

RESOLUTION 2023-073

A resolution partially approving Boulder County Community Planning & Permitting Docket SE-22-0011: North Wasatch Farm LLC and modifying the conditions of approval for SE-18-0011: North Wasatch Farms LLC in Resolution 2019-106 and MD-20-0023: Wilkins and North Wasatch Farms LLC in Resolution 2021-44

Recitals

A. In May of 2019, Community Planning & Permitting (then Land Use) staff accepted a complete Subdivision Exemption application (SE-18-0011) requesting an approximately 3.15-acre parcel at 12000 Wasatch Road (Parcel No. 12051200007) and an approximately 31.56-acre parcel at 12006 Wasatch Road (Parcel No. 12051200012) be recognized as legal building lots.

B. On July 16, 2019, at a duly noticed public hearing, the Boulder County Board of County Commissioners (the “Board”) heard docket SE-18-0011: North Wasatch Farm LLC, for which staff presented a recommendation for denial. At the hearing, the Board voted to table the docket to a date certain to allow staff and the applicants time to explore whether a Conservation Easement, or other agriculturally-related conditions facilitating farming, could meet the criteria for mitigating the impacts of an additional unit of density on the parcel at 12006 Wasatch Road.

C. On October 22, 2019, at a duly noticed public hearing, the Board heard Community Planning & Permitting (then Land Use) and Parks & Open Space staff’s recommendation for denial, which resulted from the analysis of additional information provided by the applicants, meeting with Miguel Cerceda and his attorney, and a site visit conducted with representatives from Parks & Open Space’s Conservation Easement team, Agricultural Resources team, and Land Acquisition team. In order to address the Board’s interest in exploring conditions of approval that might mitigate the impacts of an additional unit of density, staff also provided a list of conditions of approval to be included if the Board chose to approve the docket.

D. At the October 22, 2019 hearing, after asking questions of both staff and the applicants and holding a lengthy discussion, the Board voted 2 to 1 in favor of conditionally approving docket SE-18-0011. This decision centered on criteria 9-400.A.1 of the Boulder County Land Use Code (the “Code”), which allows the Board to approve a Subdivision Exemption application that proposes to increase the number of lots if “any identified land use impacts associated with the increase are sufficiently mitigated.” The two commissioners voting in favor of approval stated that the approval and associated conditions of approval were a recognition of the regenerative agricultural practices that were being implemented on the 12006 Wasatch Road parcel and the associated community benefits of improved soil health and carbon sequestration that such practices provide.

E. In October 2020, the Applicant requested to modify conditions of approval 1, 5, 7, 8, 9, 10, 11, 12, and 13 in Resolution 2019-106. Importantly, the Applicant sought to remove the condition of approval designating the residential unit located at 12006 Wasatch Road as accessory to the agricultural use and requiring that if the agricultural use ceases, the residential use also cease. Staff recommended partial conditional approval to the Board at a duly noticed public hearing on May 4, 2021, but did not recommend the removal of the condition of approval designating the residential unit at 12006 Wasatch Road as accessory to the agricultural use and requiring that if the agricultural use ceases, the residential use also cease.

F. At the May 4, 2021 hearing, the Board voted 2 to 1 in favor of partial conditional approval of docket MD-20-0023: Wilkins and North Wasatch Farms LLC. The approval included conditions of approval as recommended by staff, along with the condition of approval related to the maximum number of animal units, and did not approve the request to remove the condition of approval designating the residential unit located at 12006 Wasatch Road as accessory to the agricultural use and requiring that if the agricultural use ceases, the residential use also cease.

G. In the present request, the Applicant requested that certain conditions of approval for SE-18-0011 found in Resolution 2019-106 and for MD-20-0023 found in Resolution 2021-44 be revised or removed. The Applicant specifically requested to replace the required Conservation Easement with Restrictive Covenants, increase the maximum allowable animal units on the parcel located at 12006 Wasatch Road from 100 to 124, and remove the designation of the allowed residential unit as accessory to the established agricultural use.

H. The above-described request was processed and reviewed as Boulder County Community Planning & Permitting Docket SE-22-0011 (the “Docket”), as further described in the memorandum and written recommendation to the Board by Boulder County Community Planning & Permitting Department planning staff dated August 22, 2023, together with its attachments (the “Staff Recommendation”).

I. The Staff Recommendation included a detailed analysis of each change to the conditions of approval in Resolution 2019-106 and Resolution 2021-44 requested by the Applicant. Staff supported approval of the requests to replace the required Conservation Easement with Restrictive Covenants and increase the maximum allowable animal units on the parcel at 12006 Wasatch Road, and recommended the Board conditionally approve the Docket with revised conditions of approval to reflect those changes. Staff did not support the request to remove the designation of the residential unit approved for the parcel at 12006 Wasatch Road as accessory to the established agricultural use.

J. At a public hearing on the Docket held on August 22, 2023 (the “Public Hearing”), as further reflected on the official record of the Public Hearing, the Board considered the Staff Recommendation, as well as the documents and testimony presented by County Community Planning & Permitting Department planning staff. The Board also heard testimony from Miguel Cerceda, owner of North Wasatch Farm, and Ed Byrne, attorney on behalf of North Wasatch Farm, LLC. No members of the public spoke at the Public Hearing.

K. Based on the Public Hearing, the Board finds that a portion of the Docket, as conditioned, meets the criteria for subdivision exemption under Article 9-400 of the Code, subject to the conditions stated below.

L. Therefore, the Docket can be partially approved subject to the conditions stated below.

Therefore, the Board resolves:

Docket SE-22-0011 is partially approved, subject to the following conditions:

1. The Applicant shall comply with all applicable post-approval requirements for a Subdivision Exemption (regarding taxes, title report, deeds, and the like) as listed in Article 3-206.C of the Code, and also including Article 9-700 of the Code (which sets a one-year deadline for completing such requirements).

2. The Applicant shall work with Boulder County Community Planning & Permitting staff to record new deeds with new legal descriptions for the parcels and specific reference to this Resolution and the restrictions found within.

3. A Conservation Easement must be granted to Boulder County to preserve 12006 Wasatch Road’s agricultural values. As part of the Conservation Easement, the current and future owners of 12006 Wasatch Road are required to engage in sustainable regenerative agricultural farming practices that sequester carbon and improve soil health.

4. Prior to the recordation of required deeds, the Applicant shall work with Community Planning & Permitting and Parks & Open Space staff to finalize the Farm Operational Plan to include the provided detailed explanation of the sustainable regenerative agricultural farming practices to be used on the parcel at 12006 Wasatch Road, as well as to be in accordance with the Conservation Easement and the regulations found in the Code.

5. The Applicant must provide annual reports detailing how they are adhering to the Farm Operational Plan to the Community Planning & Permitting and Parks and Open Space Departments for review and approval.

6. No more than 2,500 square feet of above-ground Residential Floor Area shall be located on each subject parcel. Total Residential Floor Area square footage on each subject parcel shall not exceed the Presumptive Size Maximum.

7. The residential use on the parcel at 12006 Wasatch Road is accessory to the agricultural use. If the agricultural use of the property ceases, any residential use on the property shall also cease, and any residential unit must be decommissioned or deconstructed.

8. Permanent structures on the parcel at 12000 Wasatch Road must be located within the 1.5-acre area at the southern portion of the parcel.

9. Permanent structures located on the parcel at 12006 Wasatch Road must be located within the seven-acre area as shown in Figure 1 of the staff recommendation dated October 22, 2019.

10. If any existing structures will be designated as Agricultural square footage, the Applicant must submit a detailed narrative to the Community Planning & Permitting Department explaining the agricultural use taking place on the parcel and how the structure supports that use.

11. A maximum of three 400-square-foot loafing sheds are allowed on the parcel at 12006 Wasatch Road outside of the building envelope, as it is defined in the staff recommendation dated October 22, 2019.

12. The number of allowed Animal Units for each parcel shall be restricted to 10 Animal Units on the parcel at 12000 Wasatch Road and 126 Animal Units on the parcel at 12006 Wasatch Road.

13. The Applicant shall be subject to the terms, conditions, and commitments of record and in the file for Docket SE-22-0011: North Wasatch Farm LLC.

[Signature Page to Follow]

A motion to approve the Docket with conditions as set forth above was made by Commissioner Ashley Stolzmann, seconded by Commissioner Marta Loachamin, and passed by a 3-0 vote.

ADOPTED as a final decision of the Board on this ____ day of _____ 2023.

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

Claire Levy, Chair

Ashley Stolzmann, Vice Chair

Marta Loachamin, Commissioner

ATTEST:

Clerk to the Board