



Land Use

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**BOULDER COUNTY
BOARD OF COUNTY COMMISSIONERS**

Tuesday, February 12, 2019, at 9:00 a.m.

**Commissioners' Hearing Room, Third Floor
Boulder County Courthouse, 1325 Pearl Street, Boulder, CO**

PUBLIC HEARING

Docket DC-18-0001: Text Amendments to Article 9 and associated provisions, including Articles 1, 3, and 18 of the Boulder County Land Use Code

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AGENDA

1. Staff presentation and questions from the Board
2. Public Hearing
3. Board of County Commissioners deliberation and decision

INTRODUCTION

On January 18, 2018, the Board of County Commissioners (BOCC) authorized staff to proceed with text amendments to the Boulder County Land Use Code (the "Code") related to Subdivision Exemptions, Exemption Plats, and Building Lot Determinations. A need for an update to this section of the Code was recognized by the County Attorney office as early as 2006, to codify policies and precedent. The proposed Code updates presented here are intended to clarify, codify, and streamline processes related to recognition of legal building lots, parcel mergers, and boundary adjustments. Planning Commission recommended approval of these amendments, with minor grammatical edits, in their January 16, 2019 public hearing.

ACTION REQUESTED

Staff requests that the BOCC approve the proposed Land Use Code text amendments to Article 9 and associated provisions, including Articles 1, 3, 17, and 18 of the Boulder County Land Use Code in docket DC-18-0001 as presented in Attachment B of this staff report.

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I. SCOPE OF THE PROPOSED AMENDMENTS

The proposed amendments codify existing procedures, streamline existing review processes, and clarify current practices and policies. These amendments are in accordance with the Comprehensive Plan and consistent with the intent of the existing Code.

Summary of Proposed Text Amendments

- Clarify the Building Lot definition and Building Lot determination process
- Establish process-related elements of Building Lot determinations in Article 9
- Revise Subdivision Exemption definition to address properties with multiple interests that do not divide a parcel
- Revise Subdivision Exemption and Exemption Plat criteria to more adequately address land use impacts similar to the Site Plan Review and Special Review standards
- Establish an administrative process for minor Subdivision Exemptions and Exemption Plats
- Make relevant changes to Articles 1-300, 3, 17-300, and 18

Objective of Proposed Text Amendments

The purpose of amending the Code is to increase the efficiency of related Land Use Department processes and clarify the intent of Building Lot Determinations, Merger of Unsubdivided Parcels, Subdivision Exemptions, and Exemption Plats. The amendment also will make processes and requirements more clear and predictable for applicants.

II. BACKGROUND

Staff has been actively engaged in efforts related to DC-18-0001 since early 2018. Table 1 provides a timeline for this docket. Due to the strong statutory basis of the Code changes under consideration the County Attorneys' office has played a lead role in drafting the proposed Code changes.

Table 1. DC-18-0001 Timeline

Activity	Timeframe
BOCC Authorization for Text Amendments	January 18, 2018
Development of concepts for Code changes	January- November
Draft proposed Code changes, including a public referral comment period	December 2018
Planning Commission public hearing and recommendation	January 16, 2019
BOCC public hearing of proposed Code amendments	February 12, 2019

The definition of the term "subdivision," was adopted into the Code in 2004 in Article 18-204B, and used in practice since 1972. Its basis is in the County Planning Act, C.R.S. § 30-28-101(10)(a). The term "subdivision" refers to subdivisions broadly, which may occur through a mere division of land (such as through a deed or other instrument serving to physically divide or change property boundaries) or through the use of parcels for multiple dwellings. The term, "subdivided land," defined in Article 18-204, refers to subdivisions which have received approval through the County's subdivision regulations and are depicted on a recorded plat.

Certain divisions of land are exempt from the subdivision regulations. C.R.S. § 30-28-101(10)(c) exempts from the term "subdivision" certain types of divisions of land. In addition, under § 30-28-101(10)(d), the Board of County Commissioners may exempt from the term "subdivision" any divisions of land that it determines are not within the purposes of the County Planning Act.

The proposed amendments to the Code clarify existing regulations which define those parcel divisions which are statutory exemptions from the Subdivision Regulations (Building Lots), those which are exempted by the Board through adoption of this Code (and receive

administrative review), and those which may require review by the Board to be determined to be exempt from the Subdivision Regulations (Subdivision Exemptions and Exemption Plats). The proposed amendments also codify and clarify procedures for the creation of lots through a voluntary merger of unsubdivided lands by a property owner.

The following are definitions for key terms referenced throughout these Code updates.

Building Lot

Not all parcels in Boulder County are eligible for establishing certain uses or the construction of structures, such as a dwelling. Prior to establishing most uses or structures, the Code requires that a parcel is recognized as a legal building lot. A limited number of uses, such as Open Agriculture and Forestry Use, do not require a Building Lot.

A “Building Lot” is typically a legally created parcel, and describes any parcel, subdivided or unsubdivided, that was lawfully created or that otherwise meets the County’s requirements for recognition. Subdivision Regulations and zoning district minimum lot sizes have changed over time, since the inception of the first zoning regulations in 194. Building Lot Determinations examine the deed history of a parcel to determine if the parcel met the minimum lot size at the time of its creation, or meets one of the other stipulations in the Building Lot Definition.

The current Land Use Code definition of Building Lot establishes which parcels of land are eligible for potential development, including divisions of land that are statutory exemptions from the subdivision regulations. The Building Lot Determination process, which has been a policy that is proposed to be codified through these amendments, entails staff conducting deed research to confirm whether a parcel was legally created given the State Statutes and the Code at the time of creation.¹ For the purposes of this report and the Code, a “Building Lot” is not to be confused with a “parcel” which is a more general term which means all contiguous land held on one deed regardless of Building Lot status.

Subdivision Exemption

Subdivision Exemption is the review process for divisions of unsubdivided land that are not among the statutory exemptions, but may be considered by the BOCC to determine whether such divisions fall outside the purposes of the County Planning Act. Lots recognized through the Subdivision Exemption process may be considered a building lot(s). The Code establishes criteria by which staff and the Board review these divisions. The proposed amendments create better criteria for these reviews, and establish an administrative process for minor exemptions, which will not require a public hearing.

¹ Building lot determinations are limited and conditional, confirming only that a parcel is a legal building lot eligible for certain potential development. A proposal must meet other County regulations before the County may issue a building permit for development of any particular structure or use on a parcel.

Exemption Plat

An Exemption Plat is the review process for amendments or changes to a subdivision plat that are exempt from the requirements of Article 5 Subdivision Regulations of the Code. These changes can include vacation of easements or rights-of-way or minor adjustments to the boundary lines between parcels. Currently all such changes are reviewed through public hearing by the BOCC. The proposed amendments create better criteria for these reviews, and establish an administrative process for minor exemption plats, which will not require a public hearing.

Unsubdivided Lot Mergers

Under C.R.S. 30-28-139, involuntary mergers of parcels require a specific public process. However, the statute does not apply to mergers of parcels that are requested in writing by the owners. The proposed amendments codify and simplify the administrative requirements for completing such a voluntary merger, which includes a written request and record a deed merging the parcels, including a statement that, “the parcels have been merged with the owner’s consent per 30-28-139.”

III. A READER’S GUIDE TO THE PROPOSED CODE CHANGES

This portion of the staff report presents an explanation of proposed Code changes, in chronological order of their respective Article and subsections, as referenced in the italicized text. This is meant to be an explanatory guide for the readers as they review the proposed Code language found in **Attachment B**.

Building Lot Determinations

9-100 Building Lot Definition

The current Code defines “Building Lot” in detail in Article 18-121, including statutory and process related elements. The proposed amendments will maintain a more basic definition in Article 18 and relocate more detailed and process related elements to Article 9-100. The proposed definition will be broken into clearer and more digestible segments, and codify various policies that the County has consistently enacted in practice.

- A.1-2.*** Describes parcels which met the minimum lot size at the time of creation.
- A.3.*** Describes parcels that have undergone appropriate processes for recognition for those parcels that did not meet the minimum lot size.
- A. 4.*** Subdivision regulations from 1954 to 1972 required that any division which created more than four lots be required to undergo subdivision platting. During that time, many illegal subdivisions were created and individual parcels sold. A Conceptual Review process, which required Board approval, was established to recognize certain of these lots and ensure they were not substandard. This provision confirms Building Lot status of any lots previously recognized through the Conceptual Review process.
- A. 5.*** Recognizes lots created through a County recognized Subdivision and Subdivision Plat.
- A.6.*** Subdivision lots may have been further changed without recording of a new plat, before 1972, during a time period in which the law was ambiguous in regards to

this requirement. This provision specifies under what conditions these affected parcels can be recognized as Building Lots. This codifies existing practices.

- A.7. If the County has issued a Building Permit on a property for certain development based on accurate parcel information as described in this provision, the County considers itself estopped from denying Building Lot status. The proposed language addresses affected parcels in a subdivision, and requires that an Administrative Exemption Plat is completed to ensure that the County's Subdivision Plat records reflect current conditions. This codifies existing practices, but adds the requirement for an updated plat.
- A.8. This provision exists in the current code under Article 18-121.A.4, and remains to ensure any lots created by government transfer to a nongovernmental agency meet the minimum lot size.
- A.9. When illegal divisions of land occur, this provision allows for revision or recombination to their previously legal configuration.
- A.10. Recognizes lots in instances in which portions of a property are acquired for public right-of-way, reducing the lot size, but not disrupting contiguity of the parcel.
- A.11. A state court may effect certain divisions of land as a result of legal action. The provisions in this section describe instances in which the resulting parcels may be recognized as a legal building lot. It is intended to ensure that the policy in the Comprehensive Plan of rarely creating new density in the unincorporated County. An Administrative Exemption Plat will be required for cases in which County records will need to be updated to reflect resultant conditions of a platted Subdivision. Considering that the County is generally aware of any parcels created by legal action after 2014, staff felt comfortable recommending that the Board make blanket exemptions for these items as listed in 9-100.A.12.a and b, so long as the resulting parcel has legal access. Subsection c addresses any minor changes due to court action that may have occurred before 2014, where County policies may have been approached differently, but the lots created are unproblematic. More major changes that may create density or otherwise be problematic will be considered through a Subdivision Exemption, unless a court ordered the division to be recognized.
 - a. Concerns parcels created after 2014, for cases in which each of the affected parcels met the definition of a Building Lot immediately prior to the action. This provision requires that the resultant lots have legal access to be recognized as a Building Lot.
 - b. Concerns parcels created after 2014, where one or more of the affected parcels did not meet the definition of a Building Lot immediately prior to the action. This provision recognizes lots that were a Building Lot immediately prior to the action do not decrease in size as a result of the action, and have legal access. This provision prevents unwarranted increases in density or the creation of substandard lots.
 - c. Addresses older court actions, or instances in which the County was not given timely notice of pending action by the court or the opportunity to join as an interested party, or situations that are unproblematic but do not fall into (a) or (b) above. Minor changes, as determined by the director, will be recognized without a further Land Use process, so long as the

resulting parcel has legal access. Minor changes generally refer to small boundary shifts that would usually be approved through a Subdivision Exemption or Exemption Plat process without the imposition of conditions, and do not create additional density.

- d. Recognizes Building Lots when the court has sufficiently notified the County of pending action, has given the County the opportunity to join as an interested party in the proceeding, and has issued an order requiring the County to recognize the parcel as a Building Lot.

9-101 Building Lot Determination

While Building Lot is defined in the Code, and the Director has the authority to determine whether a given parcel meets the definition of a Building Lot, there is no Building Lot Determination process currently codified. Staff proposes to introduce clarifications to the current practices for the Building Lot Determination process in Article 9, including requirements related to application materials (**B**), owner notification (**C**), approval limitations (**D and F**), amendments (**E**) and appeals before the Board of Adjustment (**G**). The proposed amendments reflect the historical practices of the Land Use Department.

Mergers of Unsubdivided Parcels

State statutes that require a specific public process for mergers of parcels after October 1, 2003, do not apply when the merger is requested by a property owner. This section of the Code sets forth the requirements and procedures for the County to recognize voluntary mergers of parcels by property owners. Article 9-102 of the proposed Code will cover the mergers of lots. The legal requirements for mergers that are not requested by a property owner in writing currently appear in the Building Lot definition in Article 18, which will be relocated to Article 9 through these changes.

9-102.A and B Building Lot status of Merged Parcels

When one or more parcels are merged, a new parcel is effectively created and building lot status must be determined. When parcels are merged, and the resultant parcel is less than 35 acres, the respective areas generally maintain their Building Lot status. If two or more Building Lots are merged, the resultant parcel will constitute one single Building Lot. Where one or more of the parcels to be merged are not Building Lots, the areas that were not legal lots cannot be used for setback or building purposes, unless approved through a Subdivision Exemption.

9-102.C Owner Request of Merged Parcels

The new language in 9-102.C will codify procedural aspects of these mergers for the sake of transparency and clarity. Property owners must supply written confirmation to the County of the intent to merge parcels, and record deeds which confirm the property owner's intent to merge parcels.

9-102.D County initiated request for merged Parcels

The proposed 9-102.D is language verbatim removed and relocated from the current Article 18-121 Building Lot definition. This section describes the statutory limitations and procedures for the County to initiate a merger of parcels.

Subdivision Exemption

As noted in the Background, a Subdivision Exemption is a process for divisions of land that the Board determines falls outside the purposes of the County Planning Act² or Subdivision Regulations. The Code currently describes the Subdivision Exemption process in 9-100, types of Subdivision Exemptions 9-101, and Exemption Criteria 9-102. The proposed Code language addresses the Subdivision Exemption process and types under 9-200.

9-200 Subdivision Exemption

- A.* The proposed language is meant to replace the language currently in 9-100. The effect of the language is the same.
- B.* This provision refers to a new administrative exemption process (described in proposed 9-201) for minor subdivisions, such as the previously termed “Boundary Line Adjustments.”
- C.* Some existing processes or zoning districts in the Code allow for multiple interests or dwelling units without dividing a parcel, including but not limited to: Accessory Dwelling Units as approved through a Limited Impact Special Review (Article 4-516); or Condominiums or apartments constructed through the applicable Site Plan or Special Review in the allowed zoning districts. This provision exempts these types of proposals from the definition of the term ‘subdivision’ and allows the Director or Board to approve a proposal through another respective binding review process under the Code, such as Site Plan Review, Limited Impact Special Review, or Special Review, as applicable for the specific proposal. This clarifies and simplifies the process currently required by the Code.
- D.* This provision specifies that any lots that can be created through the Subdivision process, addressed in Articles 5 and 6 of the Code, are not eligible for Subdivision Exemption.
- E.* When the County acquires parcels, especially for Parks and Open Space, specific arrangements are made that delineate new buildable lots, and the area of land to be preserved or owned by the County. These types of divisions are approved by the Board of County Commissioners through the acquisition process, and thus Subdivision Exemption approval or Subdivision approval is not required.

² See Part 1 of Article 28 of Title 30, C.R.S. (the County Planning Act).

9-201 Administrative Subdivision Exemptions

This section establishes an administrative process for minor Subdivision Exemptions. If the Director determines that the application does not meet the requirements in A, and cannot meet the criteria without conditions, the application will not receive an administrative decision and be scheduled for a hearing before the Board as set forth in the Subdivision Exemption process in 9-200.

- A. The proposed language describes the types of subdivisions that will be considered under the administrative process and do not require public hearing before the BOCC. Primarily these involve:
 - 1. Proposals that do not substantially conflict with the Exemption Criteria (proposed Article 9-400), and will not require conditions of approval to mitigate any conflicts with the Criteria.
 - 2. Boundary line adjustments that do not increase density and do not result in problematic lots.
 - 3. Townsites which were platted in the early 1900s and may produce unreasonable conditions given plats that do not reflect topography and/or allow for adequate sanitation and emergency access.
 - o The County generally treats townsite lots as unsubdivided lands, and requires that subject parcels meet the minimum lot size at the time of their creation in order to be considered a Building Lot. This provision allows administrative recognition of certain townsite parcels as building lots. These provisions were modified from the existing Subdivision Exemption Criteria (9-102.C).
 - o This provision allows for administrative exemptions of townsite lots so long as the division is based on the original plat and is part of a substantially developed townsite. This allows for reasonable recognition of townsite lots, where the townsite improvements already exist, and will not allow for additional increases in density of undeveloped townsites.
- B. Notification of an approval will be sent to property owners within 1500 feet of the subject parcel.
- C. If the Director's determination is not appealed to the Board (per the proposed 9-600) within 14 calendar days, the determination is final.

Exemption Plats

9-300 Exemption Plat

- A. The proposed language is meant to replace the language currently in 9-200.A. The effect of the language is the same.
- B. This provision describes the few instances where Exemption Plats are allowed to involve un-subdivided land:
 - 1. the resultant lot is greater than 35 acres (currently 9-200.B)
 - 2. as a result of court action

- 3. the County is estopped from denying Building Lot status.
- C. This provision refers to a new administrative exemption process (described in proposed 9-301) for minor changes to plats, such as the previously termed “Boundary Line Adjustments.”
- D. This provision specifies that no new density can be created through the Exemption Plat process, except where court ordered or the County is estopped from denying Building Lot status.

9-301 Administrative Exemption Plats

This section is a new addition, meant to reduce the amount of minor applications that go to hearing, and take a significant amount of staff and Board time.

- A. This provision refers to Administrative Exemption Plats that meet all of the proposed Criteria (proposed Article 9-400) without conditions. The process is the same as Administrative Subdivision Exemptions, and will include notification of neighbors and opportunity to appeal to the Board under proposed 9-600.
- B. This provision refers to a new administrative exemption process for court-ordered changes.
 - 1. For those minor changes that may be done administratively
 - 2. More significant changes require recognition of a new Building Lot by the Board through a criteria review
- C. This provision refers to those instances when the County has previously issued permits on a parcel and is estopped from denying Building Lot status. An administrative exemption plat is required to update the plat and ensure the County’s records remain accurate.

Vacations

9-302 Vacations

This provision has not been altered except to clarify that it applies to any Vacations that result from reconfigurations of subdivided land or changes to the plat. It also includes specific reference to the Vacation process housed in Article 10. It simply requires that any Vacations must be reviewed in a public hearing by Planning Commission, prior to the Board hearing for both the Exemption Plat and Vacation.

Review Criteria

9-400 Review Criteria

The proposed criteria for exemption reviews more adequately address the Land Use impacts of any changes to parcels in the County. Previously, Subdivision Exemption Criteria were in 9-102 and separately Exemption Plat Criteria were in 9-202. These two sets of criteria were repetitive in many ways. Staff proposes to combine the lists into one set of more general criteria, and to revise the criteria to more adequately address concerns for health, safety, and compatibility, for consistency with review criteria found elsewhere in the Code. Criteria 3-14 are in congruence with the Site Plan Review Standards and Special Review Criteria. Criteria 1 and 2 are specific to their respective processes, as further described below.

1. Subdivision Exemption Criteria

This criterion requires mitigation of any potential impacts related to an increase in the number of currently existing lots through the Subdivision Exemption Criteria. These cases are rare, and clarifies that staff has the authority to impose reasonable conditions to mitigate any potential impacts. Increases in density are not allowed through the Exemption Plat process.

2. Exemption Plat Criteria

Under Articles 5 and 6, any new subdivided lots cannot be less than one acre in size except where served by public water and sewer. This criterion addresses any safety concerns for substandard or substantially smaller lots, but allows for minor changes to already substandard lots, or configurations of new lots as necessary, within certain constraints. The current Code specifies that lots less than one acre cannot be recognized through an exemption plat process, except if served by public sewer and water. This has proved problematic for some otherwise straight forward exemptions.

15. Community Facility Criteria

The proposed criterion 15 addresses the interest of utility and other public infrastructure, and allows for recognition of the resultant substandard lots that may be created by lands acquired for the public benefit. These provisions currently exist as specific criteria for “Community Facility Lot Splits” in 9-102.C.

Approvals and Appeals

9-500.A. Conditions of Approval

These provisions state the Board’s authority to require reasonable conditions which allow a proposal to meet the criteria and be approved. These items have been currently and historically considered as part of practice through the exiting provisions in 9-300.A of the Code. This clarifies more specifically the types of conditions to be expected through review.

9-500.B. Post Approval Requirements

Post-approval requirements are a standard practice to ensure proper documentation that the approved changes have occurred. These are currently referred to as “exemption documents” in Article 9-300.A, and listed under post-approval requirements of Article 3-206.

9-600. Appeal of Administrative Director’s Determination

The proposed language in this section allows for the appeal, to the Board, of the Director’s determination that an application meets the criteria in 9-400 for an exemption plat or subdivision exemption. The procedures for this process are described in 1-3, and reflect the appeal procedures for other administrative processes in the Code, including Site Plan Review.

9-700. Expiration of Approvals

This language is copied from the existing Article 9-300. The provisions for re-application for an exemption approval have been removed. It is inferred that any re-application for an expired Exemption would require it to be reviewed under the Code at the time of re-application, and no “shortened process” (as referenced in the current Code) would be considered.

Supporting Articles

1-300

An additional explanation of the County's authority under the County Planning Act was added to restate and clarify the purposes of the County Planning Act.

Article 3

Revisions to Article 3 include updating references to Article 9.

Article 17 Zoning Regulation Enforcement

Building Lot Definition and Determination elements were added to Article 9, and shall be removed from this section. Enforcement related Code language will remain in Article 17.

Article 18

The current Code defines Building Lot, and parcel mergers under 18-121. As described under 9-100 above, those sections of Code will move to Article 9, and basic definitions of the terms will remain in Article 18 with reference to 9-100. Minor edits were made to the definitions of Exemption Plat and Subdivision Exemption to reflect changes to Article 9 subsections.

IV. SUMMARY OF REFERRAL FEEDBACK AND RESPONSES

Staff circulated a [referral packet](#) in late December to solicit public feedback on draft Code changes. Staff received five responses from referral agencies and members of the public. Some internal feedback from other County staff was also provided. This section is a summary of feedback received, as well as changes made in response to that input.

Referral Comments

- No comments or no conflict was received from: Xcel, City of Longmont, Grand County, Boulder County Transportation.
- Only one agency, City of Boulder Open Space and Mountain Parks (OSMP) provided a comment. That agency noted that the Community Facility Lot Split provisions were absent from the referral code. The City relies heavily on the provisions of the Community Facility Lot Split when acquiring property for public purposes, including parks and utilities.
- A member of the public provided the following questions and concerns:
 - The language surrounding the deed process required by mergers needed clarification that the county was not requesting the property owner deed land to the county.
 - The appeals processes should be consistent between the administrative and full exemption review.
 - Questions regarding interpretation of state regulations.
 - Grammatical and formatting inconsistencies were noted.

Response to Feedback

Staff made the following minor edits to the structure of the Code since the referral:

- Relocated Townsite Lot provisions from the Building Lot definition in 9-100 to the Administrative Subdivision Exemption in 9-201. Staff wanted to ensure that the capability to incentivize the preservation of Historic resources, as are often found in townsites, could be maintained through a review of the criteria.
- Added language that addresses Community Facility Lot Splits, under the Criterion 15 in 9-400. That language was unintentionally excluded from the draft version of the Code language circulated for referral comment.
- Staff and the County Attorney’s office directly addressed the member of the public who raised questions regarding state regulation interpretations and appeals processes. Staff did not change the appeals processes, but clarified the differences in Article 9-600.
- As applicable, staff made grammatical edits, as well as capitalized defined items and processes to highlight internal references within the code.

V. RECOMMENDATION

Amendments to the Land Use Code require approval by the Board of County Commissioners, upon recommendation of the Planning Commission.

Text Amendment Criteria

Article 16-100.B. contains the criteria for amending the text of the Land Use Code. Staff finds that the proposed amendments in this Docket meet the following criteria:

1. the existing text is in need of the amendment;
2. the amendment is not contrary to the intent and purpose of this Code; and
3. the amendment is in accordance with the Boulder County Comprehensive Plan

Planning Commission Recommendation

On January 16, 2019, staff presented the proposed amendments to Planning Commission at a public hearing. Staff presented an [Amended Attachment B](#), as well as comments received after the staff report was posted. Planning Commission asked for clarification on a few topics including the scenarios when the county considers itself estopped from enforcing the subdivision regulation policies in 9-100.A.6 and 7. Staff clarified that the intent of those sections is to allow for the county to issue health and safety permits for minor work the non-conforming structures, without recognizing the associated lots as legal building lots. Additional questions were posed regarding how the amendments will affect density. In response, staff explained that Exemption Plats cannot recognize new units of density, only a formal subdivision process can add density to subdivisions. Planning Commission offered a few minor grammatical edits and approved the amendments unanimously. Further, Planning Commission understood that staff would be conducting additional minor grammatical editing prior to the public hearing before the BOCC.

Action Requested

Staff requests that the BOCC approve the proposed Land Use Code text amendments to Article 9 and associated provisions, including Articles 1, 3, 17 and 18 of the Boulder County Land Use Code in docket DC-18-0001 as presented in Attachment B of this staff report.

Article 9



Subdivision Exemptions & Exemption Plats

Article 9 • Subdivision Exemptions & Exemption Plats

9-100 Subdivision Exemptions

- A. The Board of County Commissioners may grant exemptions from the application of the Subdivision Regulations for any subdivision of unsubdivided land which the Board determines, pursuant to this Article 9, is not within the purposes of the Subdivision Regulations, as evidenced in Section 1-300 and Article 5 of this Code, and Part 1 of Article 28, Title 30 of the Colorado Revised Statutes.
- B. This subdivision exemption process requires public hearings before the Board of County Commissioners. Subdivision exemptions may be granted only on the basis of the exemption criteria enumerated in Section 9-102, below.

9-101 Types of Subdivision Exemptions

- A. Boundary Line Adjustment
- B. Community Facility Lot Split for land not owned by the County
- C. Townsite Lot Recognition
- D. Other subdivisions of unsubdivided land which the Board in its discretion, based on the applicable criteria of this Article 9, determines do not fall within the purposes of the Subdivision Regulations.

9-102 General Exemption Criteria

A. Criteria for all Exemptions

1. Any new parcel created shall not increase the degree of nonconformity of an existing structure.
2. No exemption shall be approved if development will occur on a topographic or geologic hazard.
3. No exemption shall be approved by the Board within a Floodplain Overlay District, unless it is determined by the County Engineer that all proposed uses are capable of receiving a floodplain development permit.
4. All proposals for the development of parcels created shall conform to the provisions of Article 7 of this Code and the Transportation Standards, including but not limited to access.
5. Proposed parcel boundaries and development shall be suitably located and sized with respect to the physical characteristics of the land, the character of the neighborhood, and the County's goals of preserving agricultural and forestry lands.
6. Proposed subdivisions involving subdivided land shall go through an exemption plat process if applicable under Section 9-200, below, or subdivision review pursuant to the Subdivision Regulations of Article 5 of this code.
7. The proposal shall be in accordance with the Comprehensive Plan, any applicable intergovernmental agreement affecting land use or development, and this Code.

B. Additional Criteria for Boundary Line Adjustments

1. Divisions which create any number of parcels equal to or less than the number of original unsubdivided parcels are subject to the following conditions:
 - a. Where the original building lot is in conformance with the lot requirements of the zoning district in which the parcel is located, any parcels created shall also conform to those requirements.
 - b. Where original building lots are nonconforming with respect to the lot requirements of the zoning district in which located, any parcels created should not increase the degree of nonconformity.
 - c. A boundary line adjustment shall not be approved primarily for convenience of construction and shall substantially advance a legitimate land use purpose under this Code.

C. Additional Criteria for Community Facility Lot Splits

1. Divisions which create parcels for use as community facilities, including utility land acquisition, are subject to the following conditions:
 - a. An exemption may be approved for the placement of a community facility where the size and location of the lot and available services are reasonable, appropriate, and customary for the proposed use.
 - b. Community facilities are public parking areas, public or private educational facilities, public parks and open spaces purchased by a public entity, and utility substations without any dwelling units.
 - c. No exemption is necessary in those cases where the community facility lot split involves land which is, or through the split will be, owned by the County;

D. Additional Criteria for Divisions within Townsites and Formerly Incorporated Towns

1. Such exemptions shall contain unsubdivided lands situated within an area of Boulder County which was mapped and recorded in the Office of the County Clerk and Recorder in full compliance with all provisions of Chapter 84, Article 11 of the Colorado Revised Statutes of 1868 or any succeeding Colorado statute providing for the mapping or incorporation of townsites, townplats, towns or settlements; or which has discontinued its former incorporation as a city or town pursuant to C.R.S. 31-3-101.
2. Such exemptions shall be limited to divisions of land effected by deed(s) executed and recorded in the Office of the County Clerk and Recorder prior to December 13, 1983.
3. The applicant shall submit adequate evidence that the division was made in substantial reliance upon the map or plat of the townsite area, and that within such townsite area:
 - a. Buildings have been constructed, lawful at the time, based upon the townsite map or plat, buildings have been continuously occupied, and buildings have been maintained in reasonable reliance on the continued utilization of such structures; and
 - b. Roadways providing access into and travel within the townsite have been constructed prior to December 13, 1983, and maintained.

- E. The Board of County Commissioners may exempt from the definition of the term 'subdivision' other divisions of land if the Board determines that such division is not within the purposes of these Subdivision Regulations.

9-200 Exemption Plats

- A. The Board of County Commissioners may grant exemptions from the application of the Subdivision Regulations, pursuant to the exemption plat requirements of this Section 9-200, in cases where the proposed subdivision involves subdivided land.
- B. Land which is not subdivided land may not go through an exemption plat process. The sole exception to this prohibition shall be where unsubdivided land is proposed to be added to the subdivided land, such that any resulting subdivided lot is 35 acres or more in area.
- C. This exemption plat process requires public hearings before the Board of County Commissioners. Exemption plats may be approved only on the basis of the exemption plat standards enumerated in Section 9-202.

9-201 Density

- A. The exemption plat process shall not require a reduction in the number of subdivided lots as delineated in the original plat. In addition, no exemption plat approval shall permit an increase in the number of subdivided lots, unless any additional resulting subdivided lot is 35 acres or more in area

9-202 Exemption Plat Standards

- A. Standards for Exemption Plats
 1. Where structures on existing subdivided lots are in conformance with the building and structure requirements of the zoning district in which the lot is located, any structure on a subdivided lot approved through the exemption plat process, should also conform to these requirements.
 2. The design of proposed subdivided lots and the location, size, height, and design of proposed structures approved through the exemption plat process shall minimize adverse impacts on streams, areas subject to flooding, drainage, geologic hazards, lakes, high ground water areas, topography, scenic views, vegetative cover, climatology, and other environmental features as identified in the Comprehensive Plan, or identifiable on or near the site.
 - a. No exemption plat shall be approved by the Board, unless it is determined that the development will not have a significant adverse impact on plant or wildlife habitat, migration corridors, or sensitive and unique plant or wildlife ecosystems as identified in the Comprehensive Plan, or identifiable on or near the site.
 - b. No exemption plat shall be approved by the Board, unless it is determined that the development will not have a significant adverse impact on wetland areas as identified in the Comprehensive Plan, or identifiable on or near the site, or alter drainage patterns from historic levels, and that runoff and erosion from this development will not have a significant adverse impact on the character of the wetland.
 3. Proposed subdivided lots and structures approved through the exemption plat process shall be suitably sized and located with respect to the character of the neighborhood, and shall be appropriately landscaped and screened to minimize the obtrusiveness of structures, and to maximize visual blending with the surrounding topography.
 4. Subdivided lots approved through the exemption plat process must be greater than one acre in size, unless served by public water and/or sewer.
 5. Confirmation from service providers that the proposed subdivided lots approved through the exemption plat process do not affect the provision of water, sewer, telephone, and emergency access, shall be required.
 6. No exemption plat shall be approved in a Flood Plain Overlay District, unless the County Engineer determines that all proposed subdivided lots are capable of receiving a floodplain development permit.
 7. If necessary to meet the standards, building envelopes on reconfigured lots may be required. In addition, certain portions of the subject property may be replatted through the exemption plat process into common outlots for the use and enjoyment of the residents of the platted subdivision, or to protect environmentally or visually sensitive features on the site.
 8. The proposal shall be in accordance with the Comprehensive Plan, any applicable intergovernmental agreement affecting land use or development, and this Code.

9-203 Vacations

- A. Road and utility easement vacations, resulting from subdivided lot reconfigurations through this process, may be heard and acted upon by the Board, in conjunction with the exemption plat hearing, following review of the vacation by Planning Commission.

9-300 Expiration of Subdivision Exemption and Exemption Plat Approvals

- A. The Board of County Commissioners' decision to approve or conditionally approve an exemption plat or subdivision exemption shall, unless otherwise stated in such action, be effective for a period of one calendar year from the date of approval to the date of recordation of all exemption documents.
- B. The Board of County Commissioners may grant up to two extensions of deadlines of no more than one year each for those dates specified in this Section, if it finds that there has been no change in this Code, the Comprehensive Plan, or the surrounding neighborhood which would substantially affect the approved exemption.
 - 1. The new application will be reviewed using criteria in effect at the time of the reapplication.
 - 2. The Director may modify the application process defined in Article 3 of this Code if it is determined that adequate public notice and input on the reapplication can be attained through a shortened process.
- C. On an annual basis, the Director may present to the Board of County Commissioners all those applications that will expire in the coming year and may need extensions of processing time.

Article 9



Building Lots, Mergers, Subdivision Exemptions

& Exemption Plats

9-100 Building Lot

- A. The following Parcels of land are Building Lots under this Code.
 - 1. A Parcel that:
 - a. was lawfully created; and
 - b. met the zoning minimum lot size when it was created or was created prior to the County's establishment of a zoning minimum lot size governing the Parcel; and
 - c. did not require approval under the Subdivision Regulations.
 - 2. A Parcel of 35 acres or more.
 - 3. A Parcel that the Board approved as a Building Lot under the then applicable Subdivision Exemption provisions or Exemption Plat provisions of the Code.
 - 4. A Parcel that the Board approved as a Building Lot through a Conceptual Review, which was a process the Board used to determine the status of certain illegal Subdivisions created in the 1960s and 1970s. (Conceptual Review policy was replaced by the codified Subdivision Exemption process in the 1980s and is no longer a process in the Code).
 - 5. A Subdivided Lot that conforms to a lawfully recorded plat.
 - 6. A Subdivided Lot that was further divided so that it no longer conforms with the recorded plat if:
 - a. the division occurred before August 28, 1972 (the date on which the County codified the provisions of S.B. 35), as shown by Deeds recorded on or before

- August 28, 1972; and
- b. the lot complied with the zoning minimum lot size at the time of the division; and
 - c. subsequent to the division, the Building Official, based upon accurate information submitted by the permittee, issued a building permit for construction of floor area for a structure that required a Building Lot; and
 - d. the permit was not for minor work including, without limitation, the provision of electrical service, the installation of heating or cooling facilities, plumbing, windows, siding, or the repair or replacement of a roof; and
 - e. the permittee relied on the building permit in good faith, substantially completed construction according to the permit, and substantially completed any required inspections; and
 - f. the Deed description for the resulting Subdivided Lot is clear and accurate, and it does not create discrepancies in boundaries with respect to adjacent Parcels. The Director may consult with the County Surveyor in making this determination.
7. An Unsubdivided Parcel that does not otherwise meet the definition of a Building Lot, or a Subdivided Lot that was divided so that it no longer conforms with the recorded Plat and is included in an Administrative Exemption Plat as set forth in Article 9-301.C, and if:
- a. subsequent to the division, the Building Official, based upon accurate information submitted by the permittee, issued a building permit for construction of floor area for a structure that required a Building Lot.; and
 - b. the permit was not for minor work including, without limitation, the provision of electrical service, the installation of heating or cooling facilities, plumbing, windows, siding, or the repair or replacement of a roof; and
 - c. the permittee relied on the building permit in good faith, substantially completed construction according to the permit, and substantially completed any required inspections; and
 - d. the Deed description for the resulting Parcel is clear and accurate, and it does not create discrepancies in boundaries with respect to adjacent Parcels. The Director may consult with the County Surveyor in making this determination.
8. A Parcel owned by a governmental entity that is transferred to a nongovernmental entity or person, provided that the Parcel met the zoning minimum lot size at the time title was transferred.
9. A Parcel that does not otherwise meet the definition of Building Lot, if:
- a. the Parcel was created by combining it with one or more other Parcels (whether Building Lots or not) to form a single Parcel; and
 - b. the resulting combined Parcel reconstitutes a previously existing Building Lot.
10. A Parcel that met the definition of a Building Lot that is altered through condemnation or acquisition of a portion of the Parcel for public roadway

purposes, except where the Parcel is split and contiguity disrupted as a result of the roadway.

11. A Parcel or Parcels created through a division of land by a state court or through a boundary line agreement under § 38-44-112 to settle an action seeking a division of land by a state court if the division involves Unsubdivided Land and/or Subdivided Land that is included in an Administrative Exemption Plat as set forth in Article 9-301.B, and:
 - a. If the Parcel or Parcels were created after 2014 and immediately prior to the action, each Parcel subject to the division met the definition of a Building Lot and:
 - i. the county was given timely notice of the pending action by the court and given the opportunity to join as a party in interest in the proceeding; and
 - ii. each resulting Parcel has legal access.
 - b. If the Parcel or Parcels were created after 2014, and any of the Parcels subject to the division did not meet the definition of a Building Lot immediately prior to the action and:
 - i. the county was given timely notice of the pending action by the court and given the opportunity to join as a party in interest in the proceeding; and
 - ii. immediately prior to the action, the Parcel met the definition of a Building Lot; and
 - iii. the Parcel size was not decreased; and
 - iv. the resulting Parcel has legal access.
 - c. If the Parcel or Parcels were created, even if the county was not given timely notice of the pending action by the court and given the opportunity to join as a party in interest in the proceeding and:
 - i. immediately prior to the action, the Parcel met the definition of a Building Lot; and
 - ii. the Director determines, in his discretion, that the change to the Parcel from its original configuration is so minor that the County does not require a further Land Use process to recognize the lot; and
 - iii. the resulting Parcel has legal access.
 - d. Any other Parcel or Parcels that were created if:
 - i. the county was given timely notice of the pending action by the court and given the opportunity to join as a party in interest in the proceeding; and
 - ii. the court issued an order requiring the county to recognize the Parcel as a Building Lot.

9-101 Building Lot Determination

- A. Any person may request that the Director determine if any Parcel of land in the unincorporated County is a Building Lot that meets the requirements of Article 9-100.
- B. Any Building Lot Determination request shall be made on an application provided by the Director. A complete application shall include payment of the specified processing fee, all information requested on the application, and any additional information that the Director determines is necessary to process the application including, without limitation, parcel maps, Deeds, surveys, County building permits, and County land use approvals or determinations issued for the Parcel.
- C. If the application is made by a person other than the Parcel owner, the Director will forward a copy of the application, as well as any Building Lot determination made on the Parcel, to the Parcel owner of record.
- D. A determination by the Director that a Parcel is a Building Lot is not a determination that the Parcel can be developed for any particular purpose or use. Development shall be reviewed and approved through the applicable County Land Use Code processes and may require related approvals from the County Transportation Department, County Public Health, and state agencies.
- E. If the Director determines that a Building Lot Determination has been issued in error, the Director may amend or rescind the determination as necessary.
- F. County recognition of a specific Building Lot does not include an implied approval of any other Parcel as a Building Lot, even if the other Parcel was part of or a remainder piece from a Subdivision that created the Parcel being recognized.
- G. The Director's interpretation of the definition of "Building Lot" in Article 9-100 made in the course of a Building Lot Determination, or the course of an amendment or rescission of a Building Lot Determination, may be appealed to the Boulder County Board of Adjustment under the provisions of Article 4-1200.

9-102 Merger of Unsubdivided Parcels

- A. At the request of a Property Owner, the Director may merge two or more Unsubdivided Parcels, one of which shall be a Building Lot, owned by a single property owner. Upon final approval, the merged Parcel will constitute a single Building Lot.
- B. Where one or more of the Parcels proposed to be merged are not Building Lots and the resultant Parcel is less than 35 acres, the areas that were not legal Building Lots shall not be used for setback or building purposes for the merged lot unless approved through the Subdivision Exemption process.
- C. Owner-Requested Merger Process
 - 1. The property owner shall submit an application, provided by the Director, for merger and confirmation of addressing. A complete application shall include payment of the specified processing fee, all information requested on the application, and any additional information that the Director determines is necessary to process the application including, without limitation, Assessor's Parcel

Identification Numbers of affected Parcels, a site plan showing the proposed final lot configuration, parcel maps, Deeds, surveys, County building permits, and County land use approvals or determinations issued for the Parcels.

2. The application for merger shall also include a draft deed that: (1) properly describes the merged Parcel and; (2) includes the following statement on the face of the deed: *"This deed is given to merge into one parcel all property described in this deed. The parcels are merged with the property owner's consent per CRS 30-28-139."*
 3. Upon approval by the Director, the Property Owner shall record a Deed in the real property records of the Boulder County Clerk and Recorder and provide a copy of the recorded Deed to the Land Use Department.
 4. Upon the Property Owner's compliance with the conditions of approval, the Land Use Department will confirm addressing of the merged Building Lot and send a Final Approval letter to the Property Owner.
- D. For any merger of Parcels of land or lots under the provisions of this Code, which merger is not requested in writing by each owner of an affected Parcel, and which merger occurs for the first time on or after October 1, 2003 (the effective date of Senate Bill 03-067 as codified in Section 30-28- 139 of the Colorado Revised Statutes), the following provisions shall govern, as expressly required in Section 30-28-139:
1. Prior to the completion of the merger, the County shall send notice of the County's intent to complete the merger to each owner of the affected Parcels by certified mail, at the address shown on the records of the County Assessor. The notice shall also specify that each such owner may request a hearing on the proposed merger pursuant to Subsection 2, immediately below, and shall specify action to be taken by such owner to request such hearing including, without limitation, the requirement that said owner shall request the hearing no later than 120 days after the date on which the owner receives the notice. The date of the owner's receipt of the notice shall be the date on which the notice arrives at the owner's stated address, which date the County may presume to be three days after the date of the County's mailing of the notice, unless the circumstances known to the County clearly indicate a later receipt date.
 2. Prior to the completion of the merger, where each owner of an affected Parcel has timely requested a hearing on the proposed merger satisfying the requirements of Subsection 1, immediately above, a public hearing on said merger shall be held before the Board of County Commissioners. The hearing shall be conducted for the purpose of allowing the Board to discuss with the owner of each affected Parcel the Board's reasons for proceeding with the merger, and to give each owner the opportunity to submit any basis provided under law for challenging the merger. In the case of a timely hearing request, the County shall provide notice of the time, place, and manner of the hearing to each owner of the affected Parcels and shall also publish the notice in a newspaper of general circulation in the County in a manner sufficient to notify the public of the time, place, and nature of said hearing.

In order to give each such owner of an affected Parcel the opportunity to take whatever remedial action is allowed under the law prior to the hearing before the Board, the County shall not hold the hearing any sooner than 90 days after the date on which the owner received the County's initial mailed notice as provided in Subsection 1, above.

3. Where the owner of each affected Parcel fails to timely request a hearing on the proposed merger satisfying the requirements of Subsection 1, above, no such hearing is required, and the affected Parcels shall be merged in accordance with the requirements of this Subsection D.
4. No merger of Parcels that is the subject of a hearing pursuant to Subsections 1 and 2, above, shall be effective unless:
 - a. The owner of the Parcels has given consent to the merger of said Parcels; and
 - b. The merger has been approved by a majority of the Board of County Commissioners.
5. Nothing in this Subsection D shall be construed to abrogate or otherwise diminish or expand any rights a landowner may have under Article 68 of Title 24, C.R.S., pertaining to vested property rights.

9-200 Subdivision Exemptions

- A. The Board of County Commissioners may grant exemptions from the application of the Subdivision Regulations for any Subdivision of Unsubdivided Land that the Board determines, as authorized in C.R.S. Section 30-28-101(10)(d), is not within the purposes of Part 1 of Article 28 of Title 30, C.R.S. (the County Planning Act), as set forth in Article 1-300 of this Code.
 1. Whether a Subdivision Exemption falls outside the purposes of the County Planning Act is determined under the criteria specified in Article 9-400.A.
- B. The divisions of land set forth in Article 9-201.A are exempt from the definition of the term 'Subdivision' because the Board determined that such minor divisions are not within the purposes of the County Planning Act and are exempt from the requirement of a public hearing before the Board ("Administrative Subdivision Exemption"). The Director may approve an Administrative Subdivision Exemption if it meets the requirements in Article 9-201.
- C. Proposals for condominiums, apartments, any other multiple dwelling units, or that otherwise create two or more separate interests without dividing a Parcel are exempt from the definition of the term 'Subdivision' because the Board determined that such divisions are not within the purposes of the County Planning Act and are exempt from the requirement of a public hearing before the Board. The Director or the Board may approve a proposal under this provision if it is regulated by, and meets the criteria of, a binding review process under this Code.
- D. Lots that may be created under Articles 5 and 6 of this Code are not eligible for approval through the Subdivision Exemption process.

- E. When the Subdivision of Parcels involves land that is, or through the Subdivision will be, owned in full or in part by the county, Subdivision Exemption approval or approval under Article 5 of this Code is not required.

9-201 Administrative Subdivision Exemptions

- A. The Director may approve an application for an Administrative Subdivision Exemption if it meets the following criteria.
 - 1. The Director has determined that there is no potential for any significant conflict with the criteria listed in 9-400 of this Code such that no conditions to mitigate land use impacts of the proposal are necessary; and
 - 2. Where a requested exemption is to recognize as a Building Lot a Parcel created through an illegal division of land, the Parcel creation or boundary line adjustment and its subsequent recognition does not increase the zoning density allowed at the time of the division; and
 - 3. Where a requested exemption involves Parcels in a townsite or formerly incorporated town:
 - a. the recognition does not increase density allowed at the time of division; and
 - b. the division was based on whole lots or portions of lots in the recorded map of the townsite area; and
 - c. the townsite area is substantially developed; and
 - d. roadways providing access into and travel within the townsite have been constructed prior to December 13, 1983, and maintained.
- B. If the Director approves an Administrative Subdivision Exemption, the Director shall notify the owners of property located within 1500 feet of the affected parcels of the decision and provide such property owners with the opportunity to appeal the decision to the Board.
- C. The Director's determination is final after 14 calendar days from the date of notice, unless the determination is appealed to the Board of County Commissioners under the provisions of Article 9-600.

9-300 Exemption Plats

- A. The Board of County Commissioners may grant exemptions from the application of the Subdivision Regulations pursuant to the requirements of Article 9-300 where the proposed division involves Subdivided Land.
- B. Unsubdivided Land is not eligible for an Exemption Plat unless:
 - 1. it is part of an application to add it to Subdivided Land to create a Subdivided Lot of 35 acres or more; or
 - 2. the county has received proper notice in a judicial process; and a court has entered an order changing the boundary lines shown on a Plat or the action has been settled through a boundary line agreement; or
 - 3. it is part of an application involving Subdivided Land where both Parcels meet the definition of a Building Lot, as described in 9-100.A.7.
- C. The minor divisions of land set forth in Article 9-301 are exempt from application of the Subdivision Regulations and do not require a public hearing before the Board (“Administrative Exemption Plat”).
- D. No Exemption Plat approval shall permit an increase in the number of Subdivided Lots unless any additional resulting Subdivided Lot is 35 acres or more, unless the additional density was recognized through a court action where the County was given timely notice of the pending action by the court and given the opportunity to join as a party in interest in the proceeding, or unless the Parcel adding the additional density meets the definition of a Building Lot in Article 9-100.A.7.

9-301 Administrative Exemption Plats

- A. Administrative Exemption Plats Through Criteria Review
 - 1. The Director may approve an application for an Administrative Exemption Plat if the Director has determined that there is no potential for any significant conflict with the criteria listed in 9-400 of this Code such that no conditions to mitigate land use impacts of the proposal are necessary;
 - 2. If the Director approves an Administrative Exemption Plat, the Director shall notify the owners of property located within 1500 feet of the affected property of the decision and provide such property owners with the opportunity to appeal the decision to the Board..
 - 3. The Director’s determination is final after 14 calendar days from the date of notice unless appealed to the Board of County Commissioners under the provisions of Article 9-600.
 - 4. Once the Director’s determination is final, the Director will present the final Exemption Plat to the Chair of the Board for a signature.
- B. Administrative Exemption Plat to Resolve Property or Boundary Line Disputes

1. The Director may approve an application for an Administrative Exemption Plat to finalize a division of a Subdivided Lot or lots by state court or through a boundary line agreement under § 38-44-112 to settle an action seeking a division of a Subdivided Lot by state court that meets any of the definitions of a Building Lot in Article 9-100.A.12.a-d. The Director will present the final Exemption Plat to the Chair of the Board for a signature.
 2. Recognition as a Building Lot of a Subdivided Lot changed by a state court or a boundary line agreement, to settle an action seeking a change to the Subdivided Lot by a state court, that does not meet the definition of a Building Lot is subject to the Exemption Plat criteria in 9-400 and requires a hearing before the Board of County Commissioners.
- C. Administrative Exemption Plat for Subdivided Lots for Which the County Issued Permits
1. The Director may approve an application for an Administrative Exemption Plat to finalize a division of a Subdivided Lot that meets the definition of a Building Lot in Article 9-100.A.7. The Director will present the final Exemption Plat to the Chair of the Board for a signature.

9-302 Vacations

- A. Road and utility easement vacations, resulting from Subdivided Lot reconfigurations through this process or otherwise requiring changes to the Plat, shall be heard and acted upon by the Board, in conjunction with the Exemption Plat hearing, following review of the vacation through the process in Article 10 of this Code by Planning Commission.

9400 Review Criteria for Subdivision Exemptions and Exemption Plats

- A. A Subdivision Exemption or an Exemption Plat shall meet the following criteria:
1. For Subdivision Exemptions only, if the exemption would result in an increase in the number of currently existing lots, any identified land use impacts associated with the increase are sufficiently mitigated.
 2. For Exemption Plats only, if the originally-approved Subdivided Lots were 1.1 acres or less, the size of each of the proposed lots shall not change by more than fifteen percent, unless served by public water and/or sewer.
 3. The proposed lots shall have legal access.
 4. The proposed lots and potential development on them shall be capable of being served by an adequate physical access, including for emergency and non-emergency purposes, which meets the requirements of the County Engineer, and, if applicable, the local fire protection district.
 5. The proposed lots and potential development on them shall be capable of being served by an adequate water supply.
 6. The proposed lots and potential development on them shall be capable of being served by an adequate on-site wastewater system or sewage treatment system as required by Boulder County Public Health.
 7. Adequate public facilities and services shall exist to serve the proposed lots and potential development on them.
 8. If any of the proposed lots are in the Floodplain Overlay District:
 - a. The potential impacts of creating the proposed lots or portions of proposed lots within the Floodplain Overlay District shall be sufficiently mitigated; and
 - b. the development upon the proposed lots shall be possible outside the Floodplain Overlay District; or
 - c. the potential development upon the proposed lots shall be capable of obtaining a floodplain development permit under Article 4-400 of this Code, as determined by the County Engineer.
 9. The proposed lots and development on them shall be in harmony with the character of the neighborhood and compatible with the surrounding area and shall be appropriately landscaped and screened to minimize the obtrusiveness of structures and maximize visual blending with the surrounding topography.
 10. The proposed lots and potential development on them shall not be subject to, or contribute to, significant risk from natural hazards such as unstable soils, steep or unstable slopes, floods, and wildfire.
 11. The proposed lots and potential development on them shall not have a significant adverse impact on environmental resources identified in the Comprehensive Plan or through the review of the application, such as Wetlands and Riparian Areas; plant communities and vegetative cover; Critical Wildlife Habitat and Migration corridors; Natural Areas and Natural Landmarks; Environmental Conservation Areas; agricultural, forestry, or open lands; and views, vistas, and scenic corridors.

12. The proposed lots and potential development on them shall not have a significant adverse impact on historic, cultural, or archaeological resources identified in the Comprehensive Plan or through the review of the application.
13. The proposed lots and potential development on them shall not cause unnecessary or excessive site disturbance or erosion, or alter historic drainage patterns.
14. The proposed lots and potential development on them shall be in accordance with the Comprehensive Plan and any applicable intergovernmental agreement affecting land use or development, and this Code.
15. Where the division creates Parcels for use as community facilities such as public parking areas, public or private educational facilities, public parks, and open space purchase by a public entity, and utility land acquisitions including for utility substations without any dwelling units, an exemption may be approved for the placement of a community facility where the size, location and available services are reasonable, appropriate, and customary for the proposed use.

9-500 Conditions of Approval and Post-Approval Requirements for Subdivision Exemptions and Exemption Plats

- A. If an application for a Subdivision Exemption or an Exemption Plat does not meet all the listed criteria for approval, the Board, in its discretion, may impose reasonable conditions which allow a proposal to meet the criteria. Nothing in this provision shall require the Board to impose conditions if, in the Board's discretion, the Board determines that a reasonable basis for mitigation does not exist and that the application shall therefore be denied.
 1. Conditions of approval which the Board may impose to allow an application to meet the listed criteria include, without limitation, structure height or floor areas restrictions; designation of building envelopes or locations in which structures, buildings, or site disturbance shall be confined; landmarking to protect historic or cultural resources; designation of preserved areas of land; required management practices to maintain preserved land, protect environmental resources, minimize erosion, control or eliminate noxious weeds or undesirable plants, regulate drainage, and prevent hazards both on and off the subject property including through wildfire mitigation; landscaping or other appropriate screening measures including through limiting building materials or colors; landowner grant of a Conservation Easement or restrictive covenant running with the land to preserve, and avoid the over-intensive use of, sites with recognized conservation and open land values; and purchase and retirement of development rights to mitigate an increase in density recognized through a Subdivision Exemption approval.
 2. In exercising its discretion to determine whether an Exemption Plat meets or does not meet the listed criteria, the Board may weigh the evidence on the criteria which is presented, with regard to the property taxation treatment of the subject Subdivided Land, conveyancing history of the subject Subdivided Land, land use regulatory history of the Subdivided Land, existing development on the subject Subdivided Land, and

reasonable investment backed expectation of the landowner in the subject Subdivided Land.

B. Post-Approval Requirements

1. The Board or Director may impose post-approval requirements upon any approved Exemption Plat or Administrative Exemption Plat including, without limitation, a title report including all owners as of the date of recordation of the new Deeds; that the owner include appropriate language on any required Deeds; and certification from the County Treasurer's Office that there are no outstanding *ad-valorem* taxes to be paid on the property being exempted.

9-600 Appeal of Director's Determination

- A. The Director's determination, made under Article 9-201 or 9-301.A, of whether an application meets the criteria in Article 9-400 for a Subdivision Exemption or an Exemption Plat may be appealed to the Boulder County Board of County Commissioners.
 1. If any person aggrieved by the Director's determination files an appeal with the Land Use Department in writing within 14 calendar days, the Board shall review the Director's determination at a public hearing. If no appeal is made within 14 calendar days after the date of the determination, the Director's determination is final.
 2. Prior written notice of the public hearing on the appeal shall be provided to the applicant and to property owners within 1500 feet and shall be published as part of the Board's agenda in a newspaper of general circulation in Boulder County.
 3. At the public hearing, the Board shall consider evidence related to the Director's determination which may be presented by the Director, the applicant, or interested members of the public. The Board shall not be limited in its review to the subject of the appeal but may review any aspect of the application. Based upon this evidence the Board may affirm the Director's decision, add new conditions, or reverse the Director's determination. In the case of denial of an application, the Board shall state its reasons for its decision based upon the criteria in the applicable article of this Code.
- B. The Director's determination, made under Article 9-301.B or 9-301.C, of whether an application meets the requirements for approval may be appealed to the Boulder County Board of Adjustment under the provisions of Article 4-1200.

9-700 Expiration of Subdivision Exemption and Exemption Plat Approval

- A. The Board of County Commissioners' or Director's decision to approve or conditionally approve an Exemption Plat or Subdivision Exemption shall, unless otherwise stated in such action, be effective for a period of one calendar year from the date of approval to the date of recordation of all required documents.

- B. The Board of County Commissioners or Director may grant up to two extensions of deadlines of no more than one year each for those dates specified in this Article, if they find that there has been no change in this Code, the Comprehensive Plan, or the surrounding neighborhood which would substantially affect the approved exemption.
- C. On an annual basis, the Director may present to the Board of County Commissioners all those applications that will expire in the coming year and may need extensions of processing time.

1-300 Purpose and Relationship to the Boulder County Comprehensive Plan

A. This Code is enacted to protect and promote the health, safety, and general welfare of the present and future inhabitants of Boulder County and to guide future growth, development, and distribution of land uses within Boulder County. Enactment, amendment, and administration of this Code shall be governed by the statutory authority granted to Colorado counties to govern the use and development of land, consistent with applicable constitutional principles. Enactment, amendment, and administration of this Code shall be in accordance with and shall serve to implement the goals and policies of the Boulder County Comprehensive Plan, and the authority set forth in the applicable provisions of the Colorado Revised Statutes as well as the provisions of any jointly adopted intergovernmental agreement or master plan governing the use and development of land of mutual concern to Boulder County and another governmental entity.

B. The purposes of the County Planning Act shall be considered to be, without limitation, and in accordance with Section 1-300.A of this Code: promotion of the health, safety, morals, convenience, order, prosperity or welfare of the present and future inhabitants of the County through such means as lessening traffic congestion; reducing the waste caused by excessive road construction; promoting energy conservation; securing safety from fire, floodwaters, and other dangers; providing adequate light and air; classifying land uses; distributing and regulating land development and its impacts; regulating structures and parcels or lots; protecting the tax base; securing economy in governmental expenditures; fostering agricultural and other industries (which, in accordance with the Comprehensive Plan, are primarily rural in nature); protecting urban and nonurban development (and, in accordance with the Comprehensive Plan, ensuring that unincorporated lands outside of community service areas remain rural in nature); ensuring for the orderly subdivision of land; and providing for coordinated master planning addressing population density, housing, transportation, public places and facilities, adequate and suitable water supplies, adequate facilities and services for development, alternative energy sources, open and rural land preservation, protection of historical/cultural and archaeological resources, hazard prevention, wildlife habitat and threatened and endangered species protection, commercial mineral deposit extraction, recreation and tourism, and environmental protection. See, primarily, C.R.S. Sections 30-28-106; 30-28-111; 30-28-115; 30-28-133; 30-28-136; and 29-20-104.

3-100 Approvals and Permits Necessary Prior to Development

A. Actions Requiring Review by the Board of Adjustment, Planning Commission, and/or Board of County Commissioners:

4. Exemption Plats: Exemption ~~plats~~ Plats are changes to existing ~~P~~plats which are exempt from review under the Subdivision Regulations as may be allowed pursuant to ~~Article 9~~Section 9-200 through 9-202 of this Code, and pursuant to other provisions of this Code authorizing ~~e~~Exemption ~~p~~Plats for specific circumstances (such as Article 4-300).
16. Subdivision Exemptions: An approval by the Board of County Commissioners to take certain ~~u~~Unsubdivided ~~l~~Land or divisions of ~~u~~Unsubdivided ~~l~~Land out of the definition of "~~s~~Subdivision," with the result that such land or divisions of land do not have to meet the requirements of the Subdivision Regulations. Types of Subdivision Exemptions include boundary line adjustments, lot recognitions, and community facility lot splits. See Article 9.

17-300 Zoning Regulation Enforcement

D. Building Lot ~~Determination~~

1. No person shall use any parcel for a use which is required by this code to comply with the minimum lot area requirements of the zoning district in which it is located, nor shall any building permit for such parcel be issued, unless the parcel is determined to be a building lot by the ~~Director~~.
2. The Director shall not determine a parcel to be a building lot for a principal use if that parcel has been occupied as or designated as a building lot for any other principal use, unless such parcel has been expressly approved for multiple principal uses as part of a use permitted by Special Review (Article 4-600) or Planned Unit

Development (Article 6).

- ~~3. The Director shall not designate a portion of a parcel as a building lot unless the Director determines that the remainder of the parcel also meets all requirements necessary for designation as a building lot.~~

18-121 Building Lot

A parcel that meets the requirements of Article 9-100 of the Land Use Code.

~~A parcel occupied by, or designated by the Director pursuant to this Code to be occupied by, a use which is required by the Zoning District provisions of this Code to comply with the minimum lot area requirements of the zoning district in which it is located. Except as provided in subsection (A) below, the parcel shall be of sufficient size and shape to conform to all requirements of the zoning district within which it is located.~~

~~A. A substandard parcel shall be considered a building lot only if it meets one of the following criteria:~~

- ~~1. A parcel upon which a use, which is required to comply with the minimum lot area requirements of the zoning district in which it is located, lawfully exists or, if none exists, has lawfully existed prior to the effective date of this Code.~~
- ~~2. A parcel which the Board of County Commissioners has exempted from the definition of 'subdivision' with the specific intent, as stated in the exemption Resolution, of allowing the parcel to be designated as a building lot; provided however that said parcel shall remain subject to any use and building requirements imposed pursuant to Article 9 as well as all other provisions and requirements of this Code.~~
- ~~3. A lot, tract, undivided block, or other plot of land, other than an outlot or right-of-way, within an area of subdivided land, which met the lot area and lot frontage requirements of this Code in effect at the time of the approval of the subdivided land, such land shall be designated as a building lot in accordance with those area and/or frontage requirements in effect at the time of its approval, subject, however, to all other provisions and requirements of this Code, as amended.~~
- ~~4. A parcel which conformed to the lot area and lot frontage requirements of the zoning district in which it was located at the time it was created, and which has continued to be held as a separate parcel, shall be designated a building lot in accordance with those area and frontage requirements in effect at the time of its creation, and with all other provisions and requirements of this Code, as amended; provided, however, if such parcel was at any time owned by a governmental entity, it may be occupied only in accordance with the area and frontage requirements in effect at the time legal title was transferred from the governmental entity to a person, unless it was acquired by the governmental entity after December 13, 1983, and was a building lot at the time of acquisition.~~

~~B. For any merger of parcels of land or lots under the provisions of this Code, which merger is not requested in writing by each owner of an affected parcel, and which merger occurs for the first time on or after October 1, 2003 (the effective date of Senate Bill 03-067 as codified in C.R.S. Section 30-28-139), the following provisions shall govern, as expressly required in C.R.S. Section 30-28-139:~~

- ~~1. Prior to the completion of the merger, the County shall send notice of the County's intent to complete the merger to each owner of the affected parcels by certified mail, at the address shown on the records of the County Assessor. The notice shall also specify that each such owner may request a hearing on the proposed merger pursuant to Subsection 2., immediately below, and shall specify action to be taken by such owner to request such hearing, including, without limitation, the requirement that said owner shall request the hearing no later than 120 days after the date on which the owner receives the notice.~~

- ~~2. Prior to the completion of the merger, where each owner of an affected parcel has timely requested a hearing on the proposed merger satisfying the requirements of Subsection 1., immediately above, a public hearing on said merger shall be held before the Board of County Commissioners. The hearing shall be conducted for the purpose of allowing the Board to discuss with the owner of each affected parcels the Board's reasons for proceeding with the merger, and to give each owner the opportunity to submit any basis provided under law for challenging the merger. In the case of a timely hearing request, the County shall provide notice of the time, place, and manner of the hearing to each owner of the affected parcels and shall also publish the notice in a newspaper of general circulation in the County in a manner sufficient to notify the public of the time, place, and nature of said hearing. In order to give each such owner of an affected parcel the opportunity to take whatever remedial action is allowed under the law prior to the hearing before the Board, the County shall not hold the hearing any sooner than 90 days after the date on which the owner received the County's initial mailed notice as provided in Subsection 1., above.~~
- ~~3. Where the owner of each affected parcel fails to timely request a hearing on the proposed merger satisfying the requirements of Subsection 1., above, no such hearing is required, and the affected parcels shall be merged in accordance with the requirements of this Subsection C.~~
- ~~4. No merger of parcels that is the subject of a hearing pursuant to Subsections 1. and 2., above, shall be effective unless: a. The owner of the parcels has given his, her, or its consent to the merger of said parcels; and b. The merger has been approved by a majority of the Board of County Commissioners.~~
- ~~5. Nothing in this Subsection C. shall be construed to abrogate or otherwise diminish or expand any rights a landowner may have under Article 68 of Title 24, C.R.S., pertaining to vested property rights.~~

18-143A Exemption Plat

An amendment or change to a plat which is exempt from the requirements of Article 5 of this Code (Subdivision Regulations), and which falls within the scope of and must instead meet the requirements of ~~Sections 9-200 through 9-202~~[Article 9](#) of this Code. Exemption plats for certain subdivisions with a sketch plan approved prior to March 22, 1978, which affect significant natural resources, are separately addressed under Article 4-300 of this code.

18-204C Subdivision Exemption

Pursuant to the authority granted in C.R.S. Section 30-28-101(10)(d), an approval by the Board of County Commissioners to take certain unsubdivided land or divisions of unsubdivided land out of the definition of "subdivision," with the result that such land or divisions of land do not have to meet the requirements of the Subdivision Regulations. The requirements for Subdivision Exemptions are contained in ~~Sections 9-100 through 9-102~~[Article 9](#) of this Code. Land with approved subdivision exemptions is not platted (subdivided) land, even though it may be described according to a so-called "Subdivision Exemption Plat" as defined in the Colorado surveying statutes in Title 38, C.R.S. Exemptions from the Subdivision Regulations for subdivided land are called "Exemption Plats" and are contained in the Exemption Plat requirements of ~~Sections 9-200 through 9-203 and Section 9-300~~[Article 9](#) of this Code (see also Article 4-300).



Land Use

Courthouse Annex • 2045 13th Street • Boulder, Colorado 80302 • Tel: 303.441.3930 • Fax: 303.441.4856
Mailing Address: P.O. Box 471 • Boulder, Colorado 80306 • www.bouldercounty.org

December 28, 2018

Docket DC-18-0001: Text Amendments to Article 9 and associated provisions, including Articles 1, 3, and 18 of the Boulder County Land Use Code

Request: Review of draft Land Use Code text amendments regarding Building Lot Determinations, Mergers, Subdivision Exemptions and Exemption Plat and related provisions.

Staff: Sinead O'Dwyer, sodwyer@bouldercounty.org

Dear Stakeholder/Interested Party,

On January 18, 2018, the Board of County Commissioners authorized staff to proceed with text amendments to the Boulder County Land Use Code related to Subdivision Exemptions, Exemption Plats, and Building Lot Determinations. The proposed code amendments will increase the efficiency of Land Use Department processes and clarify the intent of Subdivision Exemptions, Exemption Plats, Building Lot Determinations, and Merger of Unsubdivided Parcels.

Summary of Proposed Text Amendments

The draft amendments to the Land Use Code include the following:

- Clarifications to the building lot definition and building lot determination process, and relocating process-related elements into Article 9
- An administrative process for minor Subdivision Exemptions and Exemption Plats
- Revised Subdivision Exemption and Exemption Plat criteria that more adequately address land use impacts similar to the Site Plan Review and Special Review standards
- Revised Subdivision Exemption definition to address properties with multiple interests where the parcel or lot is not divided.
- Relevant changes to Articles 1-300, 3, 17-300, and 18

Attachments:

Attachment	Description
A	Proposed Draft of Article 9 <i>Shown without redline due to extensive restructuring of this section. Existing language can be found here:</i> https://assets.bouldercounty.org/wp-content/uploads/2017/02/land-use-code-article-09.pdf
B	Proposed Text Amendments to Articles 1, 17, and 18 <i>(Text to be redacted is shown in red and strikethrough, text to be added shown in blue and underlined)</i>

The draft of the proposed text amendments is attached to this letter for your review. You may also view the proposed draft text amendments and future revisions in our office or online at:

<https://www.bouldercounty.org/property-and-land/land-use/planning/land-use-code-update/dc-18-0001/>

The docket review process for the proposed amendments will include a public hearing before the Boulder County Planning Commission on January 16th, 2019 and later the Boulder County Board of County Commissioners. Public comments will be taken at both hearings. Confirmation of hearing dates and times will be published online at the link above and in local newspapers.

Attachment C: Referral Comments

The Land Use staff and County Commissioners value comments from individuals and referral agencies. Please check the appropriate response below or send a letter or email with your comments. All comments will be made part of the public record. If you have any questions regarding this docket, please contact us at (303) 441-4597 or sodwyer@bouldercounty.org.

Please return responses to the above address by **January 8, 2019**. Late responses will be reviewed as the process permits.

We have reviewed the proposal and have no conflicts.

Letter is enclosed.

Signed *Matt Ashley* PRINTED Name Matt Ashley, Associate Property Agent

Agency or Address City of Boulder Open Space and Mountain Parks



City of Boulder
Open Space and Mountain Parks

P.O. Box 791, Boulder, CO 80306; 303-441-3440

MEMORANDUM

To: Sinead O'Dwyer, Planner I, Boulder County Land Use Department

From: Matt Ashley, Associate Property Agent, City of Boulder Open Space and Mountain Parks

Date: 1/8/2019

Re: Docket DC-18-0001
Text Amendments to Article 9 and associated provisions, including Articles 1, 3, and 18 of the Boulder County Land Use Code

Thank you for the opportunity to review the amendments referenced above. Please consider the following comments regarding this proposal:

It appears that the criteria associated with Community Facility Lot Splits (CFLS), currently sections 9-101 and 9-102 of the Boulder County Land Use Code, have been removed, and reference to CFLS no longer occurs within the code.

Subdivision exemptions, especially CFLS, have been an important tool through which OSMP works with the County to achieve cost effective acquisition of property, meets the needs of the sellers, or supports the City and County in meeting the goals other than open space goals found in the Boulder Valley Comprehensive Plan. Consequently, changes in the subdivision regulations are of importance to OSMP.

OSMP would like to request that subdivision exemptions, including Community Facility Lot Splits, are included in the proposed land use code amendments as they have been a valuable tool for our department and community.

Please feel free to contact me if you have any questions or comments about this response.



Transportation Department

2525 13th Street, Suite 203 • Boulder, Colorado 80304 • Tel: 303.441.3900 • Fax: 303.441.4594
Mailing Address: P.O. Box 471 • Boulder, Colorado 80306 • www.bouldercounty.org

January 2, 2018

TO: Sinead O'Dwyer, Planner I; Land Use Department

FROM: Brett Mozzetti, Development Review Planner

SUBJECT: Docket #DC-18-0001: Text Amendments to Article 9 and associated provisions, including Articles 1, 3, and 18 of the Boulder County Land Use Code

The Transportation Department has reviewed the above referenced docket and has no comments at this time.

Attachment C: Referral Comments

From: [Erin Fosdick](#)
To: [O'Dwyer, Sinead](#)
Cc: [Ian Colby](#)
Subject: RE: [External] Draft Amendments to Boulder County Land Use Code
Date: Monday, December 31, 2018 11:40:07 AM
Attachments: [Scanned from a Xerox Multifunction Printer.pdf](#)

Hi Sinead-

We don't have any comments on these code amendments. Thanks for sending and have a Happy New Year!

Erin Fosdick, AICP | *Principal Planner*

City of Longmont | Planning & Development Services Department
385 Kimbark Street, Longmont, CO 80501
(303) 651-8336 | longmontcolorado.gov

 Please consider the environment before printing this email.

From: O'Dwyer, Sinead <sodwyer@bouldercounty.org>
Sent: Friday, December 28, 2018 5:17 PM
Subject: [External] Draft Amendments to Boulder County Land Use Code

Dear Stakeholder,

Please find attached a referral for DC-18-0001 with draft amendments to Article 9 of the Land Use Code and related provisions.

Your feedback is appreciated by January 8th, and comments can continue to be submitted through the public hearing process.

Sincerely,

Sinead O'Dwyer
Planner I
Boulder County | Land Use Department
303.441.4597 | 2045 13th St. | Boulder, CO 80302
sodwyer@bouldercounty.org



Right of Way & Permits
1123 West 3rd Avenue
Denver, Colorado 80223
Telephone: **303.571.3306**
Facsimile: 303. 571.3284
donna.l.george@xcelenergy.com

January 8, 2019

Boulder County Land Use
PO Box 471
Boulder, CO 80306

Attn: Sinead O'Dwyer

**Re: Draft Amendments to Boulder County Land Use Code
Case # DC-18-0001**

Public Service Company of Colorado's (PSCo) Right of Way & Permits Referral Desk has reviewed the **Draft Amendments to Boulder County Land Use Code** and has **no apparent conflict** CONTINGENT UPON Public Service Company of Colorado's ability to maintain all existing rights and this amendment should not hinder our ability for future expansion, including all present and any future accommodations for natural gas transmission and electric transmission related facilities.

If there are any questions about this referral response, please contact me at (303) 571-3306 or donna.l.george@xcelenergy.com.

Donna George
Right of Way and Permits
Public Service Company of Colorado

Attachment C: Referral Comments

From: [Robyn Kube](#)
To: [Parker, Kathy M.](#)
Cc: [Case, Dale](#); [Hughes, David](#)
Subject: Proposed revisions to LUC Article 9
Date: Tuesday, January 15, 2019 9:51:24 AM
Attachments: [20190115 LUC rev RWK.pdf](#)
Importance: High

Kathy,

Thank you for providing me the opportunity to review the recently proposed revisions to Article 9 of the Land Use Code. I can see that a lot of effort was put into these revisions, some of which occurred over a relatively short period of time. In any event, I have reviewed the proposed revisions and attach a redline which addresses some of my concerns. With a few exceptions, most of my suggested changes are of a housekeeping nature, intended to provide clarity and make it somewhat easier for someone not steeped in the Land Use Code to understand. I also want to be clear that my goal in providing comments is not to slow down the approval process of the proposed change, but to minimize future issues should the changes be approved as written in the December 18, 2018 draft.

That being said, I do have a few legal concerns with certain of the proposed changes, which are as follows:

- With regard to any of the changes which are intended to address the results of any state court proceeding affecting ownership of land, it is my opinion that any boundary adjustment which might arise as a result of those proceedings is already, pursuant to C.R.S. Section 30-28-101(10), exempted from the definition of subdivision. As a result, there is no need for the County to either require the properties involved in those proceedings to go through further Land Use proceedings after the proceedings have been concluded or for the County to provide some sort of exemption process to ensure that the properties remain legal building lots. I recognize the County does not share this view.
- Lumping situations in which parties may enter into boundary agreements, as provided for in C.R.S. Section 38-44-112, together with the outcome of state court proceedings regarding title seems inappropriate, since the boundary agreement process does not require any court proceeding.
- **The deed process provided for in 9-102(C)(2) is inconsistent with Colorado law and could have negative unintended consequences.** Requiring a property owner to execute a deed to the County would be considered a conveyance of that property to the County, which I am certain is not what the County intends. A notice-type document, or something more akin to the Zoning Affidavit currently used by the County in other circumstances, would be more appropriate and would not create the legal issues that would be created by a deed.
- The hearing process provided for in 9-102(D)(2) seems both overly cumbersome, too wordy and could raise due process issues. In the first place, a “hearing” would not seem to be the right forum for a “discussion” with the County as to the purpose of the proposed merger. A better process might be for the County to provide the reason for the merger in the notice document, then the hearing can be used for the property owner to provide evidence as to why the merger is not justified.
- 9-300(D) implies that in a legal case in which the County was not a party, a court could

Attachment C: Referral Comments

increase density. This would not be the case; legal actions between private parties only involve title to property, not density.

- The appeal processes referenced in 9-201, 300 and 600 should all be consistent.

In addition, I also noticed that there were capitalization and numbering inconsistencies throughout, which I did not always note in my redline.

If you have any questions, I would be glad to speak with you about my concerns.

Thank you,

Robyn Kube



Robyn W. Kube

Dietze and Davis, P.C.

2060 Broadway, Suite 400

Boulder, CO 80302

(303) 447-1375

[Serving the West from Boulder since 1972](#)

The information contained in this e-mail message is attorney privileged and confidential and is intended only for the use of the individual named. If you have received this communication in error, please notify our offices immediately at (303)447-1375. Thank you

Attachment C: Referral Comments

From: Robyn Kube
To: Parker, Kathy M.
Cc: Case, Dale; Hughes, David
Subject: Proposed revisions to LUC Article 9
Date: Tuesday, January 15, 2019 9:51:24 AM

DOCKET DC-18-0001 Referral **Draft Amendments** Article 9 - 9-100 Subdivision Exemptions

Article 9



Building Lots, Mergers, Subdivision Exemptions

& Exemption Plats

9-100 Building Lot

- A. The following parcels of land are building lots under this Code:
 1. A parcel that:
 - a. was lawfully created;
 - b. met the zoning minimum lot size when it was created or was created prior to the County's establishment of a zoning minimum lot size governing the parcel; and
 - c. did not require approval under the Subdivision Regulations.
 2. An undivided parcel of 35 acres or more.
 3. A parcel that the Board approved as a building lot under the then applicable Subdivision Exemption provisions (Article 9-200) or Exemption Plat provisions (Article 9-300) of this Code.
 4. A parcel that the Board approved as a building lot through a Conceptual Review, which was a process the Board used to determine the status of certain illegal subdivisions created in the 1960s and 1970s. (Conceptual Review policy was replaced by the codified Subdivision Exemption process in the 1980s and is no longer a process in the Code).
 5. A subdivided lot that conforms to a lawfully recorded plat.
 6. A subdivided lot that was further divided so that it no longer conforms with the recorded plat if:
 - a. the division occurred before August 28, 1972 (the date on which the County codified the provisions of S.B. 35), as shown by deeds recorded on or before

Comment [RK1]: This language is awkward.

Comment [RK2]: What is this intended to address? If it was lawfully created, then by definition wouldn't it have not required such approval?

Comment [RK3]: Isn't this redundant?

Attachment C: Referral Comments

From: Robyn Kube
To: Parker, Kathy M.
Cc: Case, Dale; Hughes, David
Subject: Proposed revisions to LUC Article 9
Date: Tuesday, January 15, 2019 9:51:24 AM

August 28, 1972;

- b. the lot complied with the zoning minimum lot size at the time of the division;
 - c. subsequent to the division, the Building Official, based upon accurate information submitted by the permittee, issued a building permit for a principal structure on the lot (i.e. a structure that was part of a principal allowed zoning use requiring a building lot, and not merely an accessory structure);
 - d. the permittee relied on the building permit in good faith, completed construction according to the permit, and, if applicable, received a certificate of occupancy to legally occupy the structure; and
 - e. the deed description for the resulting subdivided lot is clear and accurate, ~~and~~ such that it does not create discrepancies in boundaries with respect to adjacent parcels. The Director may consult with the County Surveyor in making this determination.
7. An unsubdivided parcel that does not otherwise meet the definition of a building lot, or a subdivided lot that was further divided so that it no longer conforms with the recorded plat and was included in an Administrative Exemption Plat approved pursuant to Article 9-301.C, ~~and if provided:~~
- a. The Building Official issued a building permit for:
 - i. the construction of new floor area in a new principal structure on the parcel or an expansion of an existing principal structure; or
 - ii. a significant remodel of existing floor area in a principal structure;
 - b. The permit was not for minor work, including without limitation, the provision of electrical service, the installation of heating or cooling facilities, or the repair or replacement of a roof;
 - c. The permit was issued based on accurate information submitted by the permittee;
 - d. The permit was issued after the parcel was illegally divided under the county's zoning or subdivision regulations;
 - e. The permittee relied on the building permit in good faith, substantially completed construction according to the permit, and substantially completed any required inspections; and
 - f. The deed description for the resulting parcel is clear and accurate, ~~and~~ such that it does not create discrepancies in boundaries with respect to adjacent parcels. The Director may consult with the County Surveyor in making this determination.
8. A parcel owned by a governmental entity that is transferred to a nongovernmental entity or person, provided that the parcel met the zoning minimum lot size at the time title was transferred.
9. A parcel that does not otherwise meet the definition of building lot, if
- a. the parcel was created by combining it with one or more other parcels (whether building lots or not) to form a single parcel; and

Attachment C: Referral Comments

From: Robyn Kube
To: Parker, Kathy M.
Cc: Case, Dale; Hughes, David
Subject: Proposed revisions to LUC Article 9
Date: Tuesday, January 15, 2019 9:51:24 AM

DOCKET DC-18-0001 Referral **Draft Amendments** Article 9 - 9-100 Subdivision Exemptions

- b. the resulting combined parcel reconstitutes a previously existing building lot.
10. A parcel that met the definition of a building lot ~~that is but has been~~ altered through condemnation or acquisition of a portion of the parcel for roadway purposes ~~through the power of eminent domain~~, except where the parcel is split and contiguity disrupted as a result of the roadway.
11. A parcel in a townsite or formerly incorporated town if:
- ~~it~~ met the zoning minimum lot size when it was created or was created prior to the County's establishment of a zoning minimum lot size governing the parcel; or
 - the division was effected by deed executed and recorded in the Office of the County Clerk and Recorder prior to December 13, 1983; and
 - the division was based on the recorded map of the townsite area; and
 - within the ~~T~~townsite area buildings have been (i) constructed, lawfully at the time, based upon the townsite map or plat, ~~buildings have been (ii)~~ continuously occupied, and ~~buildings have been (iii)~~ maintained in reasonable reliance on the continued utilization of such structures; and.
 - Roadways providing access into and travel within the townsite have been constructed prior to December 13, 1983, and maintained.
12. A parcel ~~or parcels~~ created through a division of land by a state court or ~~a~~ through a boundary line agreement ~~under pursuant to~~ § 38-44-112 to settle an action seeking a division of land by ~~a~~ state court if the ~~parcels division~~ involves unsubdivided land and/or subdivided land that was included in an Administrative Exemption Plat approved pursuant to Article 9-301.B:
- If the parcel or parcels were ~~so~~ created after 2014 and immediately prior to the action, each parcel subject to the division met the definition of a building lot, ~~provided~~:
 - the county was ~~provided notice in accordance with C.R.S. Section 30-28-101(10)(c)(II) given timely notice of the pending action by the court and given the opportunity to join as a party in interest in the proceeding~~; and
 - each resulting parcel has legal access.
 - If the parcel or parcels were ~~so~~ created after 2014, ~~where and~~ any of the parcels subject to the division did not meet the definition of a building lot immediately prior to the action, ~~provided~~:
 - the county was ~~provided notice in accordance with C.R.S. Section 30-28-101(10)(c)(II) given timely notice of the pending action by the court and given the opportunity to join as a party in interest in the proceeding~~; and
 - immediately prior to the action, the parcel met the definition of a building lot; and
 - the parcel size was not decreased; and
 - the resulting parcel has legal access.

Comment [RK4]: Why is this requirement needed?

Attachment C: Referral Comments

From: Robyn Kube
To: Parker, Kathy M.
Cc: Case, Dale; Hughes, David
Subject: Proposed revisions to LUC Article 9
Date: Tuesday, January 15, 2019 9:51:24 AM

- c. If the parcel or parcels were so created, ~~even if and~~ the county was not provided notice in accordance with C.R.S. Section 30-28-101(10)(c)(II) not given timely notice of the pending action by the court and given the opportunity to join as a party in interest in the proceeding, provided that:
 - i. immediately prior to the action, the parcel met the definition of a building lot; and
 - ii. the Director determines, in his discretion, that the change to the parcel from its original configuration is so minor that the County does not require a further Land Use process to recognize the lot; and
 - iii. the resulting parcel has legal access.
- d. Any other parcel or parcels that were so created, provided if:
 - i. the county was given timely notice of the pending action by the court and given the opportunity to join as a party in interest in the proceeding; and
 - ii. the court issued an order requiring the county to recognize the parcel as a building lot.

9-101 Building Lot Determination

- A. Any person may request that the Director determine if any parcel of land in the unincorporated County is a building lot that meets the requirements of Article 9-100.
- B. Any building lot determination request must be made on an application provided by the Director. A complete application must include payment of the specified processing fee, all information requested on the application, and any additional information that the Director determines is necessary to process the application, including without limitation, parcel maps, deeds, surveys, prior County building permits, and prior County land use approvals or determinations issued for the parcel.
- C. If the application is made by a person other than the parcel owner, the Director will forward a copy of the application, as well as any building lot determination made ~~on~~ with regard to the parcel, to the parcel owner of record.
- D. A determination by the Director that a parcel is a building lot is not a determination that the parcel can be developed for any particular purpose or use. Development must be reviewed and approved through the applicable County Land Use Code processes and may require related approvals from the County Transportation Department, County Public Health, and state agencies.
- E. If the Director determines that a building lot determination has been issued in error, the Director may amend or rescind the determination as necessary.
- F. County recognition of a specific building lot does not include an implied approval of any other parcel as a building lot, even if the other parcel was part of or a remainder piece from a subdivision ~~that in which created~~ the parcel being recognized was created.
- G. The Director's interpretation of the definition of "building lot" in Article 9-100 made in the course of a building lot determination, or the course of an amendment or

Comment [RK5]: This seems impermissibly vague

Attachment C: Referral Comments

From: Robyn Kube
To: Parker, Kathy M.
Cc: Case, Dale; Hughes, David
Subject: Proposed revisions to LUC Article 9
Date: Tuesday, January 15, 2019 9:51:24 AM

DOCKET DC-18-0001 Referral **Draft Amendments** Article 9 • 9-100 Subdivision Exemptions

rescission of a building lot determination, may be appealed to the Boulder County Board of Adjustment under the provisions of Article 4-1200.

9-102 Merger of Unsubdivided Parcels

- A. At the request of a Property Owner, the Director may merge two or more unsubdivided parcels, one of which must be a building lot, owned by a single property owner. Upon final approval, the merged parcel will constitute a single building lot.
- B. Where one or more of the parcels proposed to be merged are not building lots, ~~then~~ the ~~areas-any parcel~~ that ~~were was not a~~ legal building lots ~~prior to the merger~~ ~~must shall~~ not be used for setback or building purposes ~~for in connection with~~ the merged lot unless approved through the Subdivision Exemption process ~~and~~ ~~criteria~~.
- C. Owner-Requested Merger Process:
 1. The property owner shall submit an application, provided by the Director, for merger and confirmation of addressing. A complete application must include payment of the specified processing fee, all information requested on the application, and any additional information that the Director determines is necessary to process the application, including without limitation, Assessor's Parcel Identification Numbers of affected parcels, a site plan showing the proposed final lot configuration, parcel maps, deeds, surveys, ~~prior~~ County building permits, and ~~prior~~ County land use approvals or determinations issued for the parcels.
 2. The application for merger must also include a draft ~~Notice which deed to the Land Use Department~~ that: (1) ~~identifies by legal description and/or Assessor's Parcel Identification Number the parcels to be merged;~~ (2) ~~includes a new legal description for the property describes the merged parcel;~~ and; (23) includes the following statement on the face of the ~~deed~~Notice: "~~This deed Notice is provided as evidence of given to the intent to merge into one parcel all of the property described here in this deed. The parcels are merged with the property owner's consent per CRS 30-28-139.~~"
 3. Upon approval by the Director, the Property Owner ~~must shall~~ record ~~a deed the~~ Notice in the real property records of the Boulder County Clerk and Recorder and provide a copy of the recorded deed to the Land Use Department.
 4. Upon the Property Owner's compliance with the conditions of approval, the Land Use Department will confirm addressing of the merged building lot and send a Final Approval letter to the Property Owner.
- D. For any merger of parcels of land or lots under the provisions of this Code, which merger is not requested in writing by each owner of an affected parcel, and which merger occurs for the first time on or after October 1, 2003 (the effective date of Senate Bill 03-067 as codified in Section 30-28-139 of the Colorado Revised Statutes), the following provisions shall govern, as expressly required in Section 30-28-139:
 1. Prior to the completion of the merger, the County shall send notice of the County's intent to complete the merger to each owner of the affected parcels by certified mail, at the address shown on the records of the County Assessor. The notice shall

Comment [RK6]: Delivery of such a deed would convey title to the property to the County, which I do not believe is the intent; better to require the applicant to provide a "Notice-type" document to the County, similar to a Zoning Affidavit to accomplish the same purpose

Comment [RK7]: Why not have Land Use record the document as it does with a Zoning Affidavit?

Attachment C: Referral Comments

From: Robyn Kube
To: Parker, Kathy M.
Cc: Case, Dale; Hughes, David
Subject: Proposed revisions to LUC Article 9
Date: Tuesday, January 15, 2019 9:51:24 AM

DOCKET DC-18-0001 Referral Draft Amendments Article 9 - 9-100 Subdivision Exemptions
also specify that each such owner may request a hearing on the proposed merger
pursuant to Subsection 2., immediately below, and shall specify action to be taken

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by such owner to request such hearing, including, without limitation, the requirement that said owner shall request the hearing no later than 120 days after the date on which the owner receives the notice. The date of the owner's receipt of the notice shall be the date on which the notice arrives at the owner's stated address, which date the County may presume to be three days after the date of the County's mailing of the notice, unless the circumstances known to the County clearly indicate a later receipt date.

2. Prior to the completion of the merger, where each owner of an affected parcel has timely requested a hearing on the proposed merger satisfying the requirements of Subsection 1, immediately above, a public hearing on said merger shall be held before the Board of County Commissioners. The hearing shall be conducted for the purpose of allowing the Board to ~~discuss with-inform~~ the owner of each affected parcel the Board's reasons for proceeding with the merger, and to give each owner the opportunity to submit any basis provided under law for challenging the merger. In the case of a timely hearing request, the County shall provide notice of the time, place, and manner of the hearing to each owner of the affected parcels and shall also publish the notice in a newspaper of general circulation in the County in a manner sufficient to notify the public of the time, place, and nature of said hearing. In order to give each such owner of an affected parcel the opportunity to take whatever remedial action is allowed under the law prior to the hearing before the Board, the County shall not hold the hearing any sooner than 90 days after the date on which the owner received the County's initial mailed notice as provided in Subsection 1, above.
3. Where the owner of each affected parcel fails to timely request a hearing on the proposed merger satisfying the requirements of Subsection 1., above, no such hearing is required, and the affected parcels shall be merged in accordance with the requirements of this Subsection A.
4. No merger of parcels that is the subject of a hearing pursuant to Subsections 1. and 2., above, shall be effective unless:

~~E.~~ (1) The owner of the parcels has given consent to the merger of said parcels; and

~~F.~~ (2) The merger has been approved by a majority of the Board of County Commissioners.

~~1-5.~~ Nothing in this Subsection ~~AD.~~ shall be construed to abrogate or otherwise diminish or expand any rights a landowner may have under Article 68 of Title 24, C.R.S., pertaining to vested property rights.

9200 Subdivision Exemptions

- A. The Board of County Commissioners may grant exemptions from the application of the Subdivision Regulations for any subdivision of unsubdivided land that the Board determines, as authorized in C.R.S. Section 30-28-101(10)(d), is not within the purposes of Part 1 of Article 28 of Title 30, C.R.S. (the County Planning Act), as set forth in Article 1-300 of this Code.

1. Whether a Subdivision Exemption falls outside the purposes of the County

Comment [RK8]: A "hearing" is not the appropriate forum for a discussion. Furthermore, there could be due process problems if the owner is first informed of the reason for the merger at the hearing. Should provide the rationale first so the property owner can be prepared to address those issues at the hearing.

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Comment [RK9]: This is contrary to the specific language of the statute

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DOCKET DC-18-0001 Referral **Draft Amendments** Article 9 - 9-100 Subdivision Exemptions

Planning Act is determined under the criteria specified in Article 9-400.A.

- B. The divisions of land set forth in Article 9-201.A are exempt from the definition of the term 'subdivision' because the Board has determined that such minor divisions are not within the purposes of the County Planning Act and are exempt from the requirement of a public hearing before the Board ("Administrative Subdivision Exemption"). The Director may approve an Administrative Subdivision Exemption if it meets the requirements in Article 9-201.
- C. Proposals for condominiums, apartments, any other multiple dwelling units, or that otherwise create two or more separate interests without dividing a parcel are exempt from the definition of the term 'subdivision' because the Board has determined that such divisions are not within the purposes of the County Planning Act and are exempt from the requirement of a public hearing before the Board. The Director or the Board may approve a proposal under this provision if it is regulated by, and meets the criteria of, a binding review process under this Code.
- D. Lots that may be created under Articles 5 and 6 of this Code are not eligible for approval through the Subdivision Exemption process.
- E. When the subdivision of parcels involves land that is, or through the subdivision will be, owned in full or in part by the county, Subdivision Exemption approval or approval under Article 5 of this Code is not required.

Comment [RK10]: Is this the correct reference?

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9-201 Administrative Subdivision Exemptions

- A. The Director may approve an application for an Administrative Subdivision Exemption if it meets the following criteria:
1. The Director has determined that there is no potential for any significant conflict with the criteria listed in 9-400 of this Code such that no conditions to mitigate land use impacts of the proposal are necessary; and
 2. If the requested exemption is to recognize as a building lot a parcel created through an illegal division of land, the parcel creation or boundary line adjustment and its subsequent recognition does not increase the zoning density allowed at the time of the division.
- B. ~~If the Director After determining whether to~~ approve an Administrative Subdivision Exemption, the Director shall notify ~~adjacent the owners of~~ property ~~owners located~~ within 1500 feet ~~of the affected property of the decision and provide such property owners with the opportunity to appeal the decision to the Board.~~
- C. The Director's determination ~~is~~ shall be final after 14 calendar days ~~from the date of the notice provided in accordance with 9-201B.,~~ unless ~~such determination is~~ appealed to the Board of County Commissioners under the provisions of Article 9-600.

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DOCKET DC-18-0001 Referral Draft Amendments Article 9 • 9-100 Subdivision Exemptions

9300 Exemption Plats

- A. The Board of County Commissioners may grant exemptions from the application of the Subdivision Regulations pursuant to the requirements of Article 9-300 where the proposed division involves subdivided land.
- B. Unsubdivided land is not eligible for an exemption plat unless:
1. it is part of an application to add it to subdivided land to create a subdivided lot of 35 acres or more; or
 2. the county has received proper notice in a judicial process; and ~~a court,~~
 - ~~2-3.~~ ~~a court~~ has entered an order changing the boundary lines shown on a plat or the action has been settled through a boundary line agreement; ~~or-~~
 - ~~3-4.~~ it is part of an application involving subdivided land where both parcels meet the definition of a building lot in 9-100.A.7.
- C. The divisions of land set forth in Article 9-301 are exempt from application of the Subdivision Regulations. ~~Such minor divisions and~~ do not require a public hearing before the Board (“Administrative Exemption Plat”).
- D. No exemption plat approval shall permit an increase in the number of subdivided lots unless any additional resulting subdivided lot is 35 acres or more unless the additional density was recognized through a court action where the County was given timely notice of the pending action by the court and given the opportunity to join as a party in interest in the proceeding, or unless the parcel adding the additional density would meet the definition of a building lot in Article 9-100.A.7 if the Exemption Plat was approved.

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Comment [RK11]: Are you sure this is legally correct?

Comment [RK12]: A court action would not typically address density, only title to property.

9301 Administrative Exemption Plats

- A. Administrative Exemption Plats Through Criteria Review
1. The Director may approve an application for an Administrative Exemption Plat if the Director has determined that there is no potential for any significant conflict with the criteria listed in 9-400 of this Code such that no conditions to mitigate land use impacts of the proposal are necessary;
 2. After determining whether to approve an Administrative Exemption Plat, the Director shall notify ~~adjacent the owners of~~ property ~~owners located~~ within 1500 feet ~~of the subject property.~~
 3. The Director’s determination is final after 14 calendar days unless appealed to the Board of County Commissioners under the provisions of Article 9-600.
- B. Administrative Exemption Plat to Resolve Property or Boundary Line Disputes
1. The Director may approve an application for an Administrative Exemption Plat to finalize a division of a subdivided lot or lots by ~~means of a state court order~~ or a through a boundary line agreement under § 38-44-112 ~~entered into~~ to settle an action seeking a

Comment [RK13]: See changes noted in 9-201

DC-18-0001 Referral Draft 12/28/18

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division of a subdivided lot by a state court. The final exemption plat will be presented to the Chair of the Board for a signature.

2. Recognition as a building lot of a subdivided lot changed by a state court or a boundary line agreement to settle an action seeking a change to the subdivided lot by a state court that does not meet the definition of a building lot is subject to the Exemption Plat criteria in 9-400 and requires a hearing before the Board of County Commissioners.

C. Administrative Exemption Plat for Subdivided Lots for Which the County Issued Permits

1. The Director may approve an application for an Administrative Exemption Plat to finalize a division of a subdivided lot that, if approved, meets the definition of a building lot in Article 9-100.A.7.

9-302 Vacations

- A. Road and utility easement vacations, resulting from subdivided lot reconfigurations through this process or otherwise requiring changes to the plat, must be heard and acted upon by the Board, in conjunction with the exemption plat hearing, following review of the vacation through the process in Article 10 of this Code by Planning Commission.

Comment [RK14]: How is this different from 1, above?

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DOCKET DC-18-0001 Referral ~~Draft Amendments~~ Article 9 • 9-100 Subdivision Exemptions

9-400 Review Criteria for Subdivision Exemptions and Exemption Plats

- A. A subdivision exemption or an exemption plat must meet the following standards:
1. For subdivision exemptions only, if the exemption would result in an increase in the number of currently existing lots, any identified land use impacts associated with the increase are sufficiently mitigated.
 2. For exemption plats only, if the originally-approved subdivided lots were 1.1 acres or less, the size of each of the proposed lots must not change ~~in size~~ by more than fifteen percent, unless such lots are served by public water and/or sewer.
 3. Each of ~~the~~ proposed lots must have legal access.
 4. The proposed lots and the potential-expected development on ~~them-such lots~~ must be capable of being served by ~~an~~ adequate physical access, including for emergency and non-emergency purposes, which meets the requirements of the County Engineer, and, if applicable, the local fire protection district.
 5. Each of ~~the~~ proposed lots and the expected potential development on ~~them-such lots~~ must be capable of being served by an adequate water supply.
 6. Each of ~~the~~ proposed lots and the expected potential development on ~~them-such lots~~ must be capable of being served by an adequate on-site wastewater system or sewage treatment system as required by Boulder County Public Health.
 7. Adequate public facilities and services must exist to serve the proposed lots and the expected potential development on ~~them-such lots~~.
 8. If any of the proposed lots are in the Floodplain Overlay District:
 - a. The potential impacts of creating the proposed lots or portions of proposed lots within the Floodplain Overlay District must be sufficiently mitigated; and
 - b. the development upon the proposed lots must be possible outside the Floodplain Overlay District; or
 - c. the expected potential development ~~upon~~ the proposed lots must be such as would allow for capable of obtaining a floodplain development permit to be issued under Article 4-400 of this Code, as determined by the County Engineer.
 9. The proposed lots and the expected development on ~~them-such lots~~ shall be in harmony with the character of the neighborhood and compatible with the surrounding area, and shall be appropriately landscaped and screened to minimize the obtrusiveness of structures and maximize visual blending with the surrounding topography.
 10. The proposed lots and ~~potential-the expected~~ development on ~~them-such lots~~ shall not be subject to, or contribute to, significant risk from natural hazards such as unstable soils, steep or unstable slopes, floods, and wildfire.
 11. The proposed lots and ~~potential-the expected~~ development on ~~them-such lots~~ shall not have a significant adverse impact on environmental resources identified in the Comprehensive Plan or through the review of the application, such as: riparian corridors and wetland areas; plant communities and vegetative cover; wildlife habitat and migration corridors; natural areas and landmarks;

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environmental conservation areas; agricultural, forestry, or open lands; and
views, vistas, and scenic corridors.

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12. The proposed lots and ~~potential-the expected~~ development on ~~them-such lots~~ shall not have a significant adverse impact on historic, cultural, or archaeological resources identified in the Comprehensive Plan or through the review of the application.
13. The proposed lots and ~~potential-the expected~~ development on ~~them-such lots~~ shall not cause unnecessary or excessive site disturbance or erosion, or alter historic drainage patterns.
14. The proposed lots and ~~potential-the expected~~ development on ~~them-such lots~~ shall be in accordance with the Comprehensive Plan and any applicable intergovernmental agreement affecting land use or development, and this Code.

9-500 Conditions of Approval and Post-Approval Requirements for Subdivision Exemptions and Exemption Plats

- A. If an application for a Subdivision Exemption or an Exemption Plat does not meet all the listed criteria for approval, the Board, in its discretion, may impose reasonable conditions which allow a proposal to meet the criteria. Nothing in this provision shall require the Board to impose conditions if, in the Board's discretion, the Board determines that a reasonable basis for mitigation does not exist and that the application must therefore be denied.
 1. Conditions of approval which the Board may impose to allow an application to meet the listed criteria include, without limitation:
 - structure height or floor areas
 - restrictions; designation of building envelopes or locations in which structures, buildings, or site disturbance must be confined; landmarking to protect historic or cultural resources; designation of preserved areas of land; required management practices to maintain preserved land, protect environmental resources, minimize erosion, control or eliminate noxious weeds or undesirable plants, regulate drainage, and prevent hazards both on and off the subject property including through wildfire mitigation; landscaping or other appropriate screening measures including through limiting building materials or colors; landowner grant of a conservation easement or restrictive covenant running with the land to preserve, and avoid the over-intensive use of, sites with recognized conservation and open land values; and purchase and retirement of development rights to mitigate an increase in density recognized through a subdivision exemption approval.
 - 2. In exercising its discretion to determine whether an exemption plat meets or does not meet the ~~listed-identified criteria~~ standards, the Board may weigh the evidence on the standards which is presented, with regard to the property taxation treatment of the subject subdivided land, conveyancing history of the subject subdivided land, land use regulatory history of the subdivided land, existing development on the subject subdivided land, and reasonable investment backed expectation of the landowner in the subject -subdivided land.
- B. Post-Approval Requirements
 1. The Board or Director may impose post-approval requirements upon any approved exemption plat or administrative exemption plat, including, without limitation, a title report including all owners as of the date of recordation of

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the new deeds; that the owner include appropriate language on any required deeds; and certification from the County Treasurer's Office that there are no outstanding *ad-valorem* taxes to be paid on the property being exempted.

9-600 Appeal of Director's Determination

- A. The Director's determination of whether an application meets the criteria in Article 9-400 for a Subdivision Exemption or an Exemption Plat may be appealed to the Boulder County Board of County Commissioners.
 - a. If any person aggrieved by the Director's determination files an appeal with the Land Use Department in writing within 14 calendar days, the Board shall review the Director's determination at a public hearing. If no appeal is made within 14 calendar days after the date of the determination, the Director's determination ~~is~~ shall be final.
 - b. Prior written notice of the public hearing on the appeal shall be provided to the applicant and to the owners of property ~~owners-located~~ within 1500 feet of the affected property and shall be published as part of the Board's agenda in a newspaper of general circulation in Boulder County.
 - c. At the public hearing, the Board shall consider evidence related to the Director's determination which may be presented by the Director, the applicant, or interested members of the public. The Board shall not be limited in its review to the subject of the appeal but may review any aspect of the application. Based upon this evidence the Board may affirm the Director's decision, add new conditions, or reverse the Director's determination. In the case of denial of an application, the Board shall state its reasons for its decision based upon the criteria in the applicable article of this Code.

9-700 Expiration of Subdivision Exemption and Exemption Plat Approval

- A. The decision of the Board of County Commissioners' or Director's ~~decision~~ to approve or conditionally approve an exemption plat or subdivision exemption shall, unless otherwise stated in such action, be effective for a period of one calendar year from the date of approval to the date of recordation of all required documents.
- B. The Board of County Commissioners or Director may grant up to two extensions of deadlines of not more than one year each for these dates specified in this Article, if they find that there has been no change in this Code, the Comprehensive Plan, or the surrounding neighborhood which would substantially affect the approved exemption.
- C. On an annual basis, the Director may present to the Board of County Commissioners all those applications that will expire in the coming year and may need extensions of processing time.

Comment [RK15]: When would this apply?

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DC-18-0001 Referral for Draft Amendments to Articles 1, 17 & 18

1-300 Purpose and Relationship to the Boulder County Comprehensive Plan

- A. This Code is enacted to protect and promote the health, safety, and general welfare of the present and future inhabitants of Boulder County and to guide future growth, development, and distribution of land uses within Boulder County. Enactment, amendment, and administration of this Code shall be governed by the statutory authority granted to Colorado counties to govern the use and development of land, consistent with applicable constitutional principles. Enactment, amendment, and administration of this Code shall in accordance with and shall serve to implement the goals and policies of the Boulder County Comprehensive Plan, and the authority set forth in the applicable provisions of the Colorado Revised Statutes as well as the provisions of any jointly adopted intergovernmental agreement or master plan governing the use and development of land of mutual concern to Boulder County and another governmental entity.
- B. The purposes of the County Planning Act shall be considered to be, without limitation, and in accordance with Section 1-300.A of this Code: promotion of the health, safety, morals, convenience, order, prosperity or welfare of the present and future inhabitants of the County through such means as lessening traffic congestion; reducing the waste caused by excessive road construction; promoting energy conservation; securing safety from fire, floodwaters, and other dangers; providing adequate light and air; classifying land uses; distributing and regulating land development and its impacts; regulating structures and parcels or lots; protecting the tax base; securing economy in governmental expenditures; fostering agricultural and other industries (which, in accordance with the Comprehensive Plan, are primarily rural in nature); protecting urban and nonurban development (and, in accordance with the Comprehensive Plan, ensuring that unincorporated lands outside of community service areas remain rural in nature); ensuring for the orderly subdivision of land; and providing for coordinated master planning addressing population density, housing, transportation, public places and facilities, adequate and suitable water supplies, adequate facilities and services for development, alternative energy sources, open and rural land preservation, protection of historical/cultural and archaeological resources, hazard prevention, wildlife habitat and threatened and endangered species protection, commercial mineral deposit extraction, recreation and tourism, and environmental protection. See, primarily, C.R.S. Sections 30-28-106; 30-28-111; 30-28-115; 30-28-133; 30-28-136; and 29-20-104.

17-300 Zoning Regulation Enforcement

- D. Building Lot ~~Determination~~
1. No person shall use any parcel for a use which is required by this code to comply with the minimum lot area requirements of the zoning district in which it is located, nor shall any building permit for such parcel be issued, unless the parcel is determined to be a building lot by the Director.
 2. The Director shall not determine a parcel to be a building lot for a principal use if that parcel has been occupied as or designated as a building lot for any other principal use, unless such parcel has been expressly approved for multiple principal uses as part of a use permitted by Special Review (Article 4-600) or Planned Unit Development (Article 6).
 3. ~~The Director shall not designate a portion of a parcel as a building lot unless the Director determines that the remainder of the parcel also meets all requirements necessary for designation as a building lot.~~

18-121 Building Lot

A parcel that meets the requirements of Article 9-100 of the Land Use Code.

~~A parcel occupied by, or designated by the Director pursuant to this Code to be occupied by, a use which is required by the Zoning District provisions of this Code to comply with the minimum lot area requirements of the zoning district in which it is located. Except as provided in subsection (A) below, the parcel shall be of sufficient size and shape to conform to all requirements of the zoning district within which it is located.~~

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- ~~1. A substandard parcel shall be considered a building lot only if it meets one of the following criteria:~~
- ~~1. A parcel upon which a use, which is required to comply with the minimum lot area requirements of the zoning district in which it is located, lawfully exists or, if none exists, has lawfully existed prior to the effective date of this Code.~~
 - ~~2. A parcel which the Board of County Commissioners has exempted from the definition of 'subdivision' with the specific intent, as stated in the exemption Resolution, of allowing the parcel _____ to be designated as a building lot; provided however that said parcel shall remain subject to any use and building requirements imposed pursuant to Article 9 as well as all other provisions and _____ requirements of this Code.~~
 - ~~3. A lot, tract, undivided block, or other plot of land, other than an outlot or right of way, within an area of subdivided land, which met the lot area and lot frontage requirements of this Code in effect at the time of the approval of the subdivided land, such land shall be designated as a building lot in accordance with those area and/or frontage requirements in effect at the time of its approval, subject, however, to all other provisions and requirements of this Code, as amended.~~
 - ~~4. A parcel which conformed to the lot area and lot frontage requirements of the zoning district in which it was located at the time it was created, and which has continued to be held as a separate _____ parcel, shall be designated a building lot in accordance with those area and frontage requirements in effect at the time of its creation, and with all other provisions and requirements of this Code, as amended; provided, however, if such parcel was at any time owned by a governmental entity, it may be occupied only in accordance with the area and frontage requirements in effect at the time legal title was transferred from the governmental entity to a person, unless it was acquired by the _____ governmental entity after December 13, 1983, and was a building lot at the time of acquisition.~~
- ~~1. For any merger of parcels of land or lots under the provisions of this Code, which merger is not requested in writing by each owner of an affected parcel, and which merger occurs for the first time on or after October 1, 2003 (the effective date of Senate Bill 03-067 as codified in C.R.S. Section 30-28-139), the following provisions shall govern, as expressly required in C.R.S. Section 30-28-139:~~
- ~~1. Prior to the completion of the merger, the County shall send notice of the County's intent to complete the merger to each owner of the affected parcels by certified mail, at the address shown on the records of the County Assessor. The notice shall also specify that each such owner may request a hearing on the proposed merger pursuant to Subsection 2., immediately _____ below, and shall specify action to be taken by such owner to request such hearing, including, _____ without limitation, the requirement that said owner shall request the hearing no later than 120 days after the date on which the owner receives the notice.~~
 - ~~2. Prior to the completion of the merger, where each owner of an affected parcel has timely requested a hearing on the proposed merger satisfying the requirements of Subsection 1., _____ immediately above, a public hearing on said merger shall be held before the Board of County Commissioners. The hearing shall be conducted for the purpose of allowing the Board to discuss with the owner of each affected parcels the Board's reasons for proceeding with the _____ merger, and to give each owner the opportunity to submit any basis provided under law for _____ challenging the merger. In the case of a timely hearing request, the County shall provide notice of the time, place, and manner of the hearing to each owner of the affected parcels and shall also publish the notice in a newspaper of general circulation in the County in a manner _____ sufficient to notify the public of the time, place, and nature of said hearing. In order to give each such owner of an affected parcel the opportunity to take whatever remedial action is _____ allowed under the law prior to the hearing before the Board, the County shall not hold the~~

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~~hearing any sooner than 90 days after the date on which the owner received the County's
initial mailed notice as provided in Subsection 1, above.~~

Draft Amendments to the Boulder County Land Use Code • December 28, 2018

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- 3 ~~Where the owner of each affected parcel fails to timely request a hearing on the proposed merger satisfying the requirements of Subsection 1., above, no such hearing is required, and the affected parcels shall be merged in accordance with the requirements of this Subsection C.~~
- 4 ~~No merger of parcels that is the subject of a hearing pursuant to Subsections 1. and 2., above, shall be effective unless: a. The owner of the parcels has given his, her, or its consent to the merger of said parcels; and b. The merger has been approved by a majority of the Board of County Commissioners.~~
- 5 ~~Nothing in this Subsection C. shall be construed to abrogate or otherwise diminish or expand any rights a landowner may have under Article 68 of Title 24, C.R.S., pertaining to vested property rights.~~

18-143A Exemption Plat

An amendment or change to a plat which is exempt from the requirements of Article 5 of this Code (Subdivision Regulations), and which falls within the scope of and must instead meet the requirements of ~~Sections 9-200 through 9-202~~ [Article 9](#) of this Code. Exemption plats for certain subdivisions with a sketch plan approved prior to March 22, 1078, which affect significant natural resources, are separately addressed under Article 4-300 of this code.

18-204C Subdivision Exemption

Pursuant to the authority granted in C.R.S. Section 30-28-101(10)(d), an approval by the Board of County Commissioners to take certain unsubdivided land or divisions of unsubdivided land out of the definition of "subdivision," with the result that such land or divisions of land do not have to meet the requirements of the Subdivision Regulations. The requirements for Subdivision Exemptions are contained in ~~Sections 9-100 through 9-102~~ [Article 9](#) of this Code. Land with approved subdivision exemptions is not platted (subdivided) land, even though it may be described according to a so-called "Subdivision Exemption Plat" as defined in the Colorado surveying statutes in Title 38, C.R.S. Exemptions from the Subdivision Regulations for subdivided land are called "Exemption Plats" and are contained in the Exemption Plat requirements of ~~Sections 9-200 through 9-203 and Section 9-300~~ [Article 9](#) of this Code (see also Article 4-300).