



**MEETING OF THE BOARD OF COUNTY COMMISSIONERS  
BOULDER COUNTY  
AGENDA**

**Thursday, May 16, 2024, 9:00 a.m.**

**Third Floor Hearing Room**

**County Court House**

**1325 Pearl Street, Boulder**

This agenda is subject to change. Please call ahead to confirm an item of interest (303-441-3500). In-person meetings are held in the Third Floor Hearing Room, County Courthouse, 1325 Pearl Street, Boulder. Public comments are taken at meetings designated as Public Hearings. Meetings and hearings on this agenda are open to the public.

For special assistance, contact our ADA Coordinator (303-441-3525) at least 72 hours in advance.

To view a two-week forecast agenda of the commissioners' schedule, visit the Commissioners' [Advance Agenda](#).

**All commissioners' public hearings and meetings will now be offered in a hybrid format where attendees can join through Zoom or in-person at the Boulder County Courthouse, 3rd Floor, 1325 Pearl Street, Boulder. To sign up for in-person public comment, please use the link in this agenda for each respective hearing. There will also be a kiosk located in the lobby of the 3rd Floor to sign up for in-person public comment. For questions regarding in-person hearings call 303-441-3500.**

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Pages

1. **Call to Order**

2. **9:00 a.m. Meeting**

- [Virtual Attendee Registration Link](#)
- **Call-in information: 1-833-568-8864, Webinar ID: 161 325 8574**
- **Registration Required**
- [In-Person Comment Registration Link](#)

3. **Public Hearing of Community Planning & Permitting Docket SE-24-0003: Longmont Creek Channel Acquisition**

Subdivision Exemption request to separate approximately 1.7 acres of land from the subject property for purchase by the City of Longmont for flood mitigation work in

3

order to support the Resilient St. Vrain Project. The application is submitted by Scott Natter, c/o 26 S. Sunset Street LLC (applicant/property owner) and Josh Sherman c/o City of Longmont (agent). The subject property is in the General Industrial (GI) zoning district at 26 S. Sunset Street, approximately .1 miles north of the intersection of S. Sunset Street and Boston Avenue in Section 4, Township 2N, Range 69W.

- **Action Requested:** Decision
- **Presenter(s):** Sam Walker, Community Planning & Permitting
- **Location:** Hybrid (Hearing Room and Zoom Webinar)

Opportunity for live virtual and in-person public comment will be available, and written comments can be emailed to [the planners' email](#). Information regarding how to participate will be available on [the docket webpage](#).

#### 4. **Boulder County Housing Authority Work Session**

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Working Session to review the Policy on Participation in Developments Led by Others (also known as SLP, Special Limited Partnerships).

- **Action Requested:** None – Information Only
- **Presenter(s):** Susana Lopez-Baker, Housing & Human Services; Molly Chiang, Housing & Human Services; Amanda Guthrie, Housing & Human Services
- **Location:** Hybrid (Hearing Room and Zoom Webinar)

More information on Boulder County Housing Authority can be found at [the Boulder County Housing Authority website](#).



# Community Planning & Permitting

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.gov](http://www.bouldercounty.gov)

**BOARD OF COUNTY COMMISSIONERS  
PUBLIC HEARING**

**May 16, 2024 at 9:30 a.m.**  
*Hearing to be Held in a Hybrid In-Person and Virtual  
Format*

**STAFF PLANNER:** Sam Walker, Planner II

**SE-24-0003: Longmont Creek Channel Acquisition**

**Request:** Subdivision Exemption request to separate approximately 1.7 acres of land from the subject property for purchase by the City of Longmont for flood mitigation work in order to support the Resilient St. Vrain Project.

**Location:** 26 S. Sunset Street, approximately .1 miles north of the intersection of S. Sunset Street and Boston Avenue in Section 4, Township 2N, Range 69W

**Zoning:** General Industrial (GI) Zoning District

**Owners:** 26 S Sunset Street LLC

**Applicant:** Scott Natter, c/o 26 S Sunset Street LLC

**Agent:** Josh Sherman, c/o City of Longmont

**PACKET CONTENTS**

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Referral Responses and Public Comments (Attachment B)	B1 – B9

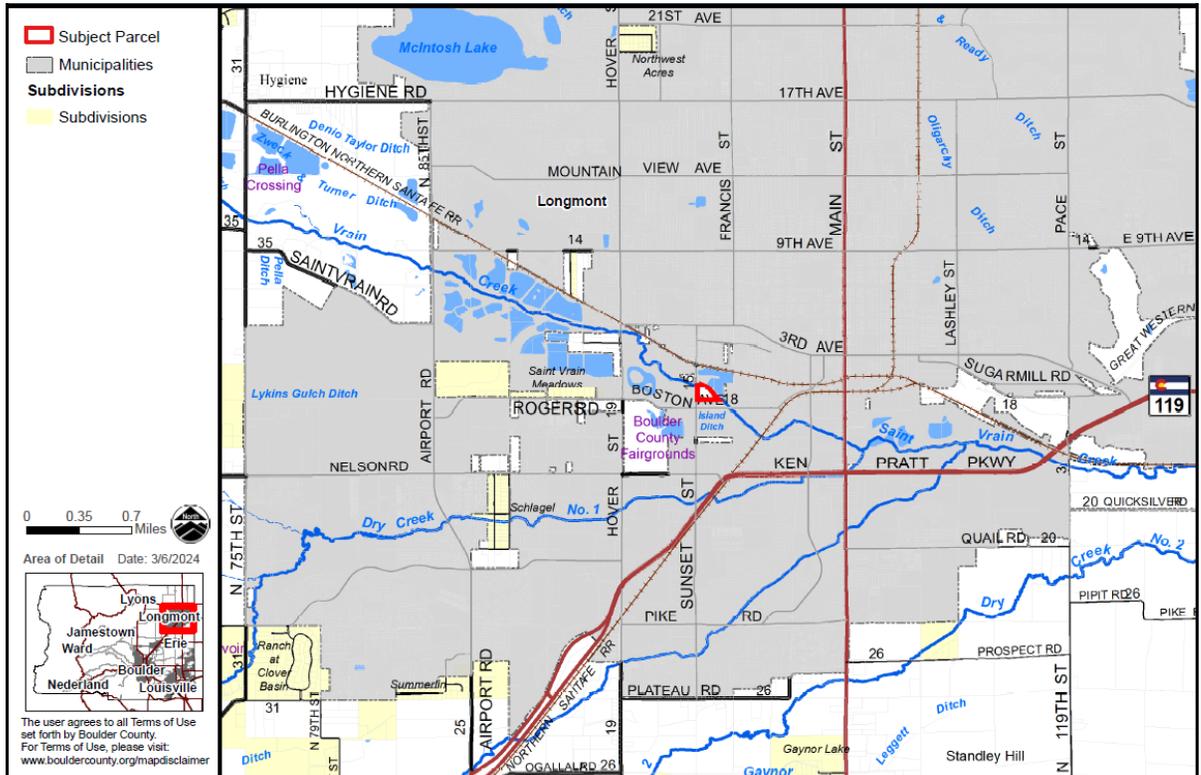
**SUMMARY**

The applicants request approval of this Subdivision Exemption docket to split the subject parcel into two new parcels.

A Subdivision Exemption application is required for this request per Article 9-200 of the Boulder County Land Use Code (“the Code”). For the reasons set forth below, staff find that the proposed lot recognition can meet the current criteria under Article 9-400 of the Code to recognize the subject property as a legal building lot. Therefore, staff recommend that the request be approved.

**DISCUSSION**

The subject property is located on the east side of S. Sunset Street, approximately .1 miles north of the intersection of S. Sunset Street and Boston Avenue, and is an unincorporated enclave that is entirely surrounded by the City of Longmont (see Figure 1, below). Presently the property is developed with seven structures totaling approximately 14,400 sq. ft. of enclosed floor area and hosts a mixture of industrial uses.



*Figure 1: Vicinity Map showing the subject parcel (red outline) located within the City of Longmont municipal boundary.*

As shown in Figure 2, below, a section of the northern and northeastern parcel boundary extends to the approximate centerline of St. Vrain Creek and encompasses most of the southern creek bank as it runs past the subject parcel. Also visible in Figure 2 is a fence line along the top of the creek bank, which approximates the location of the newly proposed dividing line between the subject parcel and the divided portion. Figure 3 follows immediately and illustrates the full area proposed to be sectioned off.



Figure 2: Aerial photo of the subject parcel, showing parcel boundary extending into the creek and the northern extent of the developed area that stops at the top of the southern stream bank (blue line).

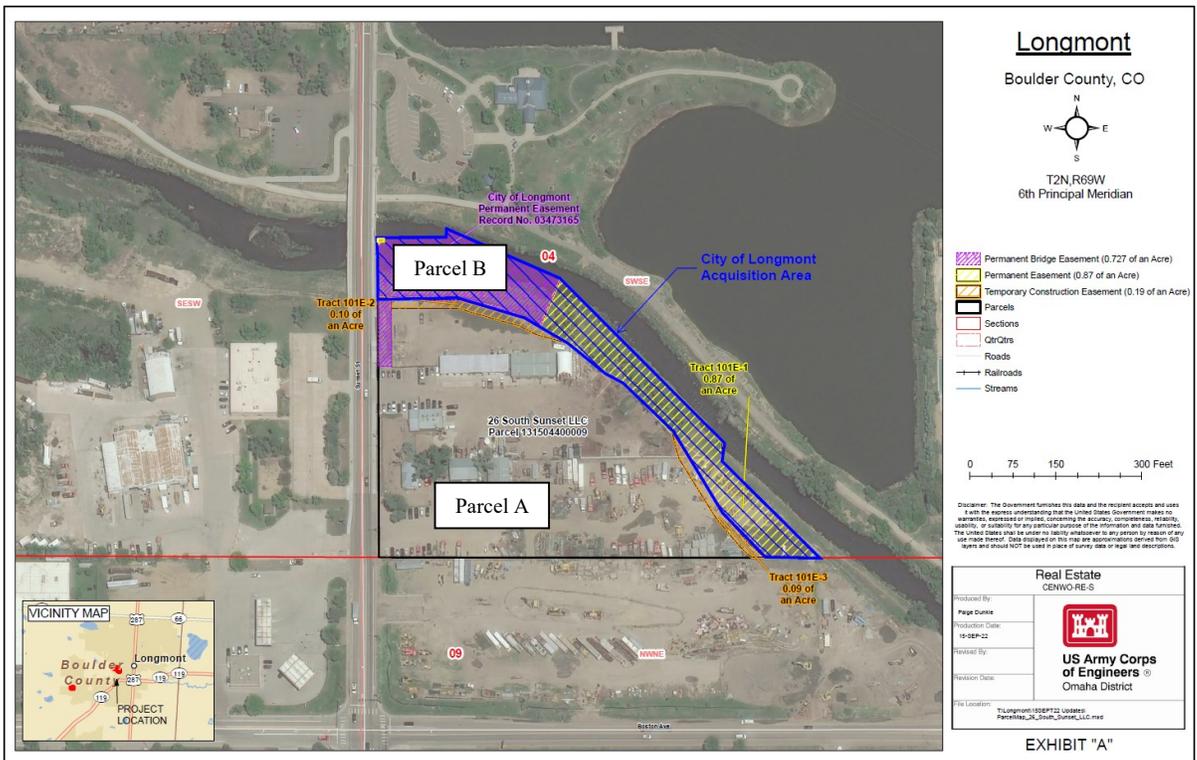


Figure 3: Applicants' proposal for area to be split, outlined in dark blue, with parcel labels added by CP&P staff.

The applicants propose to split off the section of the subject parcel illustrated above in Figure 3 to form a new, separate parcel that incorporates the southern bank of St. Vrain Creek. This new parcel will then be purchased by the City of Longmont and annexed into the City limits. Throughout the rest of this recommendation, the existing parcel will be referred to as such, while the property remaining unincorporated is referred to as Parcel A and the divided section to be transferred to the City of Longmont is referred to as Parcel B (these notations are also visible in Figure 3, above).

As described in the applicants’ project narrative, this proposal will support work being performed in the area as part of the Resilient St. Vrain Project (RSVP), a collaborative flood mitigation effort between the City of Longmont and the Army Corps of Engineers. As shown in Figure 4 below, the entirety of the subject parcel is located in the Floodway where most development is prohibited by the Code. The RSVP will eventually change the characteristics of St. Vrain Creek such that the subject parcel will be almost entirely removed from the Floodway area although it will remain within the Floodplain Overlay district.



Figure 4: Floodplain map, showing subject parcel located entirely within the Floodway.

## REFERRALS

This application was referred to the typical agencies, departments, and adjacent property owners within 1,500-feet of the subject property. Copies of all referral responses received by the Community Planning & Permitting Department (CP&P) are attached. Responses are summarized below.

**Boulder County Floodplain Management Program:** The Floodplain Program Planners reviewed the proposal and expressed no conflicts with the subdivision exemption request. They also noted that the RSVP work supported by the proposal would remove most of the subject parcel from the Floodway and that, because it is located entirely within the Floodway currently, any future development on the parcel will require a Floodplain Development Permit.

**Boulder County Parks & Open Space (BCPOS) Natural Resource Planner:** The Natural Resource Planner expressed strong support for the proposal because it would support the RSVP and

therefore the long-term health of the environmental resources identified on the site, particularly those associated with St. Vrain Creek.

**Boulder County Development Review Team - Access & Engineering (DRT A&E):** The DRT A&E referral response noted that the property is accessed South Sunset Street, which is a City of Longmont-owned and maintained right-of-way (ROW), and that legal access is demonstrated via adjacency to this ROW, before noting that they have no concerns with the proposal. The referral response also indicated that any future development proposals would necessitate further comments.

**Boulder County Building Safety & Inspection Services:** The Building Team's initial referral response noted several requirements related to the earthwork anticipated as part of the creek restoration but did not express concerns regarding the proposed lot split. A revised referral response dated May 2, 2024 described permitting requirements for the unpermitted structure staff identified during the review.

**Agencies with no conflict:** Longmont Fire Services Division, City of Longmont Planning & Development Services, Boulder County Public Health Department.

**Agencies with no response:** County Long Range Planning Team, County Assessor, County Attorney, County Parks & Open Space Real Estate, County Sheriff, County Treasurer, County Public Works Department, County Stormwater Quality Team, County Surveyor, Northern Colorado Water Conservancy District, St. Vrain & Left Hand Water Conservancy District, Longmont Power and Communications, Mile High Flood District, CO Division of Water Resources – State Engineer's Office, US Army Corps of Engineers – Denver Regulatory Office.

**Adjacent Property Owners:** Notifications were sent to 21 adjacent property owner addresses, and staff received no comments in response.

## **SUBDIVISION EXEMPTION CRITERIA**

Section 9-400 of the Boulder County Land Use Code sets general criteria for Subdivision Exemptions. Staff has reviewed these criteria and finds the following:

- (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.***

The applicants propose to split approximately 1.7 acres of land from the subject parcel to create an entirely new parcel, and therefore the proposal would result in an increase in the number of currently existing lots.

However, staff find that the land use impacts of the proposal are mitigated by the fact that the lot split is not being conducted for development purposes. Rather, the lot split will facilitate flood mitigation work performed by the City of Longmont in conjunction with the Army Corps of Engineers and there is no intention that the lot become a Building Lot eligible for building permits.

Therefore, staff find that this criterion is met.

- (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 15 percent, unless served by public water and sewer.***

The subject property is not located in a platted subdivision, so the request is not for an Exemption Plat.

Therefore, this criterion is not applicable to this proposal.

- (3) ***The proposed lots shall have legal access.***

Following the lot split, Parcels A and B will be adjacent to the South Sunset Street ROW. There is also a deeded easement between the property owner and the City that allows easier access to the northern part of the project area (see purple cross-hatching in Figure 3).

Therefore, staff finds this criterion is met.

- (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.***

Currently the existing parcel is served by two access points to S. Sunset Street, and the application materials do not propose any changes to those accesses. The referral response from the Access & Engineering team expressed no concerns regarding the proposal, and staff do not have concerns that either of the new parcels will be incapable of being served by an adequate physical access should one be required.

Therefore, staff finds this criterion is met.

- (5) ***The proposed lots and potential development on them shall be capable of being served by an adequate water supply.***

The application materials indicate that the existing property is currently served by a City of Longmont water line. Staff anticipate that the existing water supply will be maintained to Parcel A once the proposed lot split is completed, and do not anticipate that Parcel B will require a water supply in the future, but are not concerned that one could be obtained if necessary.

Therefore, staff find that this criterion can be met.

- (6) ***The proposed lots and potential development on them shall be capable of being served by an adequate onsite wastewater system or sewage treatment system as required by Boulder County Public Health.***

The Boulder County Public Health Department referral response indicated no concerns with the proposal. The existing parcel is currently served by a septic system which will continue to serve Parcel A, and a new septic system is not likely to be required for Parcel B.

Therefore, staff finds this criterion can be met.

- (7) ***Adequate public facilities and services shall exist to serve the proposed lots and potential development on them.***

Staff find that adequate public facilities and services exist in the area, and no responses to the contrary were received from any referral agency.

Therefore, staff finds this criterion is met.

- (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***

The entirety of the subject parcel is located within the Floodplain Overlay District (FO) and therefore the newly proposed lots will be as well. However, staff find that the lots' location within the FO is successfully mitigated by the circumstances of the proposal. Following the proposed lot split, Parcel B will not be used for development purposes, other than the flood mitigation work described throughout this recommendation and the accompanying application materials. That flood mitigation work is also intended to remove the existing parcel (and therefore the newly created Parcel A) almost entirely from the FO.

- b. The development upon the proposed lots shall be possible outside the Floodplain Overlay District; or***

There is currently nowhere within the boundary of the existing parcel that is outside of the FO. However, the flood mitigation work supported by the proposal will remove the bulk of the land from the Floodway, if not the FO entirely and may allow future development outside of the FO.

- 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.***

Currently, the entirety of the subject property is located within the Floodway where little-to-no development is allowed. As proposed, neither Parcel A or Parcel B would be eligible for a

floodplain development permit except for the limited circumstances described in Art. 4-404.C of the Code. However, the proposed lot split would support flood mitigation work that will eventually remove most of the existing land from the Floodway and therefore make it eligible for floodplain development permits.

Due to the mitigating circumstances of the proposal as described in the applicants' narrative, staff finds this criterion is met.

- (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.***

Staff find that the sizes of the proposed lots would be in harmony with the character of the neighborhood. If approved, Parcel B will be approximately 1.7 acres in size while Parcel A will encompass approximately 4.6 acres. These new lot sizes will be closer to existing nearby unincorporated parcels, which range in size from .4 to 2 acres in area. There is no new development proposed as part of the subject application, but future development of either parcel is unlikely to be out of character with the surrounding area. Parcel B will contain the stream bank and be re-worked to mitigate flood risk, while the Parcel A will continue to be used for industrial uses that match the character of neighboring lots within the City of Longmont municipal boundary.

Therefore, staff finds this criterion is met.

- (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.***

Staff does not anticipate any unreasonable risk of harm to people or property resulting from the application. The Comprehensive Plan does not identify any geologic hazards on the site, the site is not located in a wildfire zone, and no referral agency responded with concerns that the proposal would be subject to natural hazard risks.

Therefore, staff finds this criterion is met.

- (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.***

The Boulder County Comprehensive Plan identifies a Riparian Area and Critical Wildlife Habitat associated with St. Vrain Creek as it flows along the northern boundary of the existing parcel. Staff are not concerned that the proposed boundary line adjustment will impact these resources in any way, although the flood mitigation work to follow will likely do so. The BCPOS Natural Resource Planner's referral response expressed strong support for the proposal and indicated that the flood mitigation work would likely improve the quality of the identified resources.

Therefore, staff finds this criterion is met.

- (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***

Staff do not have concerns that the proposal or potential future development will have a significant adverse impact on any historic, cultural, or archaeological resources on the parcel. The Comprehensive Plan does not identify any such resources on the site, nor were any identified by staff during the review process.

Therefore, staff finds this criterion is met.

- (13) ***The proposed lots and potential development on them shall not cause unnecessary or excessive site disturbance or erosion, or alter historic drainage patterns.***

No site disturbance, development, or changes to drainage have been proposed as part of the application.

Therefore, staff finds this criterion is met.

- (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.***

Staff finds that the proposed lot split will not conflict with the Comprehensive Plan or any applicable intergovernmental agreement. The proposed lot recognition will, however, formalize an existing conflict with the Code because of the unpermitted structures that currently exist on the parcel.

During the course of the review staff identified an unpermitted, ~1,000 sq. ft. structure that appears to have been added to the property sometime after 2020 (see figures 5 and 6, below). This structure was viewed during the site visit, and appeared to be approximately 20 feet in height. The Code requires that a building permit be issued for any structure more than 120 sq. ft. in size, or greater than 12 feet in height.



*Figure 5: 2020 aerial photo of the subject property*



*Figure 6: 2022 aerial photo of the subject property, unpermitted structure circled in green*

Staff also noted the presence of a fence along the northernmost section of the western parcel boundary that wraps around to the east and follows the top of the creek bank for a distance of approximately 700 ft. In areas, the fence was as much as 8 feet above existing grade but

typically seemed to be about 6.5 feet above grade. Fences that exceed a height of 6 feet above existing grade are considered to be Structures by the Code, and therefore require a building permit and must also meet required setbacks. The section of the fence that was 8 feet tall appeared to be located on a section of the current western parcel boundary.

Typically, staff would recommend a requirement that the property be brought into compliance prior to completion of the proposed lot split, either by removing the unpermitted structures or having permits issued. However, permits cannot be issued for either the fencing that exceeds 6 feet, or for the unpermitted structure, due to the entirety of the property being located within the Floodway. Furthermore, even fencing that does not require a permit (because it is less than 6 feet above existing grade) is prohibited in the Floodway. Conversations between staff and the current property owner indicate that the fencing predates their purchase of the property and is necessary to prevent trespassing and theft. Staff also note that the proposed lot split will eventually allow flood mitigation work that will remove the parcel from the FO almost entirely and allow for the issuance of permits.

To allow the flood mitigation work to proceed while still bringing the southernmost new parcel into compliance with the Code, staff recommend a condition of approval requiring that the unpermitted structures be mitigated within 3 years of approval, with an option for the Director to extend that timeframe if flood mitigation work has not been completed.

Therefore, as conditioned, staff find that this criterion can be met.

- (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.*

It is not clear from the application materials whether or not Parcel B will be incorporated into the adjacent City of Longmont park following the proposed lot split and subsequent annexation. However, staff find that the size, location, and available services in the area are appropriate for the proposed use of the newly created parcel.

Therefore, this criterion can be met.

## **RECOMMENDATION**

Community Planning & Permitting staff finds that the application **meets** the criteria for a Subdivision Exemption, as discussed above. Therefore, the staff recommends that the Board of County Commissioners **APPROVE** docket *SE-24-0003 Longmont Creek Channel Acquisition*, subject to the following conditions.

1. Within three years of approval of the proposed lot split, all unpermitted structures on either of the new parcels (including, but not limited to, fencing that exceeds 6 feet in height and structures larger than 120 sq. ft.) must be permitted or removed from the property. If flood mitigation work has not been completed within enough time to meet the 3 year deadline, and the unpermitted structures are still located within the Floodway, the Director may grant an extension following a written request by the property owner.
2. The applicant must comply with all applicable post-approval requirements for a Subdivision Exemption as listed in Article 3-206.C of the Boulder County Land Use Code, within one year after the date of approving the docket, unless an extension(s) of time is granted as allowed in Article 9-700 of the Boulder County Land Use Code.

3. The applicant shall be subject to the terms, conditions, and commitments of record and in the file for docket **SE-24-0003: Longmont Creek Channel Acquisition.**



## Boulder County Land Use Department

Courthouse Annex Building  
2045 13th Street • PO Box 471 • Boulder, Colorado 80302  
Phone: 303-441-3930  
Email: [planner@bouldercounty.org](mailto:planner@bouldercounty.org)  
Web: [www.bouldercounty.org/lu](http://www.bouldercounty.org/lu)  
Office Hours: Mon., Wed., Thurs., Fri. 8 a.m. to 4:30 p.m.  
Tuesday 10 a.m. to 4:30 p.m.

Shaded Areas for Staff Use Only

Intake Stamp

## Planning Application Form

The Land Use Department maintains a submittal schedule for accepting applications. Planning applications are accepted on Mondays, by appointment only. Please call 303-441-3930 to schedule a submittal appointment.

Project Number		Project Name	
<input type="checkbox"/> Appeal <input type="checkbox"/> Correction Plat <input type="checkbox"/> Exemption Plat <input type="checkbox"/> Final Plat <input type="checkbox"/> Limited Impact Special Use <input type="checkbox"/> Limited Impact Special Use Waiver <input type="checkbox"/> Location and Extent	<input type="checkbox"/> Modification of Site Plan Review <input type="checkbox"/> Modification of Special Use <input type="checkbox"/> Preliminary Plan <input type="checkbox"/> Resubdivision (Replat) <input type="checkbox"/> Rezoning	<input type="checkbox"/> Road Name Change <input type="checkbox"/> Road/Easement Vacation <input type="checkbox"/> Site Plan Review <input type="checkbox"/> Site Plan Review Waiver <input type="checkbox"/> Sketch Plan <input type="checkbox"/> Special Use/SSDP	<input type="checkbox"/> Special Use (Oil & Gas development) <input type="checkbox"/> State Interest Review (1041) <input checked="" type="checkbox"/> Subdivision Exemption <input type="checkbox"/> Variance <input type="checkbox"/> Other:
Location(s)/Street Address(es) <b>26 S. Sunset Street (Parcel No. 131504400009)</b>			
Subdivision Name <b>TR, 290-298 - COMMERCIAL</b>			
Lot(s)	Block(s)	Section(s) <b>04</b>	Township(s) <b>2 North</b> Range(s) <b>69 West</b>
Area in Acres <b>6.26</b>	Existing Zoning <b>GI</b>	Existing Use of Property <b>Industrial/undeveloped</b>	Number of Proposed Lots <b>2</b>
Proposed Water Supply <b>City of Longmont</b>		Proposed Sewage Disposal Method <b>no change - OWTS</b>	

### Applicants:

Applicant/Property Owner <b>26 S. Sunset Street LLC</b>		Email <b>s.natter@lidlandscapes.com</b>	
Mailing Address <b>1440 Townline Rd.</b>			
City <b>Mundelein</b>	State <b>IL</b>	Zip Code <b>60060</b>	Phone <b>303-440-7833</b>
Applicant/Property Owner/Agent/Consultant <b>City of Longmont</b>		Email <b>josh.sherman@longmontcolorado.gov</b>	
Mailing Address <b>385 Kimbark Street</b>			
City <b>Longmont</b>	State <b>CO</b>	Zip Code <b>80501</b>	Phone <b>303-651-8626</b>
Agent/Consultant		Email	
Mailing Address			
City	State	Zip Code	Phone

### Certification (Please refer to the Regulations and Application Submittal Package for complete application requirements.)

I certify that I am signing this Application Form as an owner of record of the property included in the Application. I certify that the information and exhibits I have submitted are true and correct to the best of my knowledge. I understand that all materials required by Boulder County must be submitted prior to having this matter processed. I understand that public hearings or meetings may be required. I understand that I must sign an Agreement of Payment for Application processing fees, and that additional fees or materials may be required as a result of considerations which may arise in the processing of this docket. I understand that the road, school, and park dedications may be required as a condition of approval.

I understand that I am consenting to allow the County Staff involved in this application or their designees to enter onto and inspect the subject property at any reasonable time, without obtaining any prior consent.

All landowners are required to sign application. If additional space is needed, attach additional sheet signed and dated.

Signature of Property Owner 	Printed Name <b>SCOTT NATTER</b>	Date <b>5/27/2024</b>
Signature of Property Owner	Printed Name	Date

The Land Use Director may waive the landowner signature requirement for good cause, under the applicable provisions of the Land Use Code.



# Community Planning & Permitting

2045 13th Street, Boulder, CO 80302 303-441-3930 www.bouldercounty.org

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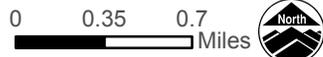
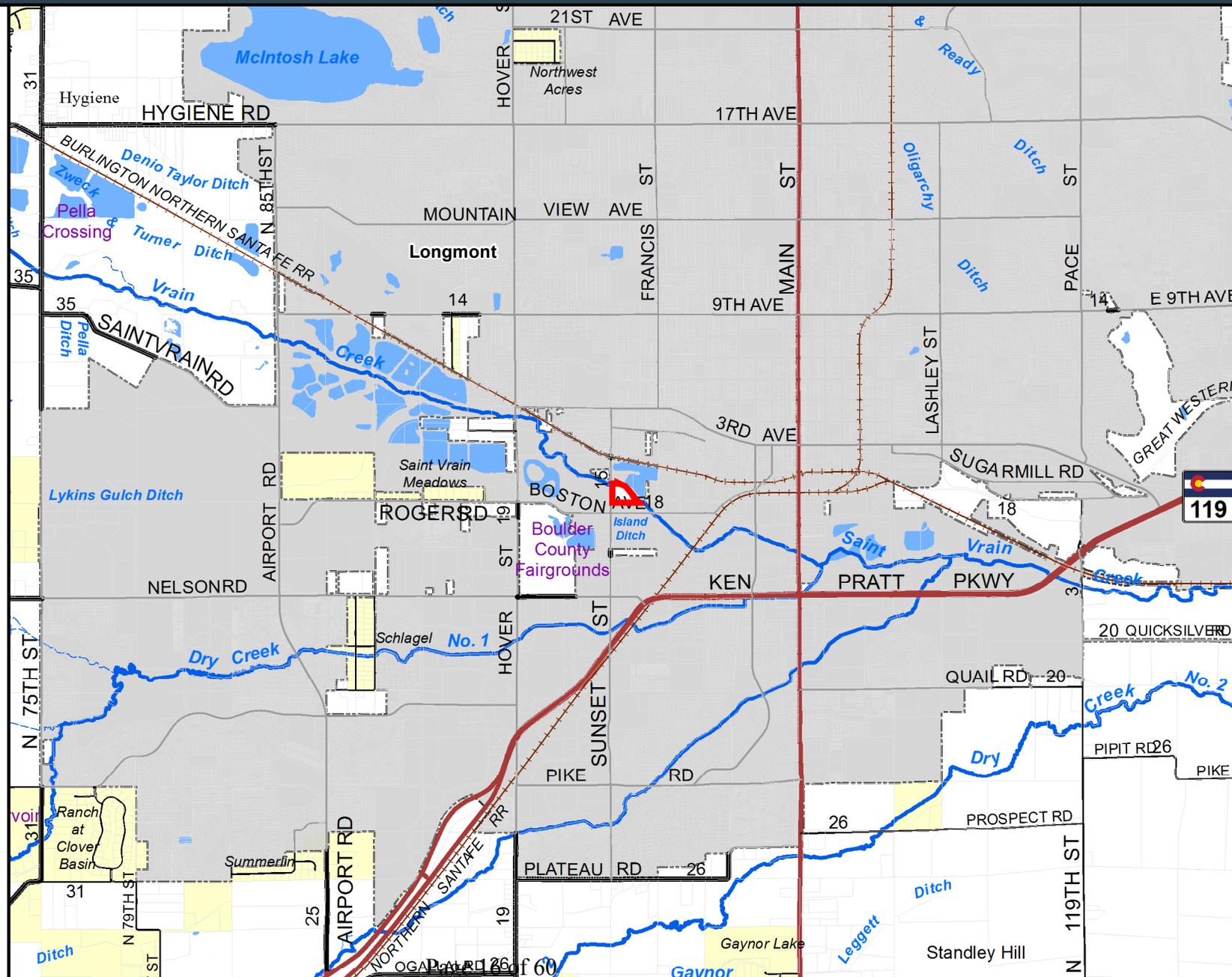
26 S SUNSET ST

Subject Parcel

Municipalities

### Subdivisions

Subdivisions



Area of Detail Date: 3/6/2024



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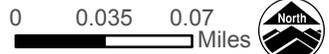
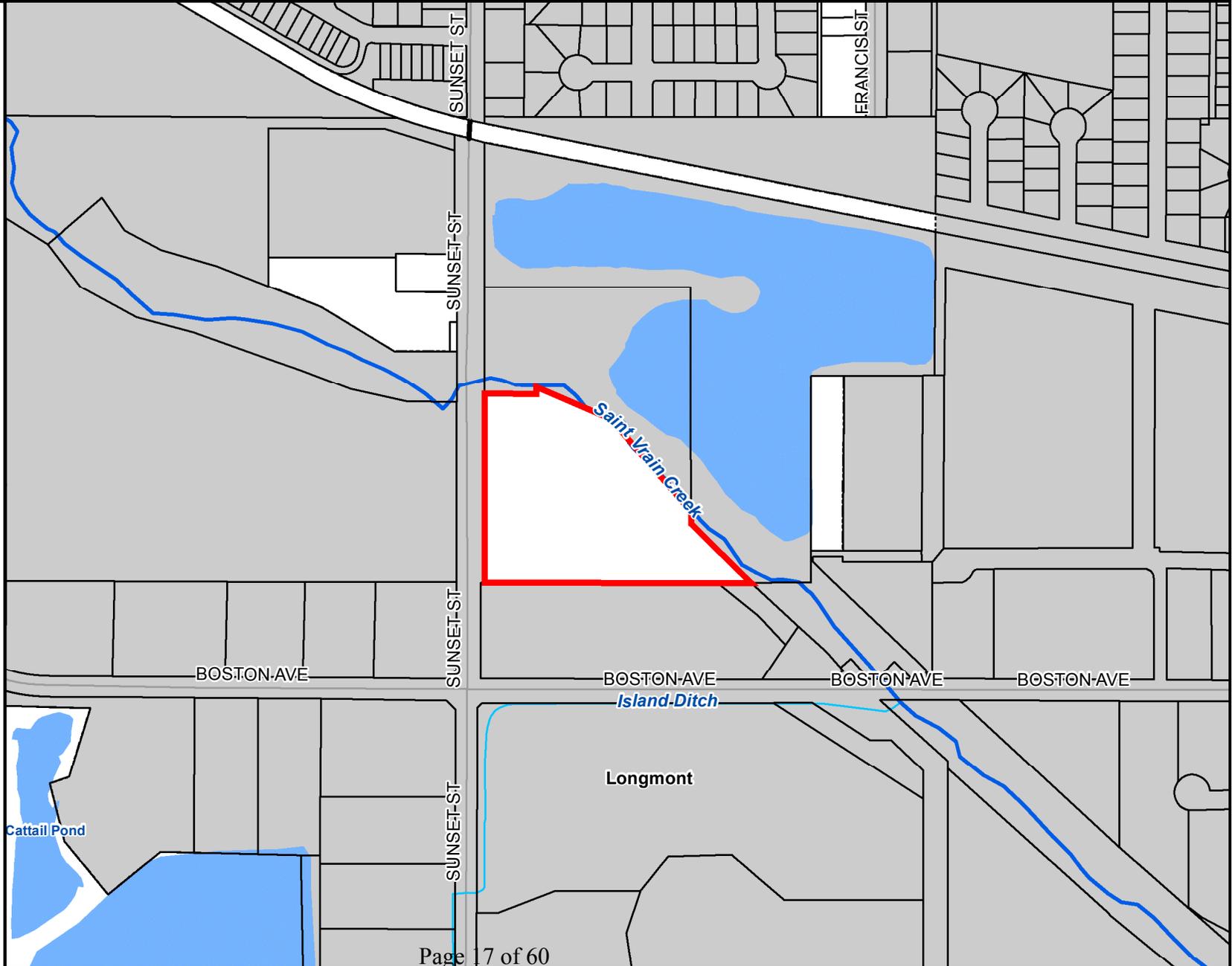
# Community Planning & Permitting

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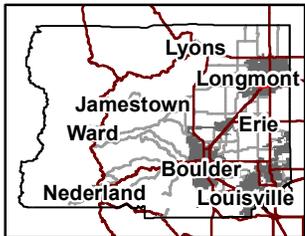
Location

26 S SUNSET ST

 Subject Parcel



Area of Detail Date: 3/6/2024



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# Community Planning & Permitting

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Aerial

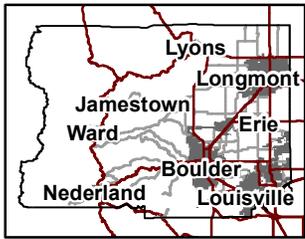
26 S SUNSET ST

 Subject Parcel



0 0.0085 0.017 Miles 

Area of Detail Date: 3/6/2024



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# Community Planning & Permitting

2045 13th Street, Boulder, CO 80302 303-441-3930 www.bouldercounty.org

Aerial

26 S SUNSET ST

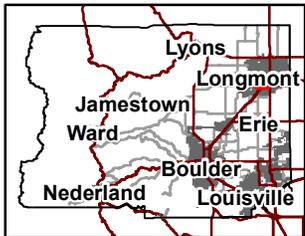
 Subject Parcel



0 0.05 0.1 Miles



Area of Detail Date: 3/6/2024



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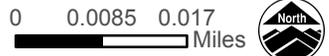
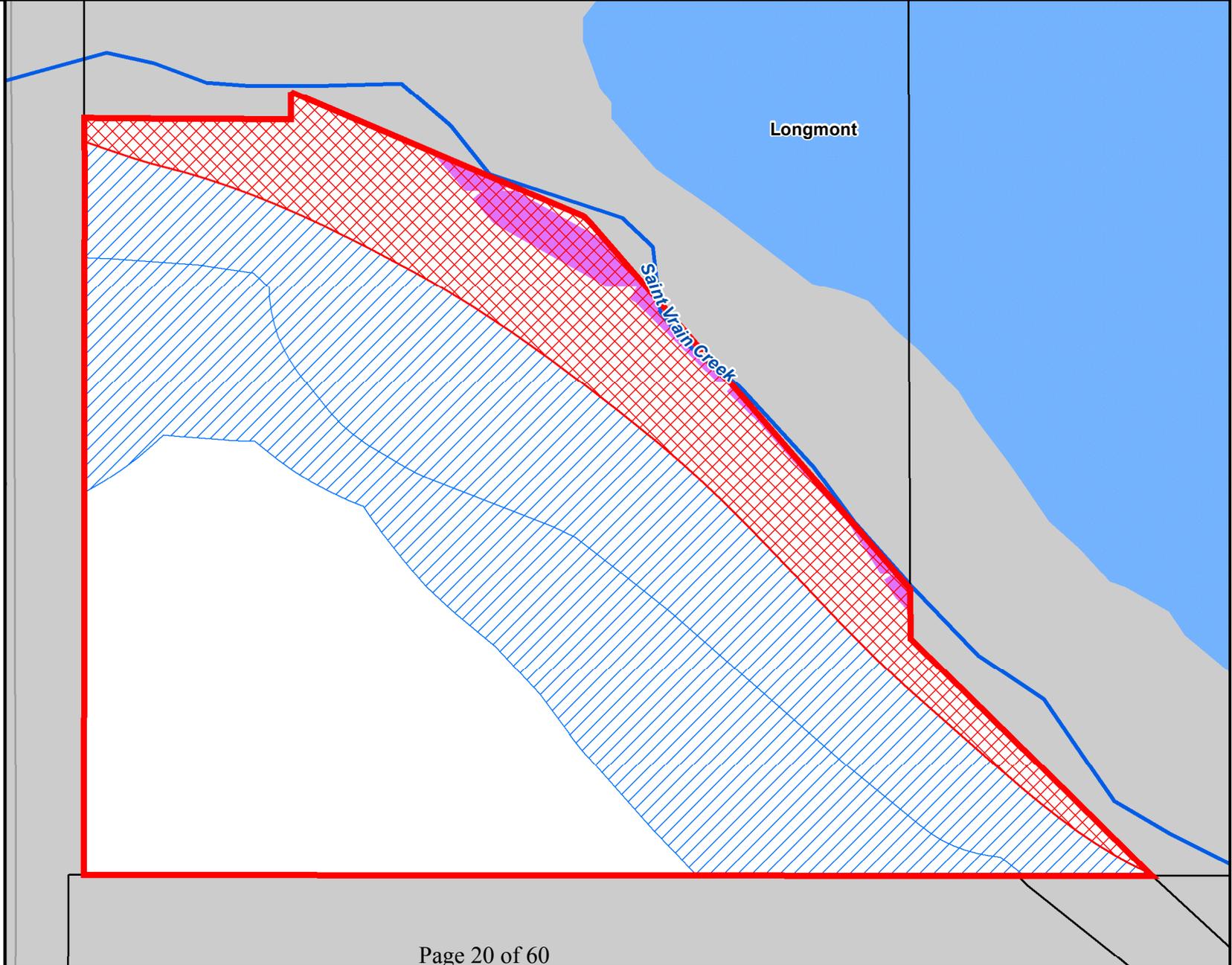
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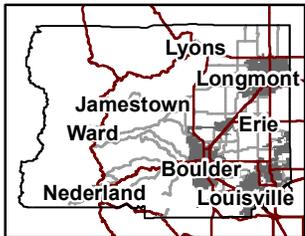
## Comprehensive Plan

26 S SUNSET ST

-  Subject Parcel
-  Critical Wildlife Habitats
-  Riparian Areas
-  Riparian Habitat Connectors



Area of Detail Date: 3/6/2024



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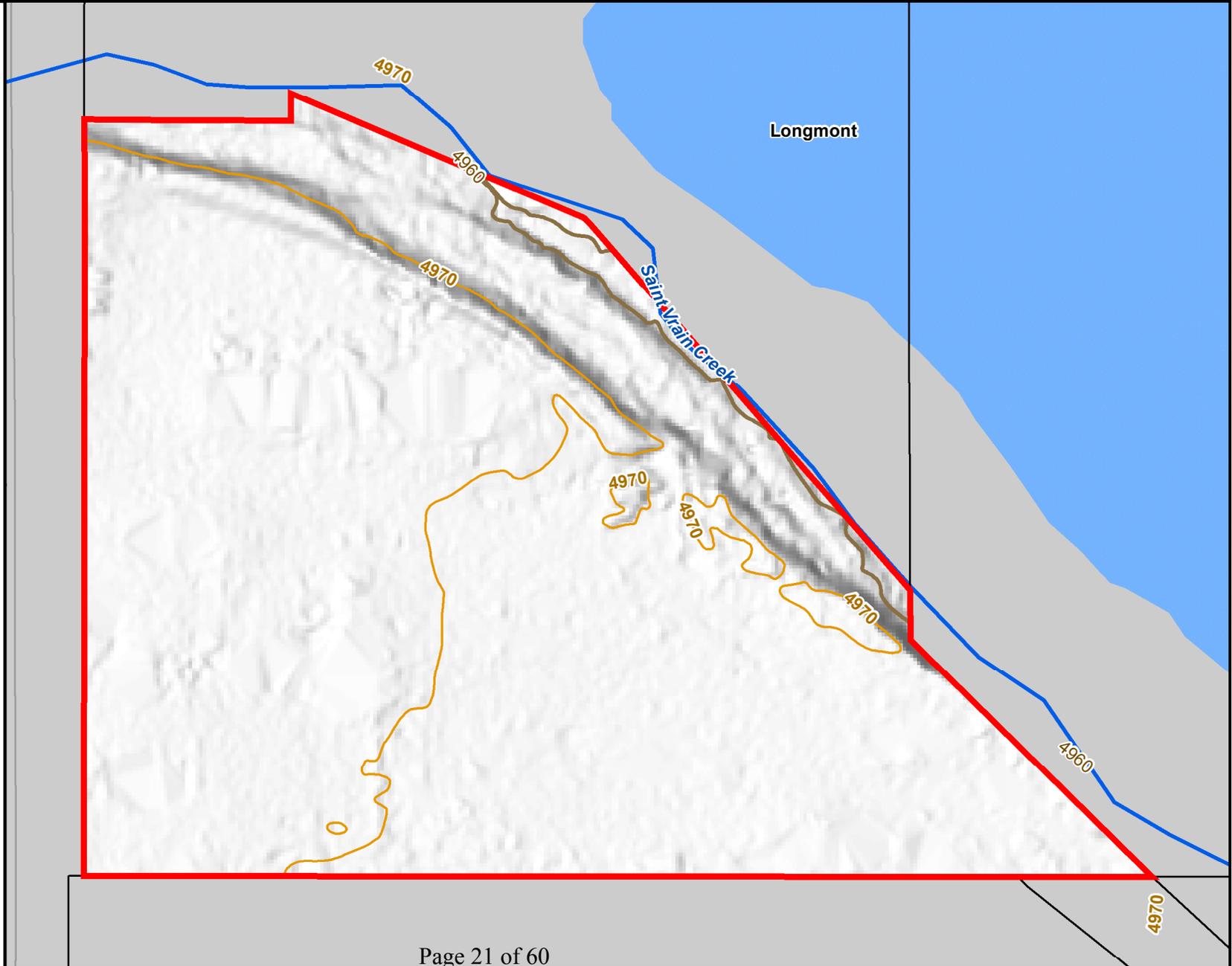
# Community Planning & Permitting

2045 13th Street, Boulder, CO 80302 303-441-3930 www.bouldercounty.org

## Elevation Contours

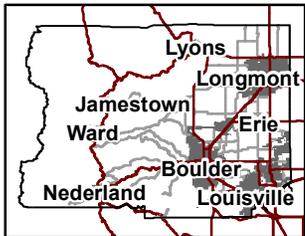
26 S SUNSET ST

- Subject Parcel
- Contours 40'
- Contours 10'



0 0.0085 0.017  
Miles

Area of Detail Date: 3/6/2024



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# Community Planning & Permitting

2045 13th Street, Boulder, CO 80302 303-441-3930 www.bouldercounty.org

## Floodplain

26 S SUNSET ST

Subject Parcel

### Floodplain

100-Year Floodplain

- Zones AE, A, AO and AH

Floodway

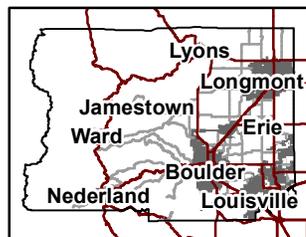
500-Year Floodplain

- Zone X500

0 0.0085 0.017 Miles



Area of Detail Date: 3/6/2024



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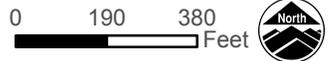
# Community Planning & Permitting

2045 13th Street, Boulder, CO 80302 303-441-3930 www.bouldercounty.org

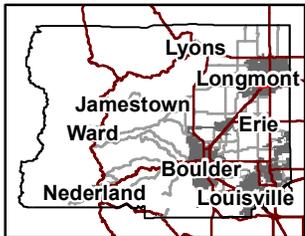
## Geologic Hazards

26 S SUNSET ST

- Subject Parcel
- High Swelling Soil Potential



Area of Detail Date: 3/6/2024



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# Community Planning & Permitting

2045 13th Street, Boulder, CO 80302 303-441-3930 www.bouldercounty.org

Planning Areas

26 S SUNSET ST

Subject Parcel

### Airport Influence

Airport Influence

Active IGA Boundary

### Active IGA Designation

MUNICIPAL INFLUENCE

Creek Planning Area



St Vrain Creek Planning Area Buffer

MUNICIPAL INFLUENCE

Saint Vrain Creek

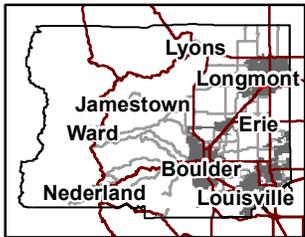
Island Ditch

Cattail Pond

0 0.035 0.07 Miles



Area of Detail Date: 3/6/2024



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# Community Planning & Permitting

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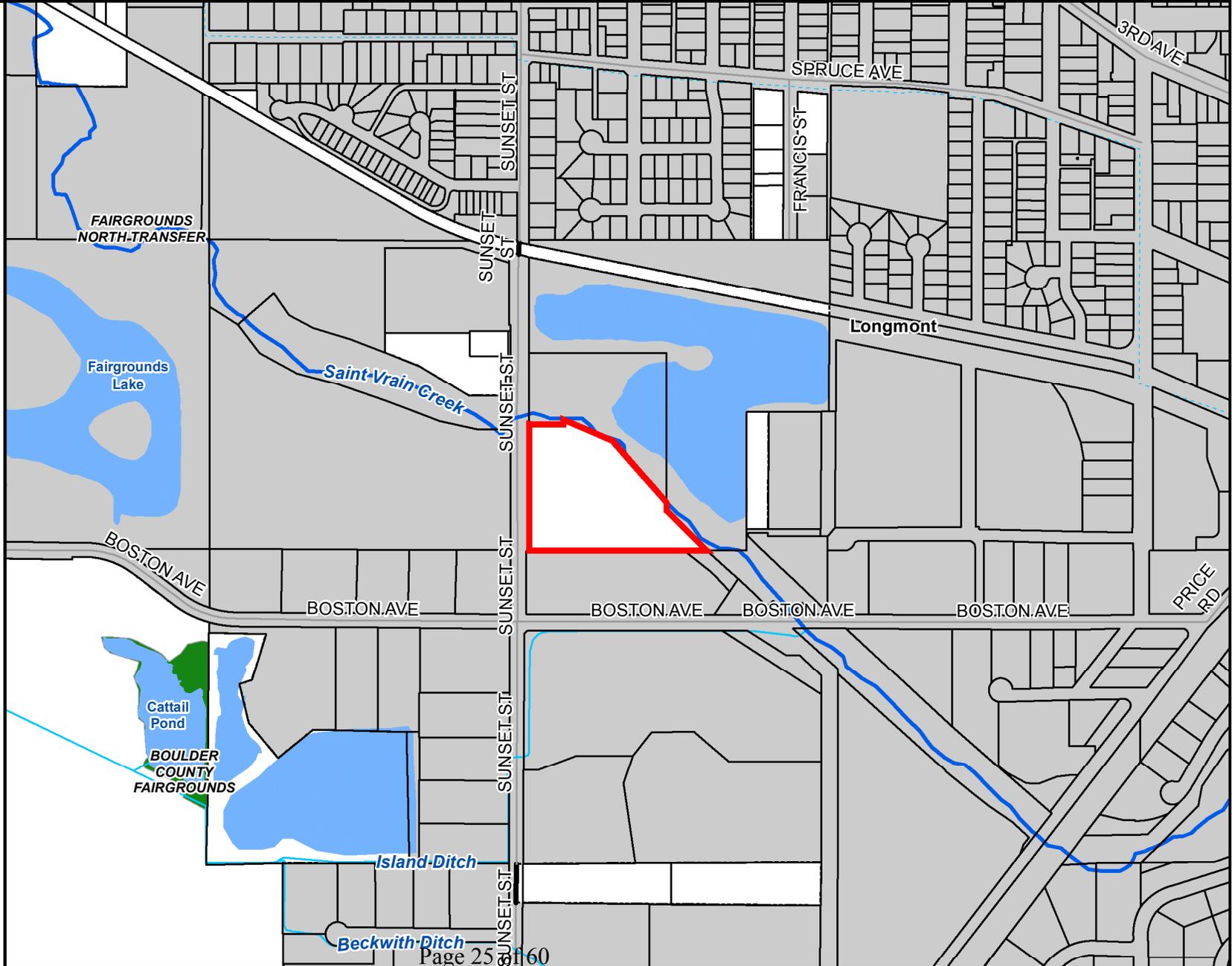
Public Lands & CEs

26 S SUNSET ST

Subject Parcel

### Boulder County Open Space

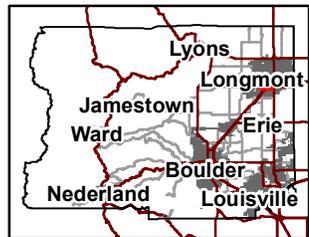
- County Open Space
- County Conservation Easement



0 0.05 0.1 Miles



Area of Detail Date: 3/6/2024



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# Community Planning & Permitting

2045 13th Street, Boulder, CO 80302 303-441-3930 www.bouldercounty.org

Zoning

26 S SUNSET ST

Subject Parcel

### Zoning Districts

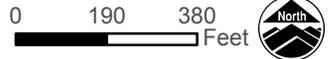
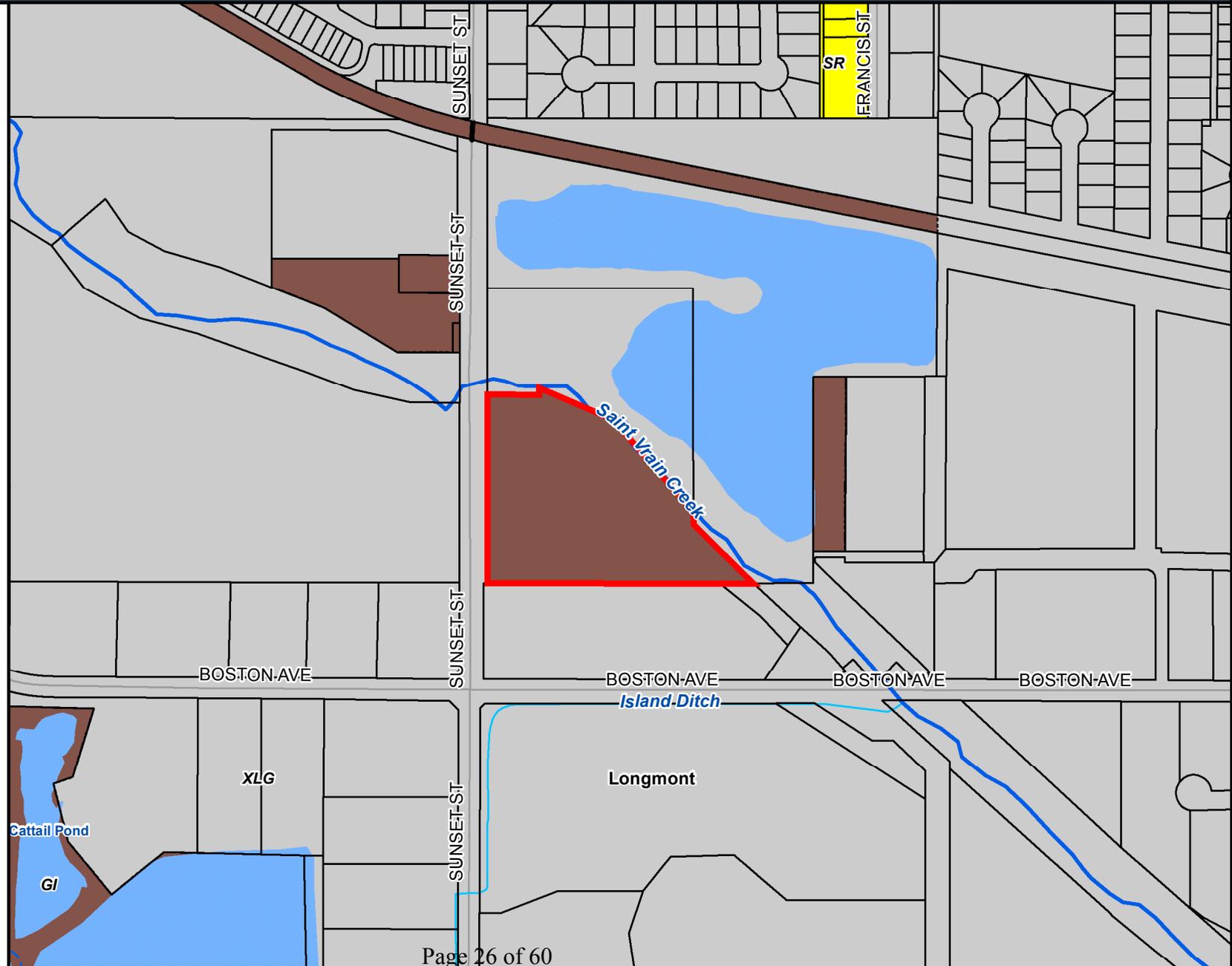
General Industrial

Suburban Residential

### Ditch Setbacks

20 feet

50 feet



Area of Detail Date: 3/6/2024



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## 26 S. Sunset Street – Subdivision Exemption

### Project Narrative.

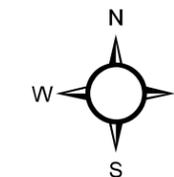
The Resilient St. Vrain Project (RSVP) is the City's multi-year, multi-phase project to restore the St. Vrain Greenway and improve St. Vrain Creek through Longmont to protect people, property and infrastructure from future flood risk. RSVP is a master plan for St. Vrain Creek improvements within the City's planning area. The estimated budget for RSVP is \$140- to \$160- million. The project limits extend from downstream at the confluence with Boulder Creek (at the City's Sandstone Ranch Open Space properties) upstream to Airport Road. Project improvements must be completed from downstream to upstream. Work completed to date includes work from Sandstone Ranch up to Boston Ave. which represents over \$80 million dollars of improvements.

The City has partnered with the US Army Corps of Engineers (USACE) under their 205 Program for design and construction St. Vrain Creek channel improvements from Boston Avenue to S. Sunset Street including replacement of the Boston Avenue Bridget over St. Vrain Creek and a new levee between Izaak Walton Pond and the creek. The City has awarded a contract for construction of the Boston Avenue Bridge replacement. The bridge project started work in the summer of 2023 with an anticipated construction period of 24-months. The USACE has completed final design of the channel improvements from Boston Ave. to S. Sunset Street. This phase of the project is currently ready for bid advertisement with construction anticipated to start in summer of this year with an anticipated 18-month construction period.

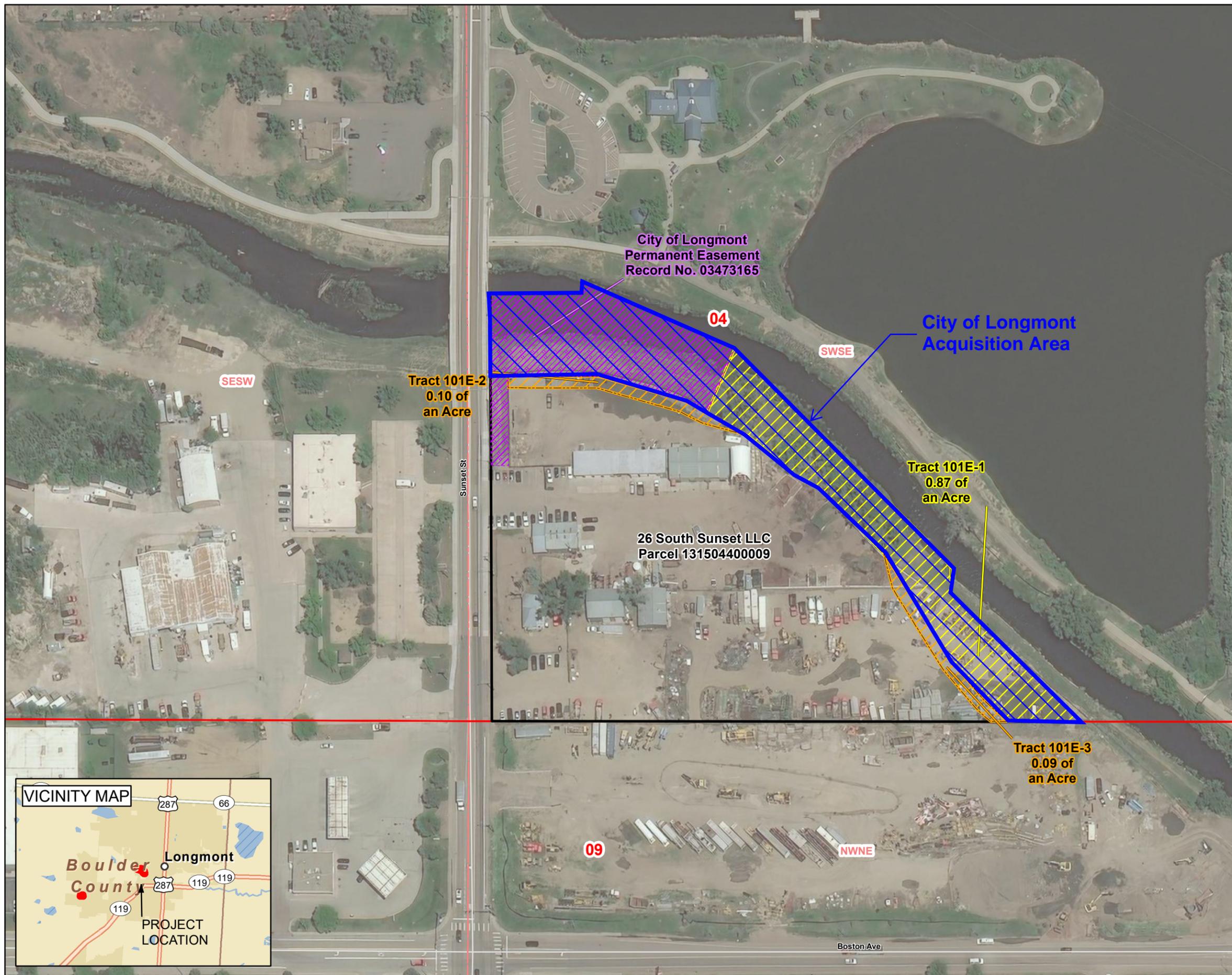
The USACE final design identified property impacts on adjacent parcels including the subject property at 26 S. Sunset Street. The subject property is approximately 6.58 acres located at the southeast corner of S. Sunset Street and St. Vrain Creek. The City of Longmont is proposing to purchase approximately 1.69 acres of the northern portion of the subject property, as required for channel improvements and flood control. The City of Longmont and the property owner are submitting this Subdivision Exemption application to Boulder County to subdivide the property.

# Longmont

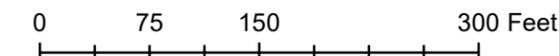
Boulder County, CO



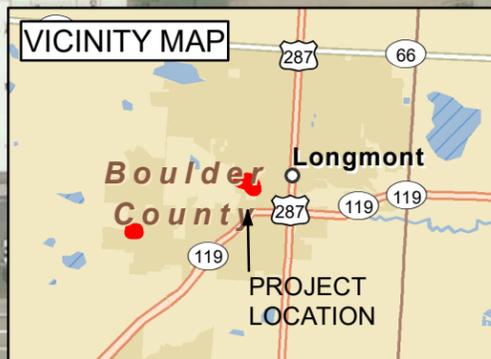
T2N,R69W  
6th Principal Meridian



- Permanent Bridge Easement (0.727 of an Acre)
- Permanent Easement (0.87 of an Acre)
- Temporary Construction Easement (0.19 of an Acre)
- Parcels
- Sections
- QtrQtrs
- Roads
- Railroads
- Streams



Disclaimer: The Government furnishes this data and the recipient accepts and uses it with the express understanding that the United States Government makes no warranties, expressed or implied, concerning the accuracy, completeness, reliability, usability, or suitability for any particular purpose of the information and data furnished. The United States shall be under no liability whatsoever to any person by reason of any use made thereof. Data displayed on this map are approximations derived from GIS layers and should NOT be used in place of survey data or legal land descriptions.



<b>Real Estate</b> CENWO-RE-S	
Produced By: Paige Dunkle	 <b>US Army Corps of Engineers</b> ® Omaha District
Production Date: 15-SEP-22	
Revised By:	
Revision Date:	
File Location: T:\Longmont\15SEPT22 Updates\ ParcelMap_26_South_Sunset_LLC.mxd	

EXHIBIT "A"



## Community Planning & Permitting

Courthouse Annex • 2045 13th Street • Boulder, Colorado 80302  
 Mailing Address: P.O. Box 471 • Boulder, Colorado 80306  
 303-441-3930 • www.BoulderCounty.gov

MEMO TO: Agencies and adjacent property owners  
 FROM: Sam Walker, Planner II  
 DATE: April 18, 2024  
 RE: Docket SE-24-0003

### Docket SE-24-0003: Longmont Creek Channel Acquisition

Request: Subdivision Exemption request to separate approximately 1.7 acres of land from the subject property for purchase by the City of Longmont for flood mitigation work in order to support the Resilient St. Vrain Project.

Location: 26 S. Sunset Street, approximately .1 miles north of the intersection of S. Sunset Street and Boston Avenue in Section 4, Township 2N, Range 69W.

Zoning: General Industrial (GI) Zoning District

Owner/  
 Applicant: Scott Natter, c/o 26 S. Sunset Street LLC

Agent: Josh Sherman, c/o City of Longmont

A Subdivision Exemption is a waiver of the usual subdivision requirements to allow a Boundary Line Adjustment, a Lot Recognition, a Lot Split, or a Community Facility Lot Split. This process includes a public hearing before the Boulder County Board of County Commissioners. Adjacent property owners and holders of liens, mortgages, easements or other rights in the subject property are notified of these hearings.

The Community Planning & Permitting staff and County Commissioners value comments from individuals and referral agencies. Please check the appropriate response below or send a letter to the Community Planning & Permitting Department at P.O. Box 471, Boulder, Colorado 80306 or via email to [planner@bouldercounty.gov](mailto:planner@bouldercounty.gov). All comments will be made part of the public record and given to the applicant. Only a portion of the submitted documents may have been enclosed; you are welcome to call the Community Planning & Permitting Department at 303-441-3930 or email [planner@bouldercounty.gov](mailto:planner@bouldercounty.gov) to request more information. If you have any questions regarding this application, please contact me at 720-564-2738 or [swalker@bouldercounty.gov](mailto:swalker@bouldercounty.gov).

Please return responses by **May 3, 2024**.

We have reviewed the proposal and have no conflicts.  
 Letter is enclosed.

Signed Don Burchett PRINTED Name Don Burchett  
 Agency or Address City of Longmont  
 Date 4/23/2024

Claire Levy County Commissioner Marta Loachamin County Commissioner Ashley Stolzmann County Commissioner



# Community Planning & Permitting

Courthouse Annex • 2045 13th Street • Boulder, Colorado 80302 • Tel: 303.441.3930  
 Mailing Address: P.O. Box 471 • Boulder, Colorado 80306 • [www.bouldercounty.gov](http://www.bouldercounty.gov)

## Building Safety & Inspection Services Team

### MEMO

**TO:** Sam Walker, Planner II  
**FROM:** Michelle Huebner, Plans Examiner Supervisor  
**DATE:** April 22, 2024

**RE:** Referral Response, SE-24-0003: Longmont Creek Channel Acquisition: Subdivision Exemption request to separate approximately 1.7 acres of land from the subject property for purchase by the City of Longmont for flood mitigation work in order to support the Resilient St. Vrain Project.

Location: 26 S. Sunset Street

Thank you for the referral. We have the following comments for the applicants:

1. **Building Permit.** A grading permit, plan review, and inspection approvals are required for the grading. The construction documents must be Stamped, signed and sealed by the Colorado design professional.

Please refer to the county's adopted 2015 editions of the International Codes and code amendments, which can be found via the internet under the link:

**2015 Building Code Adoption & Amendments**, at the following URL:  
[Amendments to Boulder County Building Code effective June 6, 2022](#)

2. **Grading Permit.** A separate grading permit and plan review and inspections approvals are required for the proposed non-foundational grading. Please refer to the county's adopted 2015 editions of the International Codes and code amendments, including IBC Appendix Chapter J for grading.
3. **Observation Reports.** The design professional responsible for the design or a similarly qualified Colorado-licensed design professional is to observe the grading and submit a stamped report to Building Safety & Inspection Services for review and approval. The final report is to state that the work has been completed in substantial conformance with the approved engineered plans.

Claire Levy County Commissioner Marta Loachamin County Commissioner Ashley Stolzmann County Commissioner

4. **Plan Review.** The items listed above are a general summary of some of the county's building code requirements. A much more detailed plan review will be performed at the time of grading permit application.

If the applicants should have questions or need additional information, we'd be happy to work with them toward solutions that meet minimum building code requirements. Please call (720) 564-2640 or contact us via e-mail at [building@bouldercounty.org](mailto:building@bouldercounty.org)



# Community Planning & Permitting

Courthouse Annex • 2045 13th Street • Boulder, Colorado 80302 • Tel: 303.441.3930  
 Mailing Address: P.O. Box 471 • Boulder, Colorado 80306 • [www.bouldercounty.gov](http://www.bouldercounty.gov)

## Building Safety & Inspection Services Team

### MEMO

**TO:** Sam Walker, Planner II  
**FROM:** Michelle Huebner, Plans Examiner Supervisor  
**DATE:** May 2, 2024 - revised

**RE:** Referral Response, SE-24-0003: Longmont Creek Channel Acquisition: Subdivision Exemption request to separate approximately 1.7 acres of land from the subject property for purchase by the City of Longmont for flood mitigation work in order to support the Resilient St. Vrain Project.

Location: 26 S. Sunset Street

Thank you for the referral. We have the following comments for the applicants:

1. **Building Permits.** Building permits, plan review, inspection approvals and a Certificate of Occupancy ("C.O.") is required for the building. A separate building permit is required for fences over 6'-0". The building that was constructed without the benefit of a building permit will be reviewed through the International Building Code (IBC) as a commercial building.

Please refer to the county's adopted 2015 editions of the International Codes and code amendments, which can be found via the internet under the link:

**2015 Building Code Adoption & Amendments**, at the following URL:  
[Amendments to Boulder County Building Code effective June 6, 2022](#)

**The Commercial Plan Submittal Checklist:** [B70 Commercial Plan Checklist \(bouldercounty.gov\)](#)

2. **Minimum Plumbing Fixtures.** The plumbing fixtures count needs to meet or exceed the requirements of IBC Chapter 29, including the need for accessible restrooms and fixtures.
3. **Accessibility.** Chapter 11 of the IBC and referenced standard ICC A117.1-09 provide for accessibility for persons with disabilities. Any building permit submittals are to

include any applicable accessibility requirements, including accessible parking, signage, accessible routes and accessible fixtures and features.

4. **Fire Department.** A separate referral response from the fire departments should be requested. The fire department may have additional requirements in accordance with their International Fire Code (“IFC”) adoption. Also, the Mountain View Fire Rescue District must provide written documentation to Boulder County Building Safety and Inspection Services approving the building permit plans and specifications of projects before the building permit can be issued.
5. **Design Wind and Snow Loads.** The design wind and snow loads for the property are 140 mph (Vult) and 35 psf, respectively.
6. **Ignition-Resistant Construction and Defensible Space.** Please refer to Section R327 of the Boulder County Building Code for wildfire hazard mitigation requirements, including ignition-resistant construction and defensible space.
7. **Grading Permit.** A separate grading permit and plan review and inspections approvals are required for the proposed non-foundational grading. The construction documents must be Stamped, signed and sealed by the Colorado design professional. Please refer to the county’s adopted 2015 editions of the International Codes and code amendments, including IBC Appendix Chapter J for grading.
8. **Observation Reports.** The design professional responsible for the design or a similarly qualified Colorado-licensed design professional is to observe the grading and submit a stamped report to Building Safety & Inspection Services for review and approval. The final report is to state that the work has been completed in substantial conformance with the approved engineered plans.
9. **Plan Review.** The items listed above are a general summary of some of the county’s building code requirements. A much more detailed plan review will be performed at the time of grading permit application.

If the applicants should have questions or need additional information, we’d be happy to work with them toward solutions that meet minimum building code requirements. Please call (720) 564-2640 or contact us via e-mail at [building@bouldercounty.org](mailto:building@bouldercounty.org)



## Community Planning & Permitting

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 Mailing Address: P.O. Box 471 • Boulder, Colorado 80306  
 303-441-3930 • [www.BoulderCounty.gov](http://www.BoulderCounty.gov)

April 22, 2024

To: Sam Walker, Planner II  
 From: Sarah Heller, Floodplain Program Planner

Subject: Docket SE-24-0003 Longmont Creek Channel Acquisition  
 Request: Subdivision Exemption request to separate approximately 1.7 acres of land from the subject property for purchase by the City of Longmont for flood mitigation work in order to support the Resilient St. Vrain Project.  
 Location: 26 S. Sunset Street, approximately .1 miles north of the intersection of S. Sunset Street and Boston Avenue in Section 4, Township 2N, Range 69W.

The Community Planning & Permitting Department – Floodplain Management Program has reviewed the above referenced docket and has the following comments:

1. We have no conflict with the proposed subdivision exemption.
2. We previously reviewed the floodplain impacts of the City of Longmont's Resilient Saint Vrain Project under Conditional Letter of Map Revision CLOMR 22-08-0716R, which has been approved by the county and FEMA. Currently the property is mapped Floodway but the City's proposed work maps it as mostly outside all floodplains with some 500-year and some Floodway.
3. The entire property is located in the Saint Vrain Creek Floodway. Any future development within the Floodplain Overlay (FO) District will require a Floodplain Development Permit.

Please contact Sarah Heller, Floodplain Program Planner, at [sheller@bouldercounty.gov](mailto:sheller@bouldercounty.gov) to discuss this referral.

This concludes our comments at this time.



## Community Planning & Permitting

Courthouse Annex • 2045 13th Street • Boulder, Colorado 80302

Mailing Address: P.O. Box 471 • Boulder, Colorado 80306 •

Tel: 303-441-3930 • www.BoulderCounty.gov

May 1, 2024

**TO:** Sam Walker, Planner II; Community Planning & Permitting, Development Review Team - Zoning

**FROM:** Brian P. Kelly, Planner II, Community Planning & Permitting, Development Review Team – Access & Engineering

**SUBJECT:** Docket # SE-24-0003: Longmont Creek Channel Acquisition – 26 S. Sunset Street

The Development Review Team – Access & Engineering staff has reviewed the above referenced docket and has the following comments:

1. The subject property is accessed from South Sunset Street, a paved, City of Longmont owned and maintained right-of-way (ROW). Legal access has been demonstrated via adjacency to the public ROW.
2. Due to the limited scope of this proposal, no changes to access and drainage are expected. Access & Engineering have no concerns with this proposal as presented.
3. If parcel remains within Unincorporated Boulder County, comments will be provided for any future development proposals.

This concludes our comments at this time.



## Parks & Open Space

5201 St. Vrain Road • Longmont, CO 80503  
303-678-6200 • POSinfo@bouldercounty.org  
www.BoulderCountyOpenSpace.org

**TO:** Sam Walker, Community Planning & Permitting Department  
**FROM:** Ron West, Natural Resource Planner  
**DATE:** April 23, 2024  
**SUBJECT:** Docket SE-24-0003, City of Longmont, 26 Sunset Street

Staff has reviewed the submitted materials, and strongly supports the proposal. This docket, per se, does not include ground disturbances, yet after the subdivision the Critical Wildlife Habitat and Riparian Area along St. Vrain Creek would be impacted during floodplain construction. However, both of these resources would be significantly improved in the long-term.

The proposal would help implement the long-term vision for the St. Vrain Creek corridor as a wildlife habitat and recreational area, which the Parks & Open Space Department supports.



# Community Planning & Permitting

Courthouse Annex • 2045 13th Street • Boulder, Colorado 80302  
 Mailing Address: P.O. Box 471 • Boulder, Colorado 80306  
 303-441-3930 • www.BoulderCounty.gov

MEMO TO: Agencies and adjacent property owners  
 FROM: Sam Walker, Planner II  
 DATE: April 18, 2024  
 RE: Docket SE-24-0003

## **Docket SE-24-0003: Longmont Creek Channel Acquisition**

Request: Subdivision Exemption request to separate approximately 1.7 acres of land from the subject property for purchase by the City of Longmont for flood mitigation work in order to support the Resilient St. Vrain Project.

Location: 26 S. Sunset Street, approximately .1 miles north of the intersection of S. Sunset Street and Boston Avenue in Section 4, Township 2N, Range 69W.

Zoning: General Industrial (GI) Zoning District

Owner/ Applicant: Scott Natter, c/o 26 S. Sunset Street LLC

Agent: Josh Sherman, c/o City of Longmont

A Subdivision Exemption is a waiver of the usual subdivision requirements to allow a Boundary Line Adjustment, a Lot Recognition, a Lot Split, or a Community Facility Lot Split. This process includes a public hearing before the Boulder County Board of County Commissioners. Adjacent property owners and holders of liens, mortgages, easements or other rights in the subject property are notified of these hearings.

The Community Planning & Permitting staff and County Commissioners value comments from individuals and referral agencies. Please check the appropriate response below or send a letter to the Community Planning & Permitting Department at P.O. Box 471, Boulder, Colorado 80306 or via email to [planner@bouldercounty.gov](mailto:planner@bouldercounty.gov). All comments will be made part of the public record and given to the applicant. Only a portion of the submitted documents may have been enclosed; you are welcome to call the Community Planning & Permitting Department at 303-441-3930 or email [planner@bouldercounty.gov](mailto:planner@bouldercounty.gov) to request more information. If you have any questions regarding this application, please contact me at 720-564-2738 or [swalker@bouldercounty.gov](mailto:swalker@bouldercounty.gov).

Please return responses by **May 3, 2024**.

We have reviewed the proposal and have no conflicts.  
 Letter is enclosed.

Signed AC Michele Goldman PRINTED Name Asst Chief Michele Goldman

Agency or Address Longmont Fire Operations

Date April 19, 2024

Claire Levy County Commissioner Marta Loachamin County Commissioner Ashley Stolzmann County Commissioner



# Boulder County Housing Department

P.O. Box 471, Boulder, CO 80306 • Tel: 303.441.3929 Fax: 720.564.2283

[www.BoulderCountyHousing.gov](http://www.BoulderCountyHousing.gov)

## BCHA Working Session May 16, 2024 Agenda

### SLP Policy Review

During our working session we would like to review the Policy on Participation in Developments Led by Others (aka special limited partnerships).

The existing Policy was drafted and recorded in 2017; staff believes it is thorough and will serve the current Board and BCHA organization well in determining SLP eligibility.

BCHA staff believes SLPs are a low-effort (although certainly not “no effort”) way to increase affordable housing stock in Boulder County by supporting other projects. SLPs are also a way to generate modest income for BCHA to be invested in additional affordable housing project.

BCHA staff requests that the Commissioners review the policy thoroughly ahead of this meeting and provide direction on how to proceed. In recent months, staff have been approached by four separate affordable housing developers wishing to partner with BCHA to support projects, both new development and existing affordable developments whose operating budgets are suffering and would benefit from tax abatement moving forward.

Questions to consider:

- The Development Participation Proposal Form does not exist or cannot be located. Can we create a new one that includes a checklist for application?
- Can the BCHA Board meetings be utilized for hearings, or will we need to schedule separate hearings?
- For evaluation – there are 7 threshold criteria, 15 evaluation criteria, and 10 “other” criteria. Provide direction on minimum to recommend?
- The policy does not include provisions for existing projects seeking tax exemption. Given the current market, increasing operational costs, staff would like to recommend that existing projects also be considered.

# BUSINESS MEETING ITEM COVER SHEET

DEPARTMENT Housing and Human Services

DIVISION Housing Authority

TITLE H.A. Resolution 2017-06, approving a Policy on BCHA  
Participation in Affordable Housing Projects Led by Others

---

DOCUMENT TYPE Resolution

SUBTYPE BCHA

---

BUSINESS MEETING DATE 10/03/17

COMMISSIONERS' ACTION

Approved

Denied

Other

---

ORIGINAL(S) RETURNED TO Vault + Ben Doyle

AGENDA ITEM NUMBER

1

COMMENTS BOCC acted as Housing Authority Board for this item



# Housing Authority

2525 13<sup>th</sup> Street, Suite 204 • Boulder, Colorado 80304 • Tel: 303.441.3929 Fax: 720.564.2283  
www.bouldercountyhhs.org

## BOULDER COUNTY HOUSING AUTHORITY

### Resolution 2017-06

#### Approving a Policy on BCHA Participation in Affordable Housing Projects Led by Others

##### Recitals

A. Private sector developers have recently submitted unsolicited proposals requesting that BCHA partner with them on affordable housing projects. In many instances, the requestors desire BCHA participation so that the project may become exempt from property taxes, special assessments, and sales and use taxes during construction, for so long as BCHA is a part owner of the project.

B. BCHA does not currently have a formal policy in place addressing how it evaluates such requests.

C. Our mission is to foster the availability of quality affordable housing and related services for residents using broad community resources. We strive to accomplish our mission through community collaboration, effective services and programs, professional organization, efficient resource management, and expansion of funding sources. As such, BCHA welcomes such proposals.

D. The County Housing Authority Enabling Act provides at C.R.S. § 29-4-507 that BCHA and its property shall be exempt from all taxes and special assessments on the same basis and subject to the same conditions as provided for city housing authorities by C.R.S. §§ 29-4-226 and 29-4-227.

E. County housing authorities are also empowered to grant or lend moneys or otherwise provide financing to any person, firm, corporation, the city, or a government for any project or any part thereof; to pledge or otherwise encumber any of its moneys in support of or in connection with a project; and to establish entities controlled by the authority that may own, operate, act, invest in as a partner or other participant, or take any and all steps necessary or convenient to undertake or otherwise develop a project. C.R.S. § 29-4-505 (referencing § 29-4-209).

F. In deciding whether partnership and its associated risks are reasonable and appropriate, BCHA must ensure sufficient benefit will accrue to the public, in terms of furtherance of the housing authority's mission to address community needs, as opposed to BCHA's participation primarily benefitting a private developer.

G. In addition, BCHA has limited staff and financial resources. It is necessary to establish procedures and criteria that staff can use to evaluate proposals and prepare recommendations to the Board, so that the Board can make the most informed decision on

the merits of such proposals.

NOW, THEREFORE, BE IT RESOLVED by the BCHA Board that:

1. The attached development participation policy is hereby adopted.
2. This Resolution shall become effective immediately upon its adoption, and the Policy shall remain in effect until amended or rescinded by the Board.

Passed and approved this 3<sup>rd</sup> day of October, 2017.

By Deb Gardner

Deb Gardner, Chair

I hereby certify that the foregoing is a full, true, and correct copy of the Resolution adopted by the Housing Authority of the County of Boulder, Colorado, a public body corporate and politic, at the meeting of said Board in Boulder, Colorado.

ATTEST:

By Mike Rojas

Assistant Secretary to BCHA

**Exhibit A to Resolution 2017-06**

**BCHA Policy on Participation in Developments Led by Others**

## **BCHA POLICY ON PARTICIPATION IN DEVELOPMENTS LED BY OTHERS**

### **I. PURPOSE**

The purpose of this policy is to provide guidance to for-profit and non-profit affordable housing developers on the procedure used to evaluate unsolicited proposals for BCHA to participate in affordable housing developments, such that the project may benefit, under agreement with BCHA, from an exemption, in whole or in part, from property taxes, special assessments, sales and use taxes during construction, and/or other benefits.

Authority to approve participation in an affordable housing development led by a third party is reserved to the Board. The Board's decision to participate may take into account analyses and recommendations made by BCHA staff and consultants, as outlined in the policies and procedures set forth herein, as well as any other information which the Board may require.

### **II. BACKGROUND**

The County Housing Authority Enabling Act provides at C.R.S. § 29-4-507 that BCHA and its property "shall be exempt from all taxes and special assessments on the same basis and subject to the same conditions as provided for city housing authorities in sections 29-4-226 and 29-4-227." A copy of these two statutes, as amended in 2016, is attached as Appendix A to this policy. In addition, a copy of the Colorado Department of Revenue's Final Rule, 1 CCR 201-4:39-26-704(1.5), the purpose of which is to establish guidelines for the sales and use tax exemption authorized by § 39-26-704(1.5), C.R.S., is attached as Appendix B to this policy.

County housing authorities are also empowered to grant or lend moneys or otherwise provide financing to any person, firm, corporation, the city, or a government for any project or any part thereof; to pledge or otherwise encumber any of its moneys in support of or in connection with a project; and to establish entities controlled by the authority that may own, operate, act, invest in as a partner or other participant, or take any and all steps necessary or convenient to undertake or otherwise develop a project. C.R.S. § 29-4-505 (referencing § 29-4-209).

BCHA welcomes such proposals. Our mission is to foster the availability of quality affordable housing and related services for residents using broad community resources. We strive to accomplish our mission through community collaboration, effective services and programs, professional organization, efficient resource management, and expansion of funding sources.

BCHA provides a diverse housing mix to benefit our residents and the communities we serve. BCHA's housing portfolio serves many of Boulder County's most vulnerable residents. We strive to ensure that our properties continue to be affordable, well-maintained, safe for residents, energy efficient, aesthetically pleasing and contribute to increased property values in our neighborhoods. Our stewardship is especially important as opportunities for new construction become less available and costlier, increasing the demand for quality affordable rental housing.

In deciding whether partnership and its associated risks are reasonable and appropriate, BCHA must ensure sufficient benefit will accrue to the public, in furtherance of the housing authority's mission to address community needs, as opposed to BCHA's participation primarily benefitting a private sector developer. BCHA recognizes that the decision to grant tax and assessment exemptions authorized by the statute will have an impact on other stakeholders –

including other public bodies who would otherwise receive the tax revenue, and on communities desiring the development of additional affordable housing.

Lastly, BCHA has limited staff and financial resources. The Board finds it is necessary to establish procedures and criteria that staff can use to evaluate proposals and prepare recommendations, so that the Board can make an efficient, informed decision on the merits of a proposal.

### **III. OVERVIEW OF APPLICATION REVIEW PROCESS**

BCHA shall consider applications as they are received. The application process is not a competitive process. Each project will be evaluated on its individual merit.

- a) Pre-application conference (by phone or in person) with BCHA staff to discuss the process for evaluating the request.
- b) Submission by a Developer of a completed Development Participation Proposal Form to BCHA.
- c) BCHA staff confirms threshold criteria met.
- d) BCHA staff evaluates criteria, receives referral responses as applicable, and formulates written staff recommendation to the Board.
- e) If the Board desires to hear the proposal, the Board conducts a duly noticed public hearing.
- f) At the hearing, staff will present the application, the requestor will have the chance to present its request to the Board if it desires to do so and, in the Board's discretion, the public may be granted time to testify.
- g) The Board will provide direction and/or a decision at the hearing. Action taken could include preliminary approval of the request as proposed, preliminary approval with conditions, denial, or direction to staff and the applicant to return with additional information.
- h) If the Board decides to grant preliminary approval of a proposal, with or without conditions, the Board may also decide to delegate authority to execute closing documentation to staff or, alternatively, to require staff to return to the Board in a public meeting for final approval of all necessary closing documentation.

### **IV. THE APPLICATION PACKAGE AND PROCESSING FEE**

- a) Developer must submit a completed Development Participation Proposal Form, available at <https://www.bouldercounty.org/families/housing/> or by contacting BCHA at (303) 441-1000 or 2525 13th St, Suite 204, Boulder, CO 80304. The Proposal Form requires, at a minimum, the following documents, unless waived by the BCHA Executive Director as unnecessary under the circumstances:
  - 1) Cover letter addressed to the BCHA Board

- 2) Explanation of the proposed project which includes total number of units, addresses, number of units to be rehabilitated or constructed, and number of phases;
- 3) Narrative outlining the proposed ownership structure, including BCHA's proposed partnership interest;
- 4) Overview of plan of finance, including equity and types, terms, and amounts of loans, lien priority, and payment priority;
- 5) Development Source and Use budget;
- 6) Unit mix, income restrictions, and rental rates;
- 7) First year operating revenues and expenses;
- 8) Detailed 15 year pro forma;
- 9) Statement describing Developer compensation from the project, whether Developer Fee, share of cash flow, sale proceeds, or other sources;
- 10) Certification by the Developer that it is not currently involved in nor has any reason to believe it will be involved in litigation;
- 11) Summary of the anticipated property tax, sales and use tax, and special assessment reduction associated with the proposal;
- 12) Schedule number(s) and real estate tax assessment for the last two years for the property to be developed;
- 13) For new construction, a proposed site plan and conceptual design of project, including a legal description, and plans for the placement of proposed structures, parking areas, access points, internal traffic control devices, landscaping, utility easement locations, appropriate zoning setbacks, and any other descriptive illustrations to aid in determining conformance with relevant plans, policies and regulations.
- 14) A list of all project team members, including architects, engineers, contractors, legal, accounting, property management, and equity and debt financing.
- 15) Any identified or established Minority and Women Owned (MBE/WBE) goals for team members and employment opportunities in the project for minority, women, and/or low-income people.
- 16) Evidence of the right to do business and/or good standing in the State of Colorado for the Developer and, if formed, the project owner.
- 17) Tax credit preliminary reservation letter, if applicable;
- 18) Development timeline;
- 19) Resumes of the principals and key employees of the applicant and any guarantor, with a focus on projects completed in Colorado;

- 20) The applicant's and any guarantor's financial statements for the preceding three years; and
  - 21) Statement demonstrating that the Developer has explored other funding sources or other mechanisms to deepen the affordability, or meet the needs of the property or project, prior to submitting the proposal.
  - 22) Other relevant information pertaining to the project.
- b) At the time of submission of the Development Participation Proposal Form and supporting documentation, the Developer must remit a non-refundable application fee in the amount of \$500.00, made payable to BCHA, to reimburse BCHA for its costs incurred in reviewing and analyzing the proposal.

**V. THRESHOLD CRITERIA**

- a) The proposed project must meet the following threshold criteria to be considered:
- 1) Complete application, including the application processing fee.
  - 2) Project is located within BCHA's jurisdiction. Generally, this means anywhere within Boulder County's incorporated and unincorporated areas except the City of Boulder and City of Longmont. (BCHA can participate in projects located in the City of Boulder and City of Longmont with the respective jurisdiction's consent.)
  - 3) The Developer has site control using CHFA's definition of that term.
  - 4) The Developer certifies that it is willing to accept a binding commitment that affordable and/or low income units which will benefit from the property and/or sales tax exemption will remain affordable for a period substantially longer than the term of other applicable restrictions, if not permanently.
  - 5) No environmental or legal impediments are present that could delay or terminate the project.
  - 6) The Developer has demonstrated in objective economic terms why the exemptions (or the extent to which the exemptions) are necessary for the project to be viable.
  - 7) BCHA will have no financial exposure in connection with the project, whether due to guarantees, requirements to contribute capital, debts of the project owner, or other financial obligations.

**II. PROPOSAL EVALUATION CRITERIA**

- a) The proposed project will be evaluated on the following required elements:
- 1) The proposed project is not financially viable at specified income and rent levels without BCHA's participation. BCHA will not participate in the project merely to increase the Developer's profit margin.

- 2) Participation in the project will further BCHA's mission and help address current needs within BCHA's jurisdiction.
- 3) A significant proportion of the proposed construction or rehabilitation of affordable and/or low-income units will serve households earning less than 60% of AMI.
- 4) Commitment to execute a restrictive covenant that affordable and/or low income units will remain affordable for a period substantially longer than the term of other applicable restrictions, if not permanently.
- 5) For preservation projects, existing sources of financing and/or investment in the low-income units are at risk of loss without BCHA's participation.
- 6) The Developer's Fee and any other compensation are reasonable under the circumstances, with the developer fee standards in CHFA's Qualified Allocation Plan used as a guide.
- 7) Demonstrated capacity and experience of the Developer to successfully to construct the project, place it in service, and manage the project in the future.
- 8) Ability to comply with all applicable state law governing exemption from property taxes and/or sales and use taxes and/or special assessments.
- 9) The total amount of property tax exemption requested, assuming a 3% annual operating expense escalation factor.
- 10) The total amount of sales and use tax exemption requested.
- 11) The total amount of special assessment exemption requested, to the extent known at the outset of the project.
- 12) The ability of BCHA to participate in excess cash flow, through cash-flow dependent fees or Payment In Lieu of Taxes ("PILOT") arrangements, or otherwise, so that the project can satisfy Debt Service Coverage Ratio requirements without the exemption providing windfall cash flow benefits to the developer.
- 13) Ability of BCHA to obtain a right of first refusal or other comparable purchase rights.
- 14) The proposal, by itself or in combination with other BCHA tax exempt partnerships, must not have an unreasonable impact to the tax base of affected taxing districts, including the County, the City in which the project is located, the school district, and all other relevant taxing districts.
- 15) The Developer of any properties that are eligible for property tax exemption under federal tax law (i.e. religious institutions, charitable purposes, etc.) must demonstrate that ongoing property tax exemption

through partnership with BCHA provides significantly greater benefit than applying for property tax exemption through other means.

- b) Other criteria and information provided by the applicant that will be considered in the evaluation:
- 1) How long the Developer requests BCHA participation in the project, with the presumption for LIHTC-funded projects being the initial 15-year compliance period;
  - 2) Whether a non-profit entity is the general partner or managing member;
  - 3) Other public funds included in the project;
  - 4) Whether the project quantifiably increases the economic diversity of a neighborhood;
  - 5) A mix of number of bedrooms per unit appropriate for the nature of the development (e.g., family vs. senior projects);
  - 6) Whether the project will include units available to Section 8 tenants;
  - 7) Whether the project provides opportunities for BCHA to manage the property, or provide other compensated services to the project;
  - 8) Whether BCHA is providing financing (e.g., subordinate debt) or other benefits to the project
  - 9) Other rights obtained and obligations incurred by BCHA if it participates in the project.

#### **VI. REFERRAL AND CONSULTATION PRIOR TO HEARING**

- a) Staff will consult with the relevant land use, zoning, or community development department prior to making a recommendation to the BCHA Board to confirm consistency of the project with the jurisdiction's comprehensive plan, zoning, subdivision, building, and other development codes and policies.
- b) Staff will also determine if any additional review or input is desired from any other related and/or impacted entity (such as the City of Boulder or City of Longmont, if a proposed project is located in the jurisdiction) and consult with that entity prior to making a recommendation to the BCHA Board.
- c) Any request from an applicant located or proposing to locate within one of the County's local municipalities must be recommended by said City or Town. The applicant and the recommending local municipality must demonstrate to the Board that an analysis of the request has been completed on the basis of local policy, and that the request is proper under such local policy.

#### **VII. PUBLIC HEARING ON THE APPLICATION**

- a) Staff will submit participation proposals to the Board with a brief recommendation for preliminary approval, preliminary approval with conditions, or denial.

- b) The staff recommendation shall include, as appropriate, analysis of the project's technical and financial feasibility.
- c) Staff will present its recommendation to the Board at a duly noticed public hearing. If the Developer desires to do so, the Developer will be offered the chance to make a brief presentation to the Board at this public meeting. In the Board's discretion, it may allow the public to testify either in written form, in person at the hearing, both, or neither, as specified in the notice.
- d) The Board may either approve the proposal exactly as proposed, approve it with conditions, deny it, or table the matter (for example, due to a need for additional information). In making its decision, the Board shall rely on the Proposal Evaluation Criteria in this policy. The Board reserves the right to deny any and all applications in its sole discretion.
- e) If it desires to proceed, the Board may give direction to staff on a set of parameters that staff may work within to negotiate a final partnership agreement and related transaction documentation.
- f) The Board may in its discretion place conditions on any approval, including without limitation:
  - 1) Commitment of exemption from property tax, sales and use tax, and special assessment, or any combination of the three, for the first 15-year compliance period. Thereafter, BCHA has the right to reassess the project's need for continued exemption.
  - 2) Execution of a binding, recorded restrictive covenant that affordable and/or low income units will remain affordable for a period substantially longer than the term of other applicable restrictions, if not permanently.
  - 3) Deeper affordability restrictions in the project, e.g., shifting the unit mix from entirely 60% AMI units to 50%, 40%, or 30% AMI units.
  - 4) Grant of a first priority right of first refusal to BCHA purchase the property or the entity that owns the project, where the purchase price is then-outstanding project debt plus federal, state, and local taxes incurred by exiting partners as a result of the sale of the project or the entity that owns the project.
  - 5) Developer's execution of an agreement to provide for the reimbursement of expenses incurred by BCHA in evaluating the request, regardless of whether the transaction closes. As a due diligence fee paid at closing, the Developer shall pay 0.25% of the gross total amount of the exemptions approved for the project, unless another amount is agreed by to BCHA. If, in the opinion of the County Attorney, special tax or partnership counsel must be retained, the Board, in its sole discretion, may require that such special counsel's fees be separately reimbursed. In all circumstances, all expenses incident to the approval of exemptions shall be paid by the Developer.

- 6) A right to inspect the project and a requirement that the Developer pay BCHA an annual compliance monitoring fee to cover BCHA's costs in ensuring ongoing compliance with state law and the terms of the transaction documents.
  - 7) A requirement that the Developer file periodic reports with BCHA on the status of the project for so long as BCHA remains a partner.
  - 8) Execution of reasonable representations, warranties, and indemnifications by the Developer for the benefit of BCHA.
  - 9) A requirement that the project accept Section 8 vouchers.
- g) Unless the Board delegates authority to staff to sign closing documentation, Board approval must be obtained prior to execution of final binding agreements.
  - h) BCHA shall, in performing its duties under the policies and procedures set forth herein, seek to protect and enlarge its good fiscal reputation.

#### **VIII. WAIVERS**

An applicant may request in writing that the Board waive one or more of the provisions of this policy for good cause. The Board may grant such waivers in its sole discretion, but only after consulting with the County Attorney to ensure that such waiver will not jeopardize the project's compliance with all applicable laws.

#### **IX. RESERVATION OF AUTHORITY**

BCHA reserves the right to accept or reject any proposals at any time for any reason, and to revise, change, modify or eliminate this policy at any time, in the sole and absolute discretion of the BCHA Board.

**Appendix A**

**Text of C.R.S. §§ 29-4-226 (special assessment exemption) and 29-4-227 (tax exemption)**

 KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

West's Colorado Revised Statutes Annotated  
Title 29. Government--Local  
Housing  
Article 4. Housing (Refs & Annos)  
Part 2. Creating Housing Authorities (Refs & Annos)

C.R.S.A. § 29-4-226

§ 29-4-226. Exemption from special assessments

Currentness

(1) The following shall be exempt from the payment of any special assessments to the state, any county, city and county, municipality, or other political subdivision of the state:

(a) A housing authority;

(b) The property of a housing authority;

(c) All property leased to a housing authority; and

(d) The portion of a project that is not used as a store, office, or other commercial facility that is occupied by persons of low income and that is owned by or leased to an entity:

(I) That is wholly owned by an authority;

(II) In which an authority has an ownership interest; or

(III) In which an entity wholly owned by an authority has an ownership interest.

**Credits**

Amended by Laws 2000, Ch. 206, § 8, eff. Aug. 2, 2000.

C. R. S. A. § 29-4-226, CO ST § 29-4-226

Current through Laws effective August 8, 2017 of the First Regular Session of the 71st General Assembly (2017), chapters 8, 14, 15, 16, 19, 21, 22, 30, 32, 37, 38, 40, 42, 46, 47, 48, 49, 51, 52, 53, 60, 63, 65, 68, 74, 78, 81, 82, 84, 85, 86, 88, 89, 94, 95, 100, 102, 103, 106, 108, 114, 117, 119, 122, 124, 125, 127, 129, 130, 132, 133, 134, 136, 140, 145, 147, 148, 150, 151, 169, 170, 175, 181, 182, 184, 185, 186, 188, 195, 199, 209, 212, 213, 215, 216, 220, 223, 236, 239, 241, 247, 248, 252, 265, 281, 290, 291, 297, 309, 310, 314, 315, 316, 318, 322, 325, 334, 338, 343, 346, 350, 352, 355, 357, 359, 364, 366, 368,

369, 373, 374, 380, 382, 384, 386, 400, 404, and 405, effective August 9, 2017, and chapters 57, 66, 69, 70, 104, 293, 296, 335, effective September 1, 2017.

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West's Colorado Revised Statutes Annotated  
Title 29. Government--Local  
Housing  
Article 4. Housing (Refs & Annos)  
Part 2. Creating Housing Authorities (Refs & Annos)

C.R.S.A. § 29-4-227

§ 29-4-227. Tax exemptions

Effective: August 10, 2016

Currentness

(1)(a) An authority is exempt from the payment of any taxes or fees to the state or any county, city and county, municipality, or other political subdivision of the state. All property of an authority is exempt from all local and municipal taxes. Bonds, notes, debentures, and other evidences of indebtedness of an authority are declared to be issued for a public purpose and to be public instruments, and, together with interest thereon, are exempt from taxes. All property leased to an authority for the purposes of a project is also exempt from taxation, as is the income derived from the authority by the lessor under the lease.

(b) A project that is owned by, leased to, or under construction by an entity that is wholly owned by an authority, an entity in which an authority has an ownership interest, or an entity in which an entity wholly owned by an authority or of which an authority is the sole member has an ownership interest is exempt from both property tax and, during construction, from the payment of sales tax and use tax to the state or any county, city and county, municipality, or other political subdivision of the state in proportion to the percentage of the project that is for occupancy by persons of low income. The determination by an authority of the percentage of the project that qualifies for the exemptions from payment of property taxes and sales and use taxes may be made on the basis of either the relative square footage or cost and is presumed valid absent manifest error.

(2) This section, as amended, applies to property owned by or leased to an authority and property owned by, leased to, or under construction by an entity in which an authority has an ownership interest, or an entity in which an entity wholly owned by an authority or of which an authority is the sole member has an ownership interest on or after August 2, 2000. Nothing in this section, as amended, entitles or shall be interpreted to entitle any entity to a refund of taxes from the state for any period beginning before January 1, 2013, or to a refund of taxes from any county, city and county, municipality, or other political subdivision of the state paid prior to August 10, 2016. Notwithstanding the provisions of section 39-26-703(2)(d), C.R.S., from August 10, 2016, until December 31, 2016, an entity may file a claim for a refund of all state taxes overpaid under this section for the period from January 1, 2013, to August 10, 2016. On and after January 1, 2017, all claims for refund under this section are subject to the provisions of section 39-26-703(2)(d) C.R.S.

**Credits**

Amended by Laws 2000, Ch. 206, § 9, eff. Aug. 2, 2000; Laws 2016, Ch. 177, § 2, eff. Aug. 10, 2016.

Notes of Decisions (2)

C. R. S. A. § 29-4-227, CO ST § 29-4-227

Current through Laws effective August 8, 2017 of the First Regular Session of the 71st General Assembly (2017), chapters 8, 14, 15, 16, 19, 21, 22, 30, 32, 37, 38, 40, 42, 46, 47, 48, 49, 51, 52, 53, 60, 63, 65, 68, 74, 78, 81, 82, 84, 85, 86, 88, 89, 94, 95, 100, 102, 103, 106, 108, 114, 117, 119, 122, 124, 125, 127, 129, 130, 132, 133, 134, 136, 140, 145, 147, 148, 150, 151, 169, 170, 175, 181, 182, 184, 185, 186, 188, 195, 199, 209, 212, 213, 215, 216, 220, 223, 236, 239, 241, 247, 248, 252, 265, 281, 290, 291, 297, 309, 310, 314, 315, 316, 318, 322, 325, 334, 338, 343, 346, 350, 352, 355, 357, 359, 364, 366, 368, 369, 373, 374, 380, 382, 384, 386, 400, 404, and 405, effective August 9, 2017, and chapters 57, 66, 69, 70, 104, 293, 296, 335, effective September 1, 2017.

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**Appendix B**

**Copy of Colorado Department of Revenue's Final Rule, 1 CCR 201-4:39-26-704(1.5)**

West's Colorado Administrative Code  
Title 200. Department of Revenue  
201. Taxpayer Service Division - Tax Group  
1 CCR 201-4. Sales and Use Tax

1 CCR 201-4:39-26-704(1.5)

201-4:39-26-704(1.5). Basis and Purpose

#### Currentness

The basis for this rule is § 39-21-112(1), § 39-26-704(1.5), § 29-4-227, § 29-1-204.5, and § 29-4-507, C.R.S. The purpose of this rule is to establish guidelines for the sales and use tax exemption authorized by § 39-26-704(1.5), C.R.S., including the process for requesting exemption certificates and refunds for tax paid. To alleviate the administrative burden on housing authorities, an affidavit, as described in this rule, may be submitted in lieu of receipts for refund claims for state sales and use tax paid prior to September 30, 2016. Receipts are required for refunds of state sales and use tax paid after September 30, 2016 and for local sales tax paid after August 10, 2016. These refund claims requiring receipts are expected to be infrequent because, beginning August 10, 2016, exemption certificates will be available to prevent the payment of tax at the point of sale, thus reducing the burden on housing authorities. Receipts are required for refunds of all local sales taxes claimed because local sales taxes can often be exempted at the point of sale with a building permit, which would have been obtained for all projects prior to construction.

#### (1) General Rule.

(a) *Exemption for Housing Authorities.* All sales to and all storage, use, or consumption of tangible personal property or otherwise taxable services by Housing Authorities are exempt from state, local, and special district sales and use taxes.

(b) *Exemption for Qualifying Projects.* Beginning August 10, 2016, an exemption from state, local, and special district sales and use taxes is allowed to any Qualifying Entity for any Qualifying Project in the manner described in this rule. Only state sales and use taxes paid prior to August 10, 2016 are eligible to be refunded. Local sales and use taxes paid prior to August 10, 2016 are not eligible to be refunded. Eligible Qualifying Projects should obtain exemption certificates beginning August 10, 2016 in order to make purchases tax-free after that date. In the event, expected to be rare, that sales and use taxes are paid on or after August 10, 2016, refunds for all sales and use taxes paid will be made in accordance with subsection (3)(f) of this rule.

#### (2) Definitions.

(a) "Authority" or "Housing Authority" means:

(i) A city housing authority as defined in § 29-4-203(1), C.R.S., or

(ii) A multijurisdictional housing authority established under § 29-1-204.5, C.R.S., or

(iii) A county housing authority as defined in § 29-4-502(1), C.R.S.

(b) "Department" means the Department of Revenue.

(c) "Qualifying Entity" means an entity that is *wholly or partially* owned by:

(i) A Housing Authority, or

(ii) An entity that is wholly owned by a Housing Authority, or

(iii) An entity of which a Housing Authority is the sole member.

(d) "Qualifying Project" means a project, as defined in § 29-4-203(12), C.R.S., that is wholly owned by, leased to, or under construction by a Qualifying Entity. A Qualifying Project will involve capitalizable expenditures.

**(3) Sales and Use Tax Exemption for Qualifying Projects.**

(a) The exemption for Qualifying Projects under paragraph (b) of subsection (1) of this rule applies only to tangible personal property and otherwise taxable services purchased, acquired, stored, used, or consumed for Qualifying Projects during the construction period determined under paragraph (b) of this subsection (3).

(b) *Determination of Construction Period.* The exemption under paragraph (b) of subsection (1) of this rule applies only during the construction of a Qualifying Project. The Housing Authority shall determine and certify the beginning and ending dates for the construction of the Qualifying Project and the period of time defined thereby will be the construction period for the Qualifying Project.

(c) *Determination of Low-Income Percentage.* The exemption allowed under paragraph (b) of subsection (1) of this rule is in proportion to the percentage of the project that is for occupancy by persons of low income. The Housing Authority shall determine and certify this percentage and such determination shall be presumed valid absent manifest error.

(i) With respect to the definition of "low income" used in the determination made under this paragraph (c), no manifest error exists where a Qualifying Entity uses a definition established by the United States Department of Housing and Urban Development, the Colorado Housing and Finance Authority, or any similar public lender for Qualifying Projects.

(ii) With respect to the calculation of the percentage of the project that is for occupancy by persons of low income made under this paragraph (c), no manifest error exists where the calculation by the Qualifying Entity is consistent with any such calculation made in accordance with rules prescribed by the United States Department

of Housing and Urban Development, the Colorado Housing and Finance Authority, or any similar public lender for Qualifying Projects.

(d) *Application for Exemption for Qualifying Projects.* Exemption certificates may be requested from the Department for any Qualifying Project to allow Qualifying Entities and contractors to make tax-free purchases for the Qualifying Project. The exemption certificate may be requested by the Qualifying Entity, the general contractor for the Qualifying Project, or both by completing and submitting the appropriate application. The application must be accompanied by a statement from the Housing Authority detailing the Authority's ownership interest in the Qualifying Entity, certifying the percentage calculated under paragraph (c) of this subsection (3), and certifying the construction period determined under paragraph (b) of this subsection (3).

(e) *Remittance of Tax for Mixed Use Qualifying Projects.* Qualifying Entities that own, lease, or construct Qualifying Projects for which an exemption certificate is issued under paragraph (d) of this subsection (3), and for which the percentage calculated under paragraph (c) of this subsection (3) is less than 100% periodically must file sales tax returns and remit payment of the sales tax for the percentage of the Qualifying Project that is not exempt.

(i) Except as provided in subparagraph (ii) of this paragraph (e), such filing and payment shall be made at least quarterly and shall be made in accordance with all rules governing the filing and payment of sales tax generally.

(ii) If the aggregate annual sales or use tax a Qualifying Entity must remit under this paragraph (e) is less than five thousand dollars, the Qualifying Entity may request from the executive director and the executive director may grant permission to file and remit sales tax under this paragraph (e) on an annual filing basis.

(f) *Refund Claims for Qualifying Projects.* A Qualifying Entity that owns, leases, or constructs a Qualifying Project may, subject to the percentage determined under paragraph (c) of this subsection (3), submit a refund claim for sales and use taxes paid.

(i) A refund claim for a Qualifying Project must be submitted by the Qualifying Entity, not by a contractor performing work for the Qualifying Project.

(ii) Any refund claim submitted under this paragraph (f) must meet the following requirements:

(A) The refund claim must be submitted on the appropriate Departmental form ("Claim for Refund of Tax Paid to Vendors").

(B) The refund claim must be accompanied by a statement from the Housing Authority certifying:

(I) The Housing Authority's place in the ownership structure of the Qualifying Entity, and

(II) The percentage determined under paragraph (c) of this subsection (3).

(C) In the case of state sales or use taxes paid prior to September 30, 2016, the refund claim must be accompanied by an affidavit, signed under penalty of perjury by the Housing Authority, affirming that:

(I) The refund claim is for sales or use tax that actually was paid to vendors or was paid directly to the Department, and

(II) The amount of the claim includes only Colorado state sales or use tax and not any local or special district taxes.

(D) In the case of local and special district sales and use taxes paid on or after August 10, 2016 or state sales and use taxes paid on or after September 30, 2016, the refund claim must be accompanied by all necessary documentation, including receipts or invoices, required under Department rules, guidance, and instructions for refund claims generally.

Cross Reference(s):

1. FYI Income 90.
2. Form DR 0137B and associated instructions.

**Credits**

Adopted March 17, 2017.

Current through CR, Vol. 40, No. 15, August 10, 2017.

1 CCR 201-4:39-26-704(1.5), 1 CO ADC 201-4:39-26-704(1.5)

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