



**RESOLUTION 2011-23  
SECOND AMENDMENT TO LYONS PLANNING AREA  
COMPREHENSIVE DEVELOPMENT PLAN  
INTERGOVERNMENTAL AGREEMENT**

THIS SECOND AMENDMENT TO LYONS PLANNING AREA COMPREHENSIVE DEVELOPMENT PLAN INTERGOVERNMENTAL AGREEMENT (the "Second Amendment") by and between the Town of Lyons, a Colorado statutory municipal corporation ("Town," "Lyons," or "Town of Lyons"), and the County of Boulder, a body politic and corporate of the State of Colorado ("County" or "Boulder County"), is made to be effective on the Effective Date as defined on the signature page of this Second Amendment. The Town and the County are collectively referred to in this Second Amendment as the "Parties."

**WITNESSETH**

**WHEREAS**, § 29-20-101 *et seq.*, C.R.S. as amended, authorizes 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 (i.e., town and county) governments to cooperate and contract with each other for the purposes 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 Lyons and of the rural area within Boulder County outside the Lyons Planning Area (the "LPA") are preserved, the Parties entered into the Lyons Planning Area Comprehensive Development Plan Intergovernmental Agreement (the "Original Agreement") effective December 30, 2002, adopting a comprehensive development plan which, *inter alia*, recognizes that delineating the area of potential urbanization within the LPA which would not be interrupted by Boulder County open space, accompanied by a commitment by Lyons for the preservation of the rural character of lands surrounding the LPA within Boulder County, is in the best interest of the citizens of each of the Parties; and

**WHEREAS**, effective February 7, 2005, the Parties entered into a First Amendment to the Original Agreement (the "First Amendment"), to include a designated portion of the Stone Mountain Lodge property (that portion below the 5,600-foot elevation line) into the LPA; and

**WHEREAS**, by letter dated October 14, 2009, addressed to the Boulder County Planning Commission and copied to the County's Board of County Commissioners, the Mayor of the Town of Lyons has requested that three additional properties, which contain existing development and front on the Town of Lyons' eastern corridor along Ute Highway (also known as U.S. Highway 66 (the "Highway")), be included within the LPA under the Original Agreement (the "Proposed LPA Inclusion Properties" or "Properties"); and

**WHEREAS**, the first Proposed LPA Inclusion Property is 4651 Ute Highway (the "Longmont Water Treatment Plant Property"), a seven-acre parcel on the north side of the Highway which, along with the 3-acre parcel to the south of the Highway (at 4652 Ute Highway), constitutes the site of the City of Longmont's now-decommissioned water treatment plant; and

**WHEREAS**, the Longmont Water Treatment Plant Parcel is adjacent to the LPA and contains the same existing use as the City of Longmont's parcel to the south of the Highway, which is already in the LPA; and

**WHEREAS**, the City of Longmont has requested an amendment to the Original Agreement to include the Longmont Water Treatment Plant Parcel within the LPA, pursuant to a letter addressed to the Boulder County Land Use Department dated December 23, 2009; and

**WHEREAS**, the second Proposed LPA Inclusion Property (consisting of two parcels) is located at the intersection of the Highway and U.S. 36, at 4497 Ute Highway and 4602 Highland Drive, and contains the existing commercial development known as Gwynne's Greenhouse (the "Gwynne's Greenhouse Property"); and

**WHEREAS**, the Gwynne's Greenhouse Property is situated at the "gateway entrance" to the Town of Lyons, contains existing commercial development which was present at the time the Original Agreement was signed, and is adjacent to the Longmont Water Treatment Plant Parcel as well as to other properties already within the LPA; and

**WHEREAS**, the owners of the Gwynne's Greenhouse Property have requested an amendment to the Original Agreement to include this Property within the LPA, pursuant to an e-mail addressed to the Boulder County Planning Commission and the Town of Lyons dated November 3, 2010; and

**WHEREAS**, the third Proposed LPA Inclusion Property is the majority of the 18-acre parcel owned by David and Kris Hawkins, which contains an existing residence and is located at 113 Stone Canyon Road (the "Hawkins Property"); and;

**WHEREAS**, the Original Agreement included a small portion of the Hawkins Property, which is located west of Nolan Road, in the LPA, but the larger portion of the Hawkins Property to the east of Nolan Road was left out of the LPA, hence splitting the Hawkins Property and making it impossible to annex the whole of the Hawkins Property as LPA-designated land; and

**WHEREAS**, David and Kris Hawkins have requested an amendment to the Original Agreement to include the entirety of the Hawkins Property within the LPA, pursuant to a letter addressed to the Boulder County Planning Commission and the Town of Lyons dated October 20, 2009; and

**WHEREAS**, in making the request for an Original Agreement amendment for the Proposed LPA Inclusion Properties, the Town of Lyons has emphasized that the Properties should have been included within the LPA under the Original Agreement; they are all bordered by or adjacent to existing LPA lands; they are key Highway frontage properties in the context of Lyons' planning efforts for orderly commercial development along the eastern corridor, and are in relatively close proximity to the Town; they were existing developed properties at the time of the Original Agreement, for municipal service uses (the Longmont Water Treatment Plant Property), for commercial use (the Gwynne's Greenhouse Property), and for residential use on a parcel only part of which was originally included in the LPA (the Hawkins Property); and, finally, the Town can efficiently extend services to the Proposed LPA Inclusion Properties and believes that extension of services will contribute to protection of the St. Vrain watershed area; and

**WHEREAS**, amending the Original Agreement to accommodate the Proposed LPA Inclusion Properties is consistent with the Town of Lyons' planning efforts for appropriate, context-sensitive, commercial development along the eastern corridor, as set forth in Lyons' adopted Comprehensive Plan; and

**WHEREAS**, the Parties have determined that amending the Original Agreement to accommodate the Proposed LPA Inclusion Properties complies with the discretionary LPA expansion criteria set forth in Section 2.3 of the Original Agreement, in particular Section 2.3.2, which authorizes expansions due to changes in the rural character of the land and where property outside the LPA would be better served by the urban structure and urban services of the Town; and

**WHEREAS**, in making the foregoing finding, the Parties note that the Longmont Water Treatment Plant Property and Gwynne's Greenhouse Property were not occupied by rural uses at the time of the Original Agreement, and that the Original Agreement mapped the Hawkins Property partly within the LPA, and therefore the Parties conclude that the intent of Section 2.3.2, which was to assure that rural lands at the time of the Original Agreement remain rural (unless otherwise subject to LPA inclusion under the Agreement), is met here; and

**WHEREAS**, the Parties also have the inherent authority under the Original Agreement to add parcels to the LPA which reasonably should or could have been mapped under that designation in the Original Agreement; and

**WHEREAS**, once in the LPA, the Proposed LPA Inclusion Properties, except as expressly provided herein, will be subject to all applicable provisions of the Original Agreement, including but not limited to the provisions related to Annexation and Development, and the General Advisory Planning Policies for the LPA, thus ensuring that any future development within the Town of Lyons is consistent with the Original Agreement; and

**WHEREAS**, the Parties here wish not only to approve the request for the Proposed LPA Inclusion Properties on the basis articulated above, but to lay the groundwork for substantial and cooperative, forthcoming discussions concerning extending or renewing the Original Agreement beyond its current expiration date of December 30, 2012, and consideration of the Town of Lyons' long-term commitment to the Boulder County Countywide Coordinated Comprehensive

Development Plan Intergovernmental Agreement (commonly referred to as the "Super IGA"), as further set forth in this Second Amendment; and

**WHEREAS**, the Parties believe that the County's agreement to accept the Proposed LPA Inclusion Properties, coupled with the Town of Lyons' agreement to establish the basis for substantial and cooperative, forthcoming discussions regarding extending or renewing the Original Agreement, with appropriate amendments, allow the Parties to respond to changing circumstances and needs, while still preserving the essential integrity of the LPA, and of the area outside of the LPA which is to remain rural under the County's jurisdiction; and

**WHEREAS**, the County's Board of County Commissioners held a duly noticed public hearing on April 12, 2011, to consider this Second Amendment to the Original Agreement, and, based on that hearing and for the reasons articulated above, voted unanimously to approve the Second Amendment as set forth herein; and

**WHEREAS**, the Town of Lyons Board of Trustees held a duly noticed public hearing on May 16, 2011, to consider this Second Amendment to the Original Agreement, and, based on that hearing and for the reasons articulated above, also voted to approve the Second Amendment as set forth herein.

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

**1.0 PROPOSED LPA INCLUSION PROPERTIES**

The Longmont Water Treatment Plant Property (4651 Ute Highway), the Gwynne's Greenhouse Property (4497 Ute Highway and 4602 Highland Drive), and the portion of the Hawkins Property (113 Stone Canyon Road) east of Nolan Road (which is not now in the LPA), shall all be included within the LPA under the Original Agreement and this Second Amendment. The Proposed LPA Inclusion Properties are depicted on the map which is attached to and incorporated into this Second Amendment as Exhibit A. No other inclusions of property within the LPA, nor any changes in the overall boundary of the Original Agreement, are made by this Second Amendment.

**2.0 LIMITS ON DEVELOPMENT ON HAWKINS PROPERTY**

Due to the Hawkins Property containing a portion of the Indian Mountain Natural Landmark Area as designated for preservation on the Boulder County Comprehensive Plan, including the landmark's surrounding 250-foot buffer area, any future structures or development on the Hawkins property east of Nolan Road, shall occur only outside of the cross-hatched area labeled "Hawkins Property Non-Development Area" which lies to the east of the 5400-foot contour line, and (250' north of the Highway ) to east of the 5360-foot contour line, all as depicted on the map which is attached to and incorporated into this Second Amendment as Exhibit B. This no-development limitation shall affect this portion of the Hawkins Property whether in the LPA or annexed to the Town under the Original Agreement. Prior to final plat recordation or other final approval for any development on the Hawkins Property, the owner of the Property shall grant to the County and to the Town of Lyons a Conservation Easement pursuant to Article 30.5 of Title

38 of the Colorado Revised Statutes, in a form acceptable to both the County and the Town, which prohibits any structures or development on this preserved area of the Hawkins property.

### **3.0 AMENDED MAPS.**

The map for the Original Agreement is amended by the maps attached to and incorporated into this Second Amendment as Exhibits A and B.

### **4.0 DISCUSSION OF EXTENSION OF TERM OF ORIGINAL AGREEMENT AND RELATED ISSUES.**

The Parties acknowledge that the County has requested that the Town agree to a 15-year extension of the term of the Original Agreement (from December 30, 2012 to December 31, 2027) as part of this Second Amendment, but that the Town has expressed reluctance to make this commitment at this time, due to it having a new Board of Trustees, a new Town Administrator, and a newly adopted comprehensive plan. Therefore, the County accepts the Town's offer and commitment to engage in substantial and cooperative discussions with the County, beginning during the second quarter of the 2011 calendar year, regarding the extension or renewal of the Original Agreement, including appropriate amendments to update the Original Agreement.

Such discussions, without limitation, will focus on the following topics: (1) addressing the County's concerns with the possible future expansion of the Town, as mapped on the Town's 2010 adopted Comprehensive Plan, beyond the current eastern limits of the LPA as designated in this Second Amendment; (2) establishing a mutually acceptable level of development for any new properties to be included within the LPA, with a view toward ensuring that new development is not over-intensive, and is of an appropriate nature and scale to harmonize with surrounding rural, unincorporated County lands; (3) considering the Town's waiver of its right under the third paragraph of Section 14 of the SuperIGA, to give written notice (at any time until 90 days prior to the tenth anniversary of the effective date of the SuperIGA) to withdraw as a Party from the SuperIGA effective on that anniversary date; (4) exploring the formation of a St. Vrain River Corridor Task Force; (5) committing to conduct a trail and highway assessment within an area of mutual interest to be determined; and (6) discussing potential use of County property as a site for relocation of the Town's waste water treatment plant. The Parties further agree that they shall make all reasonable efforts to use these discussions as a basis for the Town to submit a first draft of an extended/renewed Original IGA to the County by June 30, 2011, and thereafter for the Parties to adopt an extended/renewed Original IGA by the end of the third quarter of calendar year 2011.

### **5.0 ORIGINAL AGREEMENT AS AMENDED.**

The Original Agreement shall continue in full force and effect in accordance with its terms, except as is expressly amended by the terms of the First Amendment and this Second Amendment.

**7.0 COUNTERPART.**

This Second Amendment may be executed in any number of counterparts, which together shall constitute the agreement of the Parties.

**THIS SECOND AMENDMENT TO THE ORIGINAL AGREEMENT** is made and entered into to be effective on the later of the dates of approval by the Town of Lyons or Boulder County (the "Effective Date").

**TOWN OF LYONS:**

BOARD OF TRUSTEES

By: [Signature]  
Mayor or Mayor Pro Tem

Date: 5/25/11, 2011

ATTEST:

[Signature: Deb Anthony]  
Town Clerk

APPROVED AS TO FORM:

see attached  
Town Attorney

**COUNTY OF BOULDER:**

BOARD OF COUNTY COMMISSIONERS

By: [Signature: Ben Paulina]  
Chair

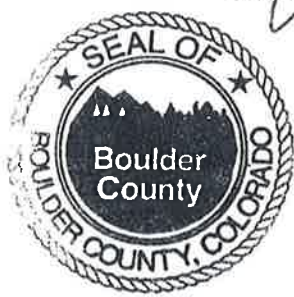
Date: 6/6/2011, 2011

ATTEST:

[Signature: Mike Ryder]  
Clerk to Board

APPROVED AS TO FORM:

[Signature]  
County Attorney



**7.0 COUNTERPART.**

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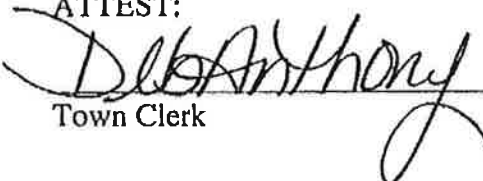
**TOWN OF LYONS:**

**BOARD OF TRUSTEES**


By:   
Mayor or Mayor Pro Tem

Date: 5/25/11, 2011

**ATTEST:**

  
Town Clerk

**APPROVED AS TO FORM:**

  
Town Attorney

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

By: \_\_\_\_\_  
Chair

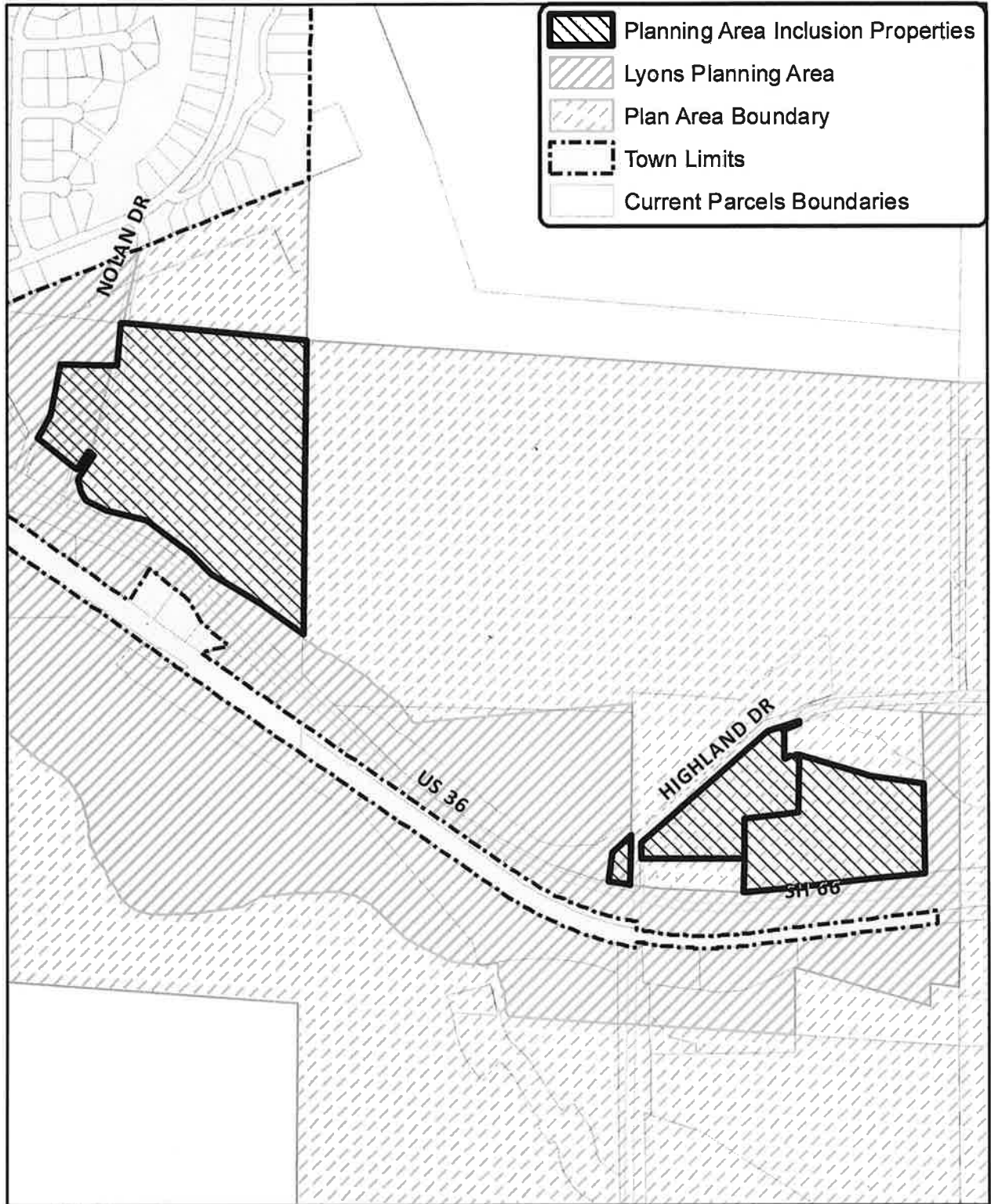
Date: \_\_\_\_\_, 2011

**ATTEST:**

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

**APPROVED AS TO FORM:**

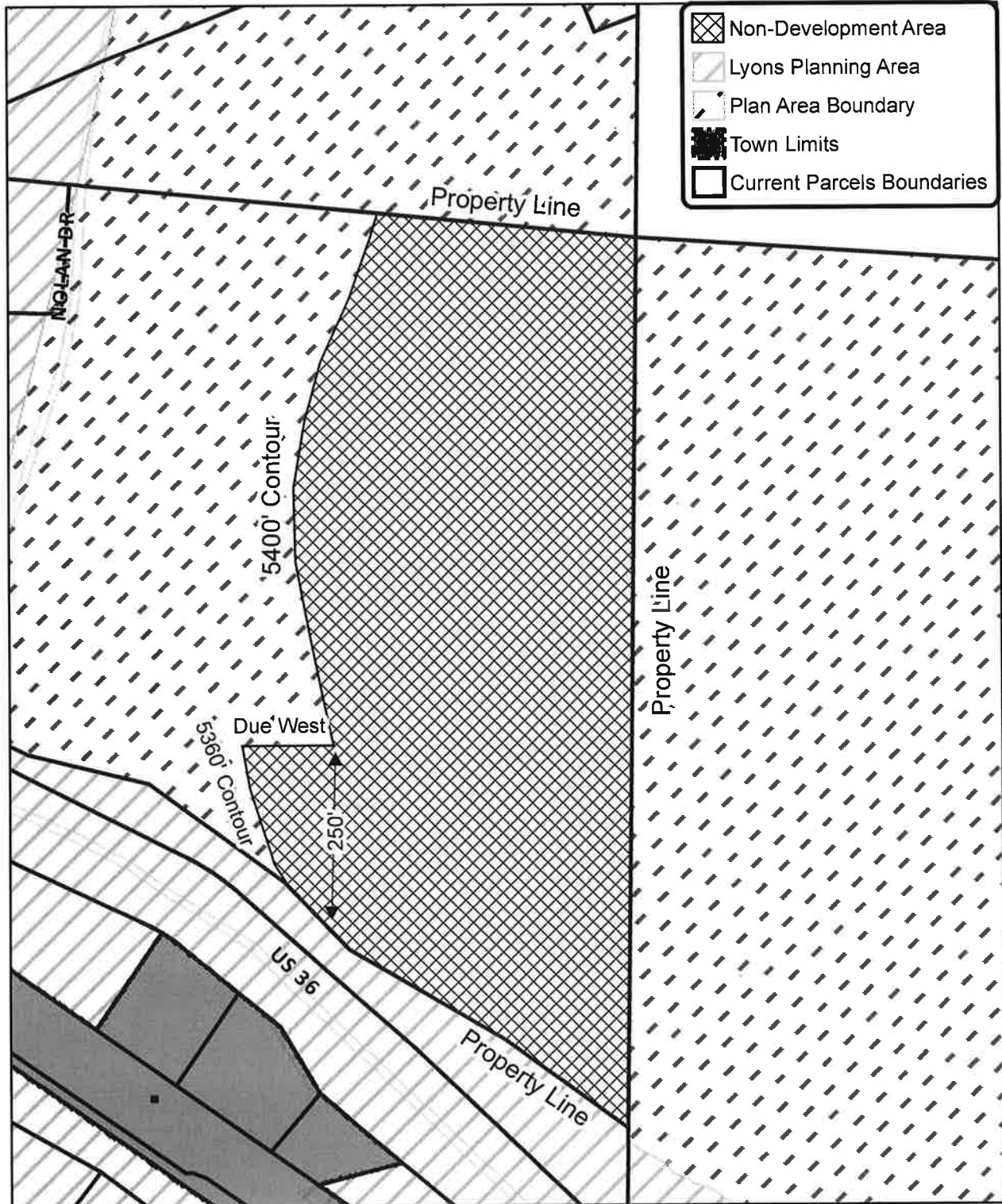
\_\_\_\_\_  
County Attorney



## Exhibit A

### Areas Added to Lyons Planning Area





## Exhibit B

### Non-Development Area Hawkin's Parcel

