



Parks & Open Space

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

BOCC BUSINESS MEETING

Tg

TO: Board of County Commissioners
FROM: Tina Burghardt, Senior Land Officer
FOR: BOCC Business Meeting, 8:45 a.m., Thursday, November 30, 2023
RE: Divide Fee Donation
MEMO DATE: November 27, 2023

For much longer than Parks & Open Space's history of stewarding open space, the land in this community has been important to diverse Indigenous communities that continue to live here. We are partnering with Indigenous people to make meaningful changes to how we do our work that include Indigenous people, incorporate their perspectives, and honor their land stewardship legacy. Parks & Open Space operates within modern legal constructs of land ownership to steward Boulder County open space and accomplish these efforts on behalf of our community.

Summary of Request

Woodwardia Limited Partnership (Landowner) proposes donating its 5-acre vacant parcel (Property) to the county. The Property is located on the northwest edge of the Town of Eldora and has an address of 0 Eldorado Avenue (please see the maps at the end of this memo). The Property is surrounded by US Forest Service lands. Staff recommends approval.

Background Information

The Property has been owned by the same family since the 1940s. The family partnership has no desire to develop the property and would like to donate the Property to the county so that it will never be developed.

The Property is part of the Indian Peaks Environmental Conservation Area and also has a View Protection Corridor score of 1.57-2.00 on a scale from 1 (lowest) to 5 (highest) as designated by the Boulder County Comprehensive Plan. In addition, US Forest Service contiguity makes this a good candidate for an exchange.

Staff Recommendation

Staff recommends accepting the donation of the Property. Upon conveyance to the county, the development right associated with the Property will be extinguished and the Property will remain vacant land surrounded entirely by public land.

BOCC Action Requested

Approve the request as described above.

Vicinity Map:

Divide Property Vicinity



2023



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Close-Up Map:

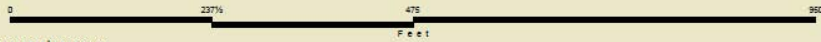
Divide Property



Parks & Open Space



2023



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2022 county pictometry data used for aerial imagery basemap.



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November 1, 2023

Woodwardia Limited Partnership
Bruce Woodward
4500 Garfield Street
La Mesa, CA 91941

Re: Parcel # 158320000018
0 Eldorado Avenue

Dear Bruce:

Thank you for the Woodwardia Limited Partnership's interest in donating to Boulder County (the "County") an approximately 5-acre parcel of land located in Section 20, Township 1 South, Range 73 West, 6th P.M. (the "Property") the legal description of which is attached hereto as Exhibit A. The Property is generally depicted on the map attached hereto as Exhibit B. The Partnership's generous contribution to the County's open space program will preserve the Property in perpetuity. The County is willing to accept your offer to donate the Property, subject to the following conditions in this letter agreement ("Agreement"). In this Agreement Woodwardia Limited Partnership, the Property's owner of record, is hereafter referred to as "Grantor." The County and Grantor are collectively referred to as the "Parties."

In consideration of the recitals, promises, payments, covenants, and undertakings hereinafter set forth, and other good and valuable consideration, which is hereby acknowledged and received for, the Parties agree as follows:

1. Grantor will donate the Property via a General Warranty Deed to the County substantially in the form attached hereto as Exhibit C.
2. Grantor will provide copies of any existing engineering and/or survey work related to the Property to the County upon the execution of this Agreement. If the existing engineering and/or survey work is not acceptable to the County, the County may at its sole expense contract for a survey of the Property prior to closing.
3. The County will be responsible for any expenses related to the ordering of a title commitment and/or a title insurance policy insuring the County's ownership of the Property. Title to the Property will be merchantable in Grantor, and the title commitment and/or title insurance policy will contain no exceptions other than:
 - 3.1. taxes and assessments for the current year; and
 - 3.2. rights-of-way, easements, restrictions, covenants, and mineral reservations of record which are acceptable to the County; and

Grantor will execute an affidavit concerning mechanic's liens and take all steps necessary to obtain the deletion of the standard pre-printed exceptions on the County's title policy. Should title not be merchantable in Grantor, or if the title commitment includes exceptions which are not acceptable to the County (even though such exceptions would not make the title unmerchantable), a written notice of the defects will be given to Grantor by the County within fifteen (15) days after the receipt of the title commitment and any exception documents referenced therein. If Grantor has not corrected such defects within one hundred twenty (120) days after receipt of the notice of defects, the County, at its option, may accept the donation of the Property, notwithstanding the defects, or may, upon written notice to Grantor, declare this Agreement terminated and the Parties will be released herefrom.

4. Closing will take place no later than December 31, 2023, at a mutually agreeable date and time in the office of the title company issuing a title policy to the County.

4.1. At the closing of this Agreement, Grantor will deliver to the County the following:

a. A fully good and sufficiently executed and acknowledged General Warranty Deed, free and clear of all liens, tenancies, and encumbrances, except those set forth in paragraph 3 above.

b. Documents acceptable to the County and the title company evidencing the authority of Grantor to execute this Agreement and to convey the Property to the County.

c. All instruments, certificates, affidavits, and other documents necessary to satisfy the Requirements listed on Schedule B-1 of the title commitment.

d. Any other documents required by this Agreement to be delivered by Grantor to the title company or reasonably required by the County or the title company in connection herewith.

5. Grantor hereby represents and warrants to the County that as of the date of the signing of this Agreement:

5.1. Grantor has received no notice of and has no other knowledge of any litigation, claim or proceeding pending or currently threatened which in any manner affects the Property; and

5.2. Grantor has received no notice and has no other knowledge of any current, existing violations of, or pending investigations into violations of, any federal, state, or local law, code, ordinance, rule, regulation, or requirement affecting the Property; and

5.3. Grantor has the full right, power, and authority to convey the Property to the County as provided herein; and

5.4. Every document, schedule, item, and other information delivered or to be delivered by Grantor to the County hereunder, or made available to the County for inspection hereunder, will be true, accurate and correct; and

5.5. Grantor has not entered into any agreement with any private person or entity or with any governmental or quasi-governmental entity with respect to the Property that may result in liability or expenses to the County upon the County's acquisition of the Property; and

5.6. There are no special assessments which now burden or encumber the Property and there are no special assessments currently proposed as to the Property; and

5.7. The execution and delivery of this Agreement and the performance of all of the obligations of Grantor hereunder will not result in a breach of, or constitute a default under, any agreement entered into by Grantor or under any covenant or restriction affecting the Property; and

5.8. There are no leases, tenancies or rental agreements relating to the Property, or to any part thereof; and

5.9. Grantor has not granted or created, and has no knowledge of any third parties who may have the right to claim or assert any easement, right-of-way or claim of possession not shown by record, whether by grant, prescription, adverse possession or otherwise, as to any part of the Property; and

5.10. To the best of Grantor's knowledge, no part of the Property has ever been used as a landfill, and no materials have ever been stored or deposited upon the Property which under any applicable governmental law or regulation would require that the Property be treated or such materials removed from the Property prior to the use of the Property for any purpose which would be permitted by law, but for the existence of said materials on the Property; and

5.11. To the best of Grantor's knowledge, no underground storage tank, as that term is defined by federal statute or Colorado statute, is located on the Property which under applicable governmental law or regulation would require such underground storage tank to be upgraded, modified, replaced, closed, or removed; and

5.12. To the best of Grantor's knowledge, Grantor has not caused or permitted the release of any hazardous substance on the Property. The terms "hazardous substance" and "release" as used herein will have the same meaning and definition as set forth in Paragraphs (14), (22) and (23), respectively, of Title 42 U.S.C. Section 9601; provided, however, that the term "hazardous substance" as used herein also will include "hazardous waste", as defined in Paragraph (5) of 42 U.S.C. Section 6903.

Grantor shall, at the time of closing, certify to County in writing that the above and foregoing representations and warranties remain true and correct as of the date of closing. If the representations and warranties of Grantor as set forth and provided for herein are not true and correct as of the date of the closing of this Agreement, the County shall have the right to terminate this Agreement or to accept the donation, in the County's sole discretion. Grantor agrees that if it is discovered that the above and foregoing representations and warranties were not true and correct at the time they were made, Grantor will indemnify County and hold it harmless from and against claims for all liabilities, costs or damages, including, but not limited to attorney fees, suffered by or claimed against the County as a result of the breach.

6. At all reasonable times during the term of this Agreement, the County will have access to the Property for the purpose of conducting tests, studies, and surveys thereon, including, without limitation, environmental audits, soil and subsoil tests. The County may have performed, at its option and/or expense, the following inspections:

6.1. Soil and percolation tests;

6.2. Inspections for asbestos, PCB's, underground tanks, or other hazardous substances;

6.3. Any other tests and/or studies deemed necessary by County that do not materially damage the Property.

The County may, at County's expense, obtain a Phase I environmental audit and/or survey of the Property. The Phase I environmental audit and/or survey must be satisfactory to the County, in its sole discretion. If the Phase I and/or survey is/are not satisfactory to the County, the County will, within 15 days of the receipt of the Phase I and/or survey, give Grantor written notice of the defects. If Grantor has not corrected such defects within 120 days of receipt of the notice, the County, at its option, may accept the donation notwithstanding the defects or may, upon notice to Grantor in recordable form, declare this Agreement terminated, and the Parties will be released herefrom.

7. If any underground tank/s is/are located on the Property, Grantor will have the option of removing said tank/s at Grantor's expense prior to the closing of this Agreement. In the event Grantor elects not to remove such tank/s, the County can elect (a) to proceed to accept the donation of the Property, or (b) choose to terminate this Agreement. If any underground tank/s is/are removed prior to closing pursuant to this paragraph, Grantor will provide at the time of closing of this Agreement, an affidavit, subscribed and sworn to by a registered professional engineer licensed in the State of Colorado and approved by the County, stating that the Property meets all applicable federal, state and local laws, regulations, and standards regarding such sites, including without limitation, the following standards:

7.1. No more than 75 parts per million total petroleum hydrocarbons in the soil using an analytical test/s that are standard in the industry for the detection of specific compound mentioned herein.

7.2. No more than 10 parts per million total petroleum hydrocarbons in ground water, other than drinking water, using an analytical test/s that are standard in the industry for the detection of the specific compound mentioned herein.

7.3. The BTEX (benzene, toluene, ethylbenzene, and xylene) and the petroleum contaminants in the ground water will not exceed the maximum contaminant levels for these components in the ground water as set forth by the state water quality provisions in effect at the time of the execution of this contract.

8. Grantor hereby agrees that if Grantor retracts the offer to donate the Property or otherwise terminates this Agreement, Grantor will reimburse the County for any costs the County has reasonably incurred in connection with this Agreement, including the cost of staff time invested in the project. The County will provide Grantor with copies of any invoices justifying costs it has incurred and an invoice for staff time, and Grantor shall pay all invoices within thirty (30) days.

9. Grantor shall not assign any rights and obligations hereunder unless the County first consents thereto in writing, which consent shall not be unreasonably withheld.

10. Grantor agrees not to encumber or burden the Property or any part thereof, without the consent of the County, so long as this Agreement is in effect.

11. Grantor acknowledges that neither the County, nor any of its agents or attorneys, has made any representations as to the fair market value of the Property or the donation thereof. Grantor further acknowledges that neither the County, nor any of its agents or attorneys, has made any representations as to the tax treatment to be accorded to this donation or to any proceeds thereof by the Internal Revenue Service under the Internal Revenue Code or by the officials of the State of Colorado under Colorado law. ***The County does not provide legal, financial or tax advice, and landowners should consult qualified independent professionals to obtain independent legal, financial and tax advice before proceeding with donating an easement.***

12. This Agreement contains the entire contract, understanding, and agreement between the Parties and supersedes all prior understandings, warranties, representations, and letters of intent, all of which are by execution hereof rendered null and void.

13. The Parties agree that, except for such of the terms, conditions, covenants and agreements hereof which are, by their very nature fully and completely performed upon the closing of the transactions herein provided for, all of the terms, conditions, representations, warranties, covenants and agreements herein set forth and contained shall survive the closing of any donation transaction herein provided for and shall continue after said closing to be binding upon and inure to the benefit of the Parties, their successors and assigns.

14. Whenever notice is required to be given hereunder, it shall be in writing and may be faxed, hand delivered or mailed to the party entitled thereto. If faxed or hand delivered, said notice shall be effective and complete upon completion of the fax or hand delivery. If mailed, said notice shall be sent by registered or certified mail, return receipt requested, and shall be effective and complete as of the date of mailing. Until changed by notice in writing, notice will be given as follows:

To the County: Real Estate Division Manager
Boulder County Parks & Open Space
5201 St. Vrain Road
Longmont, CO 80503

With copy to: The Boulder County Attorney's Office
P.O. Box 471
Boulder, CO 80306

To Grantor: Woodwardia LP
Bruce Woodward
4500 Garfield Street
La Mesa, CA 91941
E-mail: bruce@bpw-arch.com

15. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, and all of which will constitute one and the same Agreement. Facsimile signatures on this Agreement will be acceptable to and binding upon all Parties. All documents referenced herein are incorporated by their reference and made a part hereof.

16. The validity and effect of this Agreement shall be determined in accordance with the laws of the State of Colorado.

17. This Agreement will be recorded in the office of the Clerk and Recorder of Boulder County, Colorado.

18. If any part of this Agreement is found, decreed, or held to be void or unenforceable, such finding, decree or holding will not affect the other remaining provisions of this Agreement which will remain in full force and effect.

The Parties have executed this Agreement on the dates set forth in their respective acknowledgments intending that this Agreement be effective as of the day and year first above set forth.

COUNTY OF BOULDER,
a body corporate and politic

By: _____
Claire Levy, Chair, of the Board of County
Commissioners of Boulder County, Colorado

GRANTOR:

WOODWARDIA LIMITED PARTERSHIP, a
Nevada limited partnership by its General Manager:
WOODWARDIA MANAGEMENT, LLC, a
Nevada limited liability company

By: Scott Woodward
Scott B. Woodward, Manager

By: Jessica Woodward Mazalewski
Jessica Woodward Mazalewski, Manager

EXHIBIT A

Legal Description

The Divide Lode Mining Claim designated as Lot 13777 in the Grand Island Mining District

EXHIBIT B

Map of Property

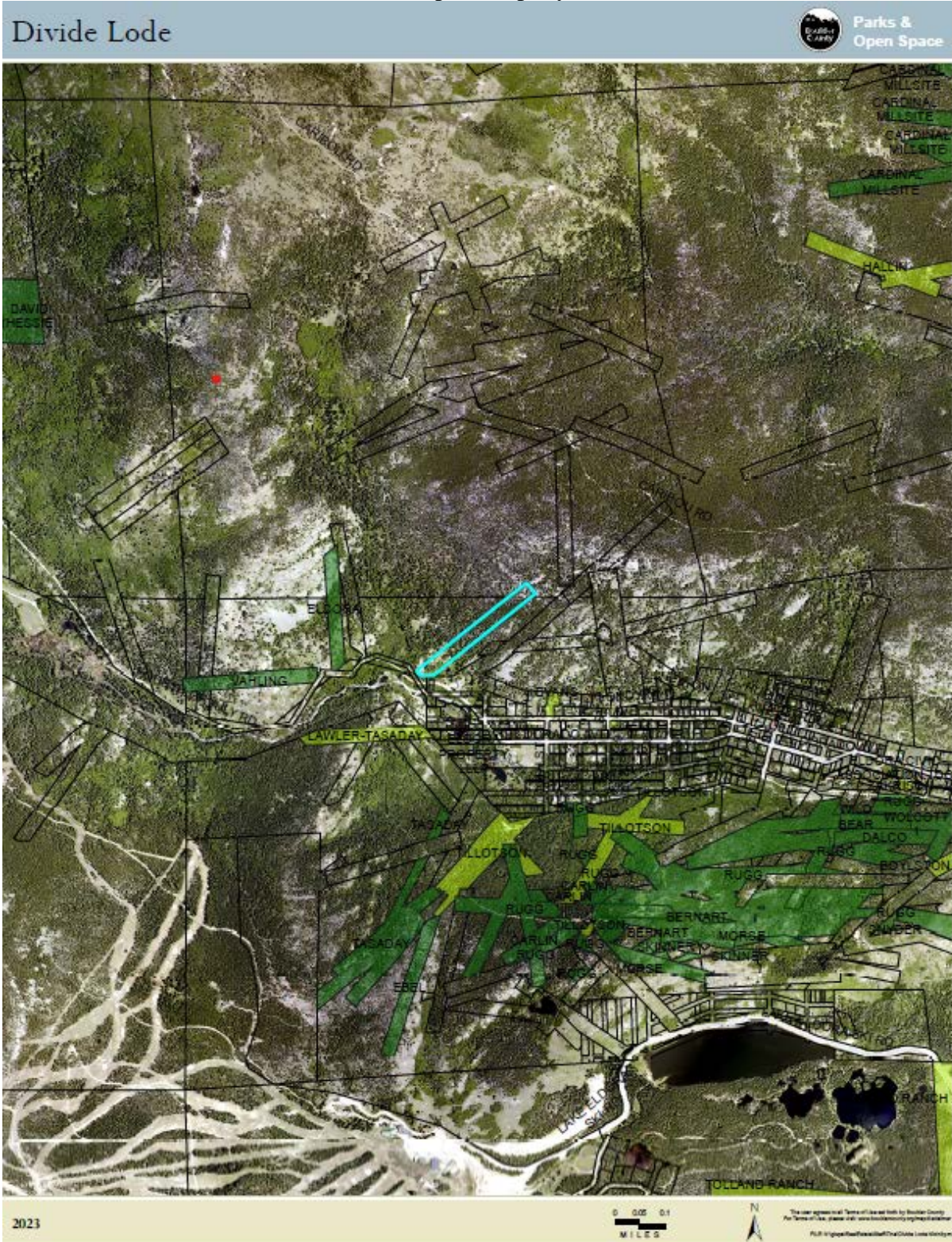


EXHIBIT C

GENERAL WARRANTY DEED
(Statutory Form, C.R.S. § 38-30-113)

Grantors, **Woodwardia Limited Partnership**, whose legal address is 4500 Garfield Street, La Mesa, CA 91941, of the County of San Diego, and State of California, for good and valuable consideration, the receipt of which is hereby acknowledged, hereby sells and conveys to Grantee, the **County of Boulder**, a body corporate and politic, whose legal address is 5201 St. Vrain Road, Longmont, CO 80503, of the County of Boulder, State of Colorado, the following real property in the County of Boulder and State of Colorado, to wit:

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF BY THIS REFERENCE FOR LEGAL DESCRIPTION OF THE PROPERTY,

with all its appurtenances, including all mineral rights and water rights appurtenant to the Property, and warrants the title to the same, subject only to those matters set forth on Exhibit B attached hereto and made a part hereof by this reference.

Signed this ____ day of _____, 2023.

Name
General Manager of Woodwardia Limited Partnership

State of _____
County of _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2023 by _____, General Manager, Woodwardia Limited Partnership.

(Notary official signature)

NOTARY
SEAL

(Commission expiration)

EXHIBIT A
Legal Description

The Divide Lode Mining Claim designated as Lot 13777 in the Grand Island Mining District

EXHIBIT B
Permitted Exceptions