development regulations.
- STRUCTURE: Any thing which is built or constructed, including but not limited to an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner, but excluding fences, retaining walls not over 6 feet in height, stone drainage facilities, and buried utility lines.
- REGULATORY PARTY: That party having regulatory jurisdiction over the subject property at the relevant time.

2. THE PLAN AREA AND ITS COMPONENTS:

The Plan Area shall be divided into two (2) categories of land, each depicted on Exhibit A and generally described as follows:

- a. Nederland Town Limits. This category shall include all lands currently within or subsequently added, in accordance with the provisions of this Agreement and Plan,

- to the boundaries of the Town of Nederland.
- b. Rural Preservation Area. This category shall include all lands commencing at the edge of the Nederland Town Limits and extending West to the Continental Divide, South to the Gilpin County Line, North to Sugarloaf Road, and East to the Boulder Falls, as depicted by the Plan Area Boundary on Exhibit A.
  - c. Regarding the Eldora Townsite, although it is included within the Rural Preservation Area, and notwithstanding any other provisions of the Boulder County Land Use Code, Boulder County agrees to refer to Nederland for comment all development applications affecting water quality and for residential development other than single family homes, and applications for installation or replacement of septic systems.

3. CONTROLLING REGULATIONS:

- a. Any proposed use or development of any portion of the parcels in the Rural Preservation Area shall conform to the provisions of this Agreement, or, if nonconforming, shall require amendment of the Plan in the manner provided in Section 6 of the Agreement. Any proposed rezoning, subdivision, special use or other regulatory process, or amendment or modification of any existing zoning, PUD, special or conditional use, or subdivision plat, or issuance of a building permit, or proposed annexation, whether or not coupled with any such regulatory process, entered into for any lands within the Rural Preservation Area, shall conform to the Plan, or with an approved amendment thereof, in order to be approved by the Regulatory Party.
- b. Within the Nederland Town Limits the Nederland Planning Commission and the Nederland Board of Trustees shall have the sole authority to review and approve or deny applications for subdivisions or other developments or land uses proposed to take place entirely within the Nederland Town Limits and no approval by the Boulder County Planning Commission or the Boulder County Board of County Commissioners shall be required.
- c. (1) Within the Rural Preservation Area, existing uses of parcels which conform to Boulder County's regulations, or which are legally nonconforming, may be permitted to continue, either as legal or legal nonconforming uses, in accordance with the provisions of the Boulder County Land Use Code. No density increase beyond the limits currently permissible under the Boulder County Land Use Code shall be approved for any parcel in the Rural Preservation Area.  
(2) Pursuant to regulations in the Boulder County Land Use Code as it may exist from time to time, parcels within the Rural Preservation Area may be "sending parcels" for purposes of transferring development rights (TDRs). However, such parcels shall not serve as "receiving parcels" without amendment of this Agreement. TDR units shall not be "sent" from parcels designated in this Agreement as Rural Preservation to be located upon a receiving site within the Nederland Town Limits without the consent of the Nederland Board of Trustees.  
  
(3) Development on parcels for which "vested rights" for further development have

been acquired through an estoppel against Boulder County for parcels in the Rural Preservation Area, precluding the prohibition of such development, established by a final non-appealable court judgment in a proceeding of which Nederland has been given timely notice and the opportunity to join or intervene, shall be permitted notwithstanding this Agreement, to the extent such development is in conformance with the rights so acquired and occurs within the vested period. Boulder County represents that it has disclosed to Nederland all vested rights of which it has knowledge for any of the properties in the Plan Area that may have been established or approved by Boulder County.

4. ANNEXATION:

- a. Nederland commits that it is not currently pursuing any annexations within the Rural Preservation Area.
- b. Except as provided in sub-paragraph c. below, the Rural Preservation Area as shown on Exhibit A is intended to remain in Boulder County's regulatory jurisdiction for the term of this Agreement. Further, the Town Board of the Town of Nederland, by authorizing the execution of this Agreement, finds and determines, for the term of this Agreement, that there is no community of interest between the Rural Preservation Area and the Town, that none of the Rural Preservation Area is urban nor is likely to urbanize, and that none of the Rural Preservation Area is currently integrated with, nor will it be capable of being integrated with the Town. The Town agrees it will not initiate nor approve any annexation of any Rural Preservation Area lands unless such annexation is referred for recommendation to the Boulder County Planning Commission, approved by the Boulder County Board of County Commissioners, referred for recommendation by the Nederland Planning Commission, approved by the Nederland Board of Trustees, and approved at an election of the qualified electors of the Town of Nederland, with the applicant for any such annexation to bear all costs and fees associated with such election.
- c. Notwithstanding any other provisions of this Agreement, the Nederland Board of Trustees may determine, in its sole discretion, that it needs land in the Rural Preservation Area for utilities, including but not limited to water, water storage, water treatment, sewer, sewage treatment, or roads. Should the Town proceed with acquisition of such land, whether or not through the exercise of eminent domain, the Town may then annex such land, and such annexation need not be submitted to review or approval by the Boulder County Planning Commission or the Boulder County Board of County Commissioners. However, such annexation will require referral to the Nederland Planning Commission for recommendation, approval by the Nederland Board of Trustees, and approval by the qualified electors of the Town of Nederland at an election.
- d. The County agrees that it will not initiate or approve or consent to annexation of any Rural Preservation Area lands to a municipal entity other than the Town of Nederland unless such annexation is referred to the Boulder County Planning Commission for recommendation, approved by the Boulder County Board of County Commissioners,

referred to the Nederland Planning Commission for recommendation, and approved by the Nederland Board of Trustees.

5. REFERRALS:

Any petition, application or other proposal for development or land use on any parcel within the Rural Preservation Area, other than an application for a building permit or an individual site plan, shall be immediately referred in writing by the County to the Town of Nederland. Any offer, proposal, request or application by the County to purchase any parcel within the Nederland Town Limits shall be immediately referred in writing by the County to the Town of Nederland. No action shall be taken thereon by the referring Party until the other Party has had the opportunity to respond concerning the proposal's conformity to this Agreement and Plan, and other land use concerns, all such responses to be received within twenty (20) days of date of referral. No action shall be taken thereon by the referring Party unless it is in compliance with this Agreement and Plan, or an amendment thereto is agreed upon by the Parties.

6. AMENDMENTS:

This Agreement, including Exhibit A, contains the entire agreement between the Parties. Any proposed amendment of the Plan affecting the jurisdiction over lands or the development or regulation of lands must be referred to the other Party by the Party initiating such proposed amendment in writing. Amendment of the Plan shall take place only after referral to and recommendation by the Nederland Planning Commission and the Boulder County Planning Commission, and after approval by resolution or ordinance adopted by the governing body of each of the Parties, after notice and hearing as may be required by law. No Party shall acquire any parcel, or approve or permit any development or change of use, of any parcel in the Rural Preservation Area by any means or in any manner inconsistent with this Agreement until and unless the Agreement and Plan have been amended so that the proposed acquisition, development, or use of such parcel is consistent with the Agreement and Plan. Any proposed amendment that would affect the process for annexations as provided in Section 4. above, in addition to requiring the approval of the bodies listed above, shall also require approval at an election by the qualified electors of the Town of Nederland.

7. BENEFICIARIES:

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

8. ENFORCEMENT:

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

9. DEFENSE OF CLAIMS/INDEMNIFICATION:

If any person allegedly aggrieved by the Rural Preservation Area provisions of this Agreement or the Plan and who is not a Party to the Plan should sue any Party concerning such Plan provisions, Boulder County shall, and Nederland may, defend such claim upon receiving timely and appropriate notice of pendency of such claim. Defense costs shall be paid by the Party providing such defense. The defense by Boulder County shall include defending the Town of Nederland, unless the Town request otherwise.

In the event that any person not a Party to the Plan should obtain a final money judgment against any Party who is the Regulatory Party for the diminution in value of any regulated parcel resulting from the Rural Preservation Area provisions of this Agreement or the Plan or regulations adopted by the Regulatory Party implementing said provisions of the Plan, Boulder County shall, to the extent permitted by law, indemnify such Party for the amount of said judgment.

10. GOVERNING LAW AND VENUE:

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

11. TERM AND EFFECTIVE DATE/NON-SEVERABILITY:

- a. This Agreement shall become effective upon signature of an authorized representative of the governing bodies of the Parties. Except as provided herein, this Agreement shall remain in effect for a period of twenty (20) years from the effective date, unless terminated prior thereto by agreement of the Parties.
- b. If any portion of this Plan is held by a court in a final, non-appealable decision to be per se invalid or unenforceable as to any Party, the entire Agreement and the Plan shall be terminated, it being the understanding and intent of the Parties that every portion of the Agreement and Plan is essential to and not severable from the remainder.

12. PARTY REPRESENTATIVES:

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

County of Boulder:  
Director  
Boulder County Land Use Department  
Post Office Box 471  
Boulder, CO 80306

Town of Nederland:  
Mayor, Town of Nederland  
45 West First Street  
Post Office Box 396  
Nederland, CO 80466

Name and address changes for representatives shall be made in writing, mailed to the other Party at the then current address.

**THIS AGREEMENT** is made and entered into to be effective on the date set forth above.

**TOWN OF NEDERLAND**

By: \_\_\_\_\_  
Jim Miller, Mayor

ATTEST

APPROVED AS TO FORM:

\_\_\_\_\_  
Sheridan Garcia, Town Clerk

\_\_\_\_\_  
Scotty P. Krob, Town Attorney

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

\_\_\_\_\_  
Jana L. Mendez, Chair

ATTEST:

APPROVED AS TO FORM:

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

\_\_\_\_\_  
H. Lawrence Hoyt County Attorney