



## Parks & Open Space

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

### BOCC BUSINESS MEETING

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**TO:** Board of County Commissioners  
**FROM:** Tina Burghardt, Senior Land Officer  
**FOR:** BOCC Business Meeting, 9:30 a.m., Tuesday, March 25, 2025  
**RE:** Girl Scouts 2-Dave Miller Ditch Easement  
**MEMO DATE:** March 20, 2025

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 American Indian, urban native, indigenous, and other cultural communities to make meaningful changes to how we do our work that include them, 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

Boulder County proposes to grant a 20-foot-wide non-exclusive utility easement to the Dave Miller Ditch Company ("Ditch Company") in exchange for the relinquishment of the prescriptive easement for an existing open ditch the Ditch Company has held since the late-1800s. The new easement allows for a newly installed underground pipeline to convey irrigation water under county open space to the ditch shareholder's properties in a manner that creates more efficient, flood-resilient irrigation water delivery with much less surface disturbance to county open space. Staff supports this request.

#### Background Information

The Dave Miller Ditch was originally constructed in 1874 to irrigate land along the west side of North St. Vrain Creek in the Apple Valley Road area. The ditch is an open ditch that was partially destroyed in the 2013 flood and has since not been able to service most of its 14 shareholders.

The open ditch crosses the Girl Scouts 2 open space property, which was acquired through the flood buyout process. The Ditch Company has had a prescriptive easement over this the property for the open ditch since the mid-1800s. During the summer and fall of 2024, the Ditch Company installed approximately 5,000 feet of underground pipe in a new alignment to improve the delivery of ditch water and prevent potential damage from future floods, so a portion of this new underground pipeline travels underneath a different section of the Girl Scouts 2 property.

Upon beginning the installation of the new pipeline, the exact alignment was not known due to unknown underground obstacles. The county therefore issued a temporary permit with the understanding that a new easement would be dedicated once the final location was surveyed.

The Ditch Company has completed the pipeline. The maps at the end of this memo depict the locations and alignments of the original prescriptive and new dedicated easements.

**Staff Recommendation**

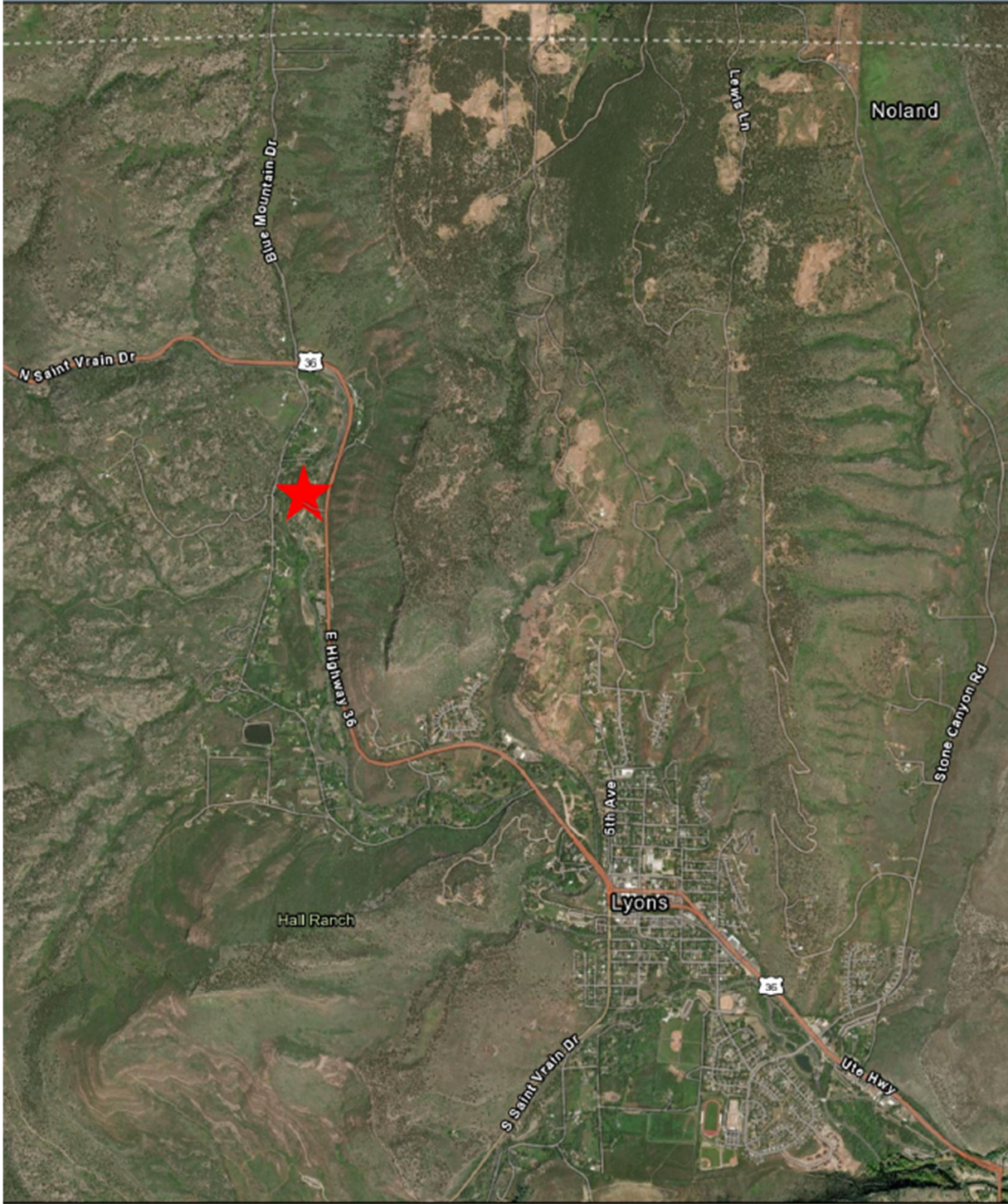
Staff recommends approval of this exchange. The dedication of a new easement to the Ditch Company in exchange for the relinquishment of the old, open ditch, prescriptive easement allows for more efficient, flood-resilient irrigation water delivery with much less surface disturbance to county open space.

**BOCC Action Requested**

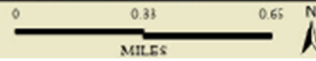
Approve the request as described above.

Vicinity Map:

# Girls Scouts 2 Vicinity Map

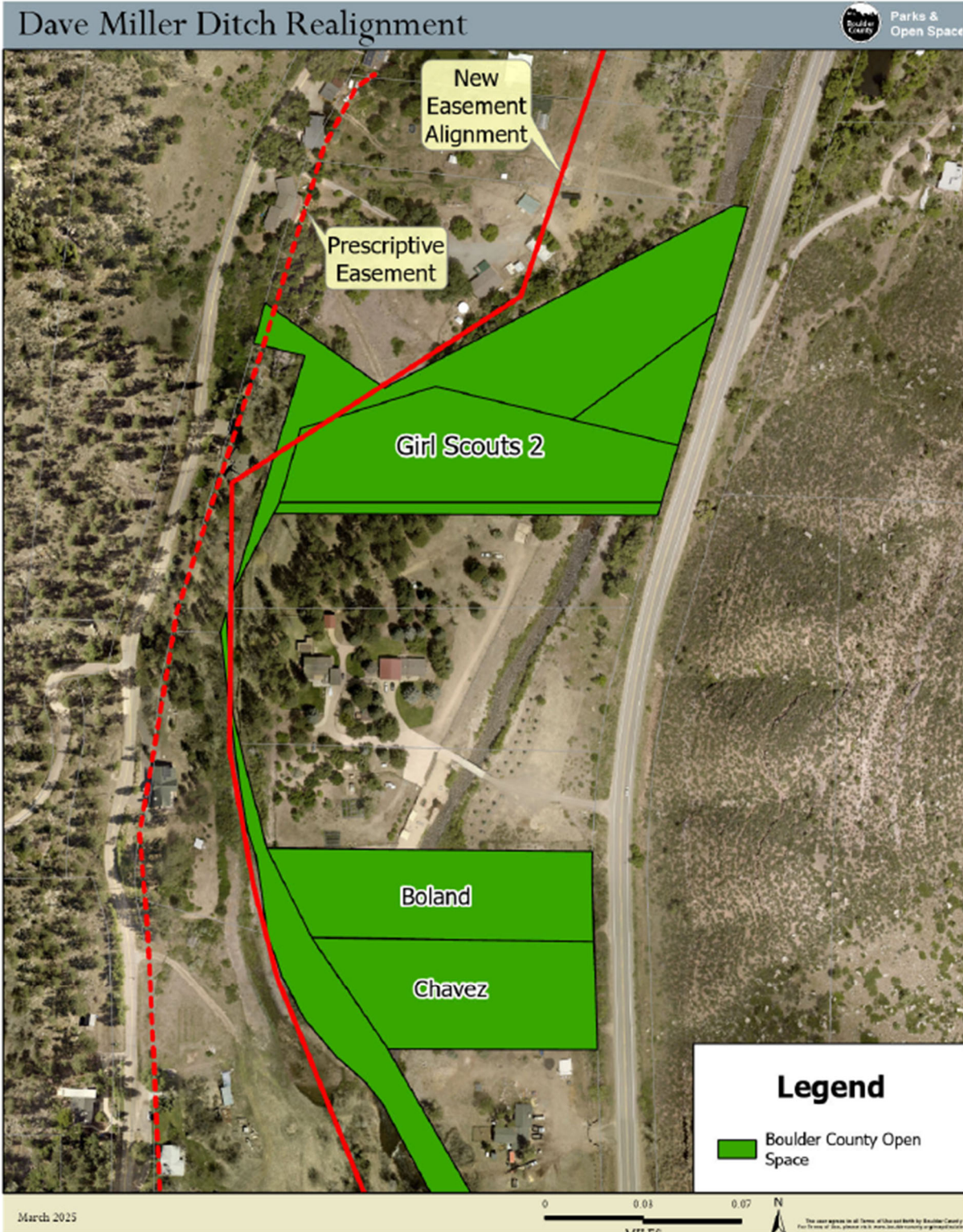


March 2025



This map agrees in all terms of Use and Bank by Boulder County. For Terms of Use, please visit [www.bouldercounty.org/maps/realtime](#)

Map of Easements to be Exchanged:



End of Staff Memo to BOCC

Following pages are documents for signature

## DAVE MILLER DITCH COMPANY UTILITY EASEMENT

This Utility Easement is granted this \_\_\_\_ day of \_\_\_\_\_, 2024, by the **County of Boulder**, a body corporate and politic, whose legal address is P.O. Box 471, Boulder, Colorado 80306 (“Grantor”) to **The Dave Miller Ditch Company, LLC**, whose legal address is 1636 Apple Valley Road, Lyons, CO 80540 (“Grantee”).

### RECITALS

A. Grantor owns certain properties along Apple Valley Road in Lyons, including parcel numbers 120112000018, 120112000019, 120112000022, 120112000028 and 120112000032, as generally depicted on Exhibit A (“Grantor’s Properties”); and

B. Grantee has an existing prescriptive easement (“Prescriptive Easement”) for the Dave Miller Ditch, an open ditch constructed in 1874 which travels the length of Apple Valley Road and crosses a number of properties, including Grantor’s Properties, as generally depicted by the dashed red line on Exhibit B; and

C. Grantee recently installed approximately 5,000 linear feet of underground pipe (“Ditch Pipe”) along a new alignment across Grantor’s Properties, which replaces the Prescriptive Easement; and

D. Grantor desires to grant to Grantee a non-exclusive right of access over and across Grantor’s Properties and the right to install, operate, maintain, and repair the Ditch Pipe along the route as generally depicted by the solid red line on Exhibit B, subject to the conditions contained in this instrument; and

E. Grantee desires to relinquish and vacate any prescriptive rights Grantee may have on Grantor’s Properties related to the Prescriptive Easement.

### GRANT OF EASEMENT

NOW THEREFORE, in consideration of the foregoing Recitals, and the mutual covenants contained herein, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, but subject to the terms and conditions more fully set forth below, Grantor hereby conveys to Grantee, its successors and assigns, the non-exclusive perpetual easement described below:

1. Grant of Easement. Grantor hereby grants and conveys to Grantee a non-exclusive perpetual easement twenty feet wide over Grantor’s Properties to Grantee for the purposes set forth in Paragraph 2, and as depicted on the survey sheets attached and incorporated as Exhibit C (“Easement Property”).

2. Purpose. The Easement Property may be used by Grantee and its agents, assigns, and invitees for the distribution by the Ditch Pipe of irrigation water under, through and across the Easement Property, subject to the conditions contained in this instrument. Grantee must not use the Easement Property for any other uses without an amendment of this Easement or the express written agreement of Grantor. Similarly, Grantee must contain all work activities within the Easement Property and must not use other areas of Grantor's Property or other property owned by Grantor. Without limiting the foregoing, the terms of this Easement will apply to the initial construction and to all future maintenance or replacement operations.

3. Construction, Improvements and Maintenance. Within the Easement Property, Grantee may access, construct, install, operate, repair, remove, replace, reconstruct, alter, relocate, inspect, and maintain the Ditch Pipe; and use and have reasonable ingress and egress along and across the Easement Property for personnel, equipment, and vehicles. Grantee may not pave or otherwise create an impermeable surface over any portion of the Easement Property.

3.1 All use of the Easement Property must be accomplished with all reasonable care for conducting the work.

3.2 Grantee must contain all work activities within the Easement Property and must not affect any other portion of the Grantor's Properties.

3.3 Grantee must comply with all Boulder County land use regulations, including without limitation, obtaining all necessary approvals and permits for the uses permitted hereunder.

3.4 Grantee is responsible for all construction costs and any repairs or maintenance necessary for its construction, maintenance and/or use of the Easement Property. Grantee must restore the Easement Property to its prior condition, including all improvements thereon, including but not limited to, fences, drain tiles, irrigation systems, landscaping, and roads, and is required to pay Grantor for damages to Grantor's Properties, including but not limited to, damage to growing crops, livestock, and other damages caused by Grantee's activities.

3.5 Grantee may conduct routine maintenance activities within the Easement Property but must not make improvements or conduct anything other than routine maintenance without having first provided written notice and plans two weeks prior to the initiation of said work to the Director, Parks & Open Space Department, P.O. Box 471, Boulder, Colorado 80306 and receiving written approval from said county department prior to conducting the work, which approval may not be unreasonably withheld.

3.6 Upon completion of any work, Grantee must remove all equipment,

materials, and supplies and must leave Grantor's Properties in its original or better condition and void of all hazards including but not limited to hazardous changes in topography, such as holes, ruts, and dirt piles.

4. Relocation. Grantee hereby acknowledges and agrees that if Grantor's management of Grantor's Properties creates a need for a relocation of the Easement Property as determined in Grantor's sole discretion, Grantee will cooperate with Grantor to accomplish such relocation at Grantor's expense. In the event of relocation, Grantor and Grantee must execute such documents as are necessary to vacate the location of the Easement Property as set forth in this Easement and to establish and record the Easement Property's new location.

5. Relinquishment of the Prescriptive Easement. Grantee hereby relinquishes and vacates all prescriptive rights Grantee may have on Grantor's Properties related to the Prescriptive Easement.

6. Indemnity. Grantee must hold harmless and indemnify the County and its employees, agents, contractors, and elected and appointed officials for any and all liability, liens, or other costs and/or losses arising from Grantee's use of the Easement Property; provided that the foregoing indemnity will not apply to extent caused by acts or omissions of Grantor, its agents, employees, contractors or invitees. This indemnity includes all costs, attorney fees, expenses and liabilities incurred in connection with any such potential claims, the investigation thereof or the defense of any action or proceedings brought thereon, and any judgments, orders, decrees, or liens, resulting therefrom, but not to the extent caused by acts or omissions of Grantor, its agents, employees, contractors or invitees. By requiring this right to indemnification, County in no way waives or intends to waive the limitations on liability which are provided to it under the Colorado Governmental Immunity Act, C.R.S., §§24-10-101, et seq., as currently enacted or subsequently amended.

7. Mechanic's Lien. Nothing contained herein authorizes Grantee, or any person or entity acting through, with or on behalf of Grantee, to subject the Easement Property or any portion of the Easement Property or of Grantor's Property, to mechanic's liens. If any such lien is filed against the Easement and Grantee has caused such lien, Grantee must cause the lien to be discharged. In the event that such lien is not discharged within twenty (20) days after receipt of written notice of the lien by the Grantee, then Grantor, at its option, and at the cost and expense of the Grantee, may enter into, defend, prosecute or pursue any effort or action (whether or not litigation is involved) which Grantor deems necessary to defend Grantor's Property from and against such lien.

8. Enforcement and Restoration. Grantor may exercise immediate reasonable enforcement, restoration and conservation actions when such actions are warranted for the protection and preservation of Grantor's Property. Should an activity be undertaken on the Easement Property to which the parties have not agreed, Grantor may require Grantee to



immediately cease and desist from such activity. In such case, if the unauthorized activity was performed by Grantee, its employees, agents, guests or invitees, the cost of any restoration of Grantor's Property must be borne by Grantee.

9. Grantor's Reserved Rights. Grantor reserves the right to use and occupy the Easement Property for any lawful purpose consistent with the rights and privileges granted herein which will not interfere with or endanger Grantee's use of the Easement Property. Grantee's use of the Easement Property must be non-exclusive, and Grantee has no rights to use any portion of Grantor's Property except the Easement Property and only as permitted in this Easement.

10. Specific Performance. This Easement may be enforced by specific performance, including mandatory injunctive relief and/or damages.

11. Covenant Running with the Land. This Easement runs with the land and be binding upon and inures to the benefit and/or burden of Grantor and Grantee and their respective successors and assigns.

12. Notices. Within sixty (60) days after a change of a party's address, that party must provide a written notice of any change of address to all other parties. Whenever notice is required to be given hereunder, it must be in writing and may be mailed, or hand delivered to the party entitled thereto, and if mailed, it must be done by registered or certified mail, return receipt requested. If mailed, said notice is effective and complete as of the date of mailing. If hand delivered, said notice is effective and complete upon completion of the hand delivery. Notice may also be accomplished by email, if emailed to a current email address specified in writing by the receiving party. Until changed by notice in writing, each party's mailing addresses are as follows:

To the Grantee:           The Dave Miller Ditch Company, LLC  
                                  c/o Matt Rooney  
                                  1636 Apple Valley Road  
                                  Lyons, CO 80540

To the Grantor:           Director  
                                  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

13. Severability. If any provisions of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, will not be affected thereby.

14. Entire Agreement. This instrument and the attached Exhibits contain the entire agreement between the parties relating to the Easement and may be modified only by an instrument in writing executed by both parties.

15. Exhibits. All references to exhibits herein incorporate such exhibits by their reference.

16. Counterparts. This Easement may be executed in one or more counterparts, each of which when so executed is deemed an original, and such counter parts together constitutes one and the same instrument.

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

18. No Waiver. The waiver by any party to this Easement of any term or condition of this Easement will not operate or be construed as a waiver of any subsequent breach by any party.

19. Encumbrances. Grantee acknowledges this Easement is subject to all prior recorded encumbrances of Grantor's property.

IN WITNESS WHEREOF, the Parties have executed this Easement as of the date set forth above.

GRANTOR:

COUNTY OF BOULDER,  
a body corporate and politic

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_  
of the Board of County Commissioners

State of Colorado  
County of Boulder

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2025,  
by \_\_\_\_\_, as \_\_\_\_\_ of the Board of County  
Commissioners of Boulder County, Colorado.

\_\_\_\_\_  
(Notary official signature)

NOTARY  
S E A L

\_\_\_\_\_  
(Commission expiration)

GRANTEE:

THE DAVE MILLER DITCH COMPANY, LLC

By: [Signature]

Printed Name: Matthew Rooney

Title: President

State of Colorado  
County of Boulder

The foregoing Easement was acknowledged before me this 16 day of December,  
2024, by Shirley Bossert

Shirley Bossert  
(Notary official signature)

Sept 15, 2027  
(Commission expiration)

**SHIRLEY BOSSERT**  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20234035485  
MY COMMISSION EXPIRES SEPT. 15, 2027

NOTARY  
SEAL

**EXHIBIT A**  
**Map of Grantor's Properties**

**Dave Miller Ditch Realignment**



2025

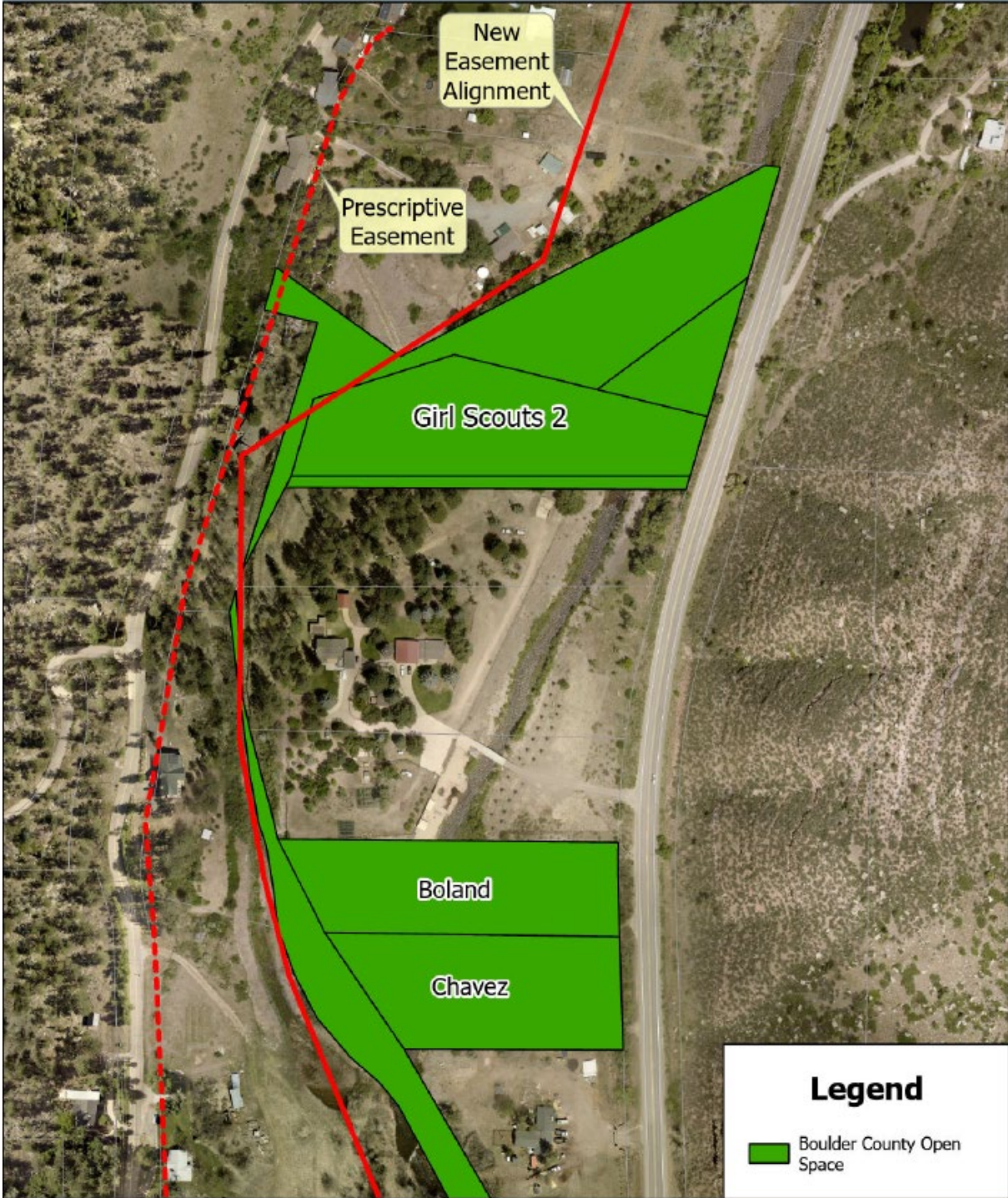
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Blaine County, Oregon 97603-0001

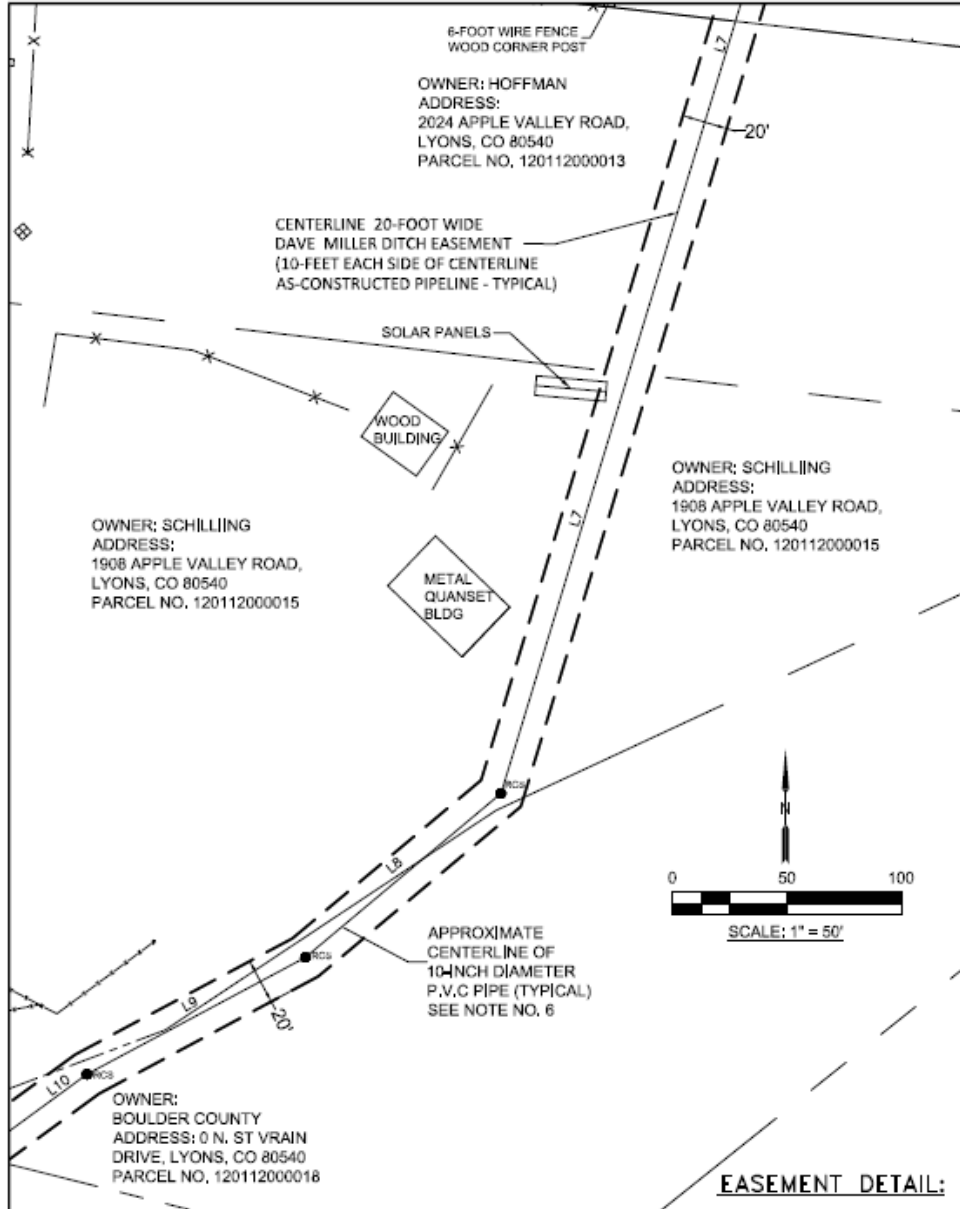
**EXHIBIT B**  
**Depiction of Easements**

**Dave Miller Ditch Realignment**



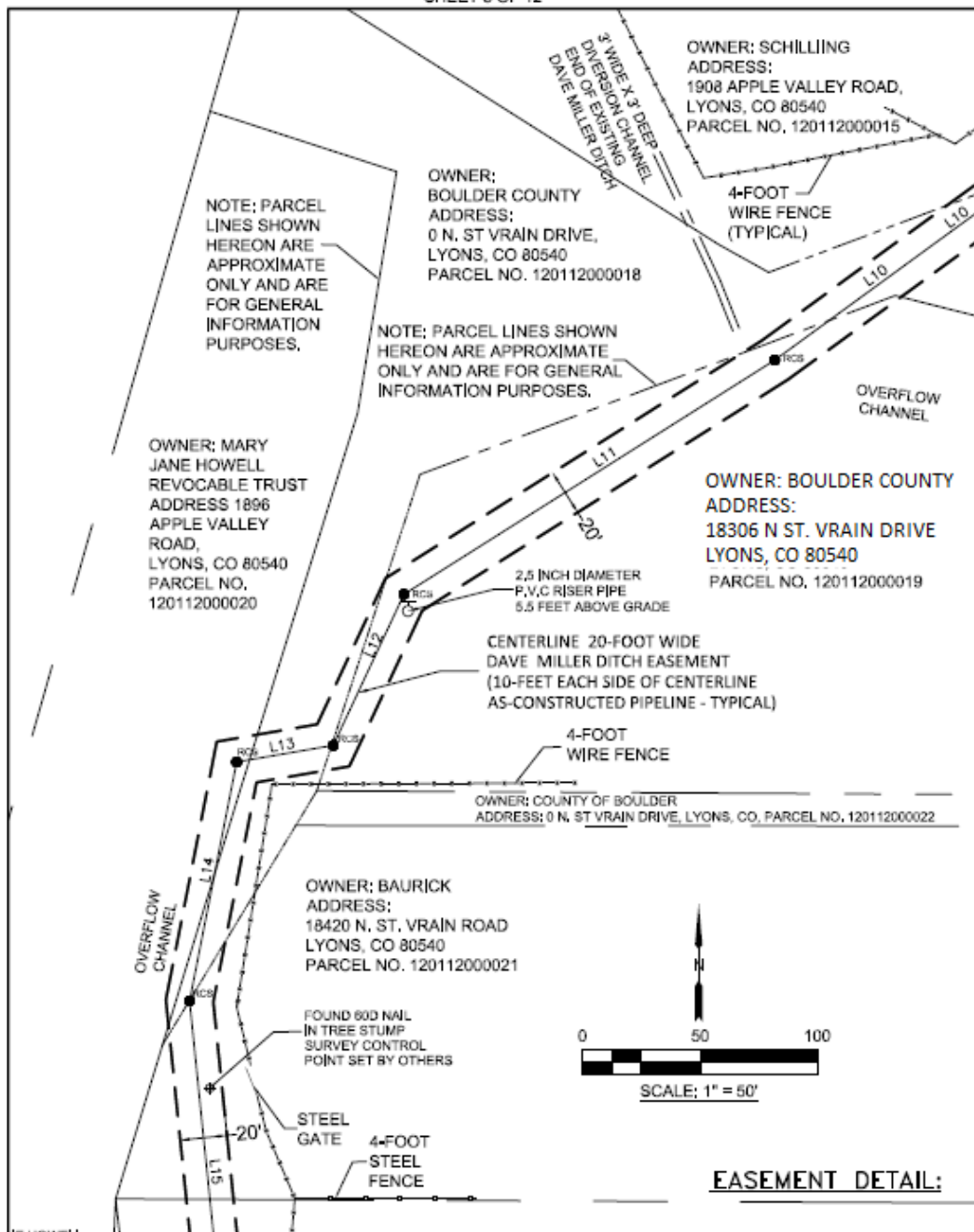
## Exhibit C Survey of Easement Property

20-FOOT WIDE DAVE MILLER MUTUAL DITCH COMPANY, LLC EASEMENT  
LOCATED IN SECTION 12, TOWNSHIP 3 NORTH, RANGE 71 WEST OF THE 6TH P.M.,  
COUNTY OF BOULDER, STATE OF COLORADO  
SHEET 7 OF 12



PREPARED BY:  
**ROCK CREEK SURVEYING, LLC**  
LAND SURVEYING SERVICES  
EMAIL: rockcreeksurvey@gmail.com  
Phone: 303-521-7376

20-FOOT WIDE DAVE MILLER MUTUAL DITCH COMPANY, LLC EASEMENT  
 LOCATED IN SECTION 12, TOWNSHIP 3 NORTH, RANGE 71 WEST OF THE 6TH P.M.,  
 COUNTY OF BOULDER, STATE OF COLORADO  
 SHEET 8 OF 12



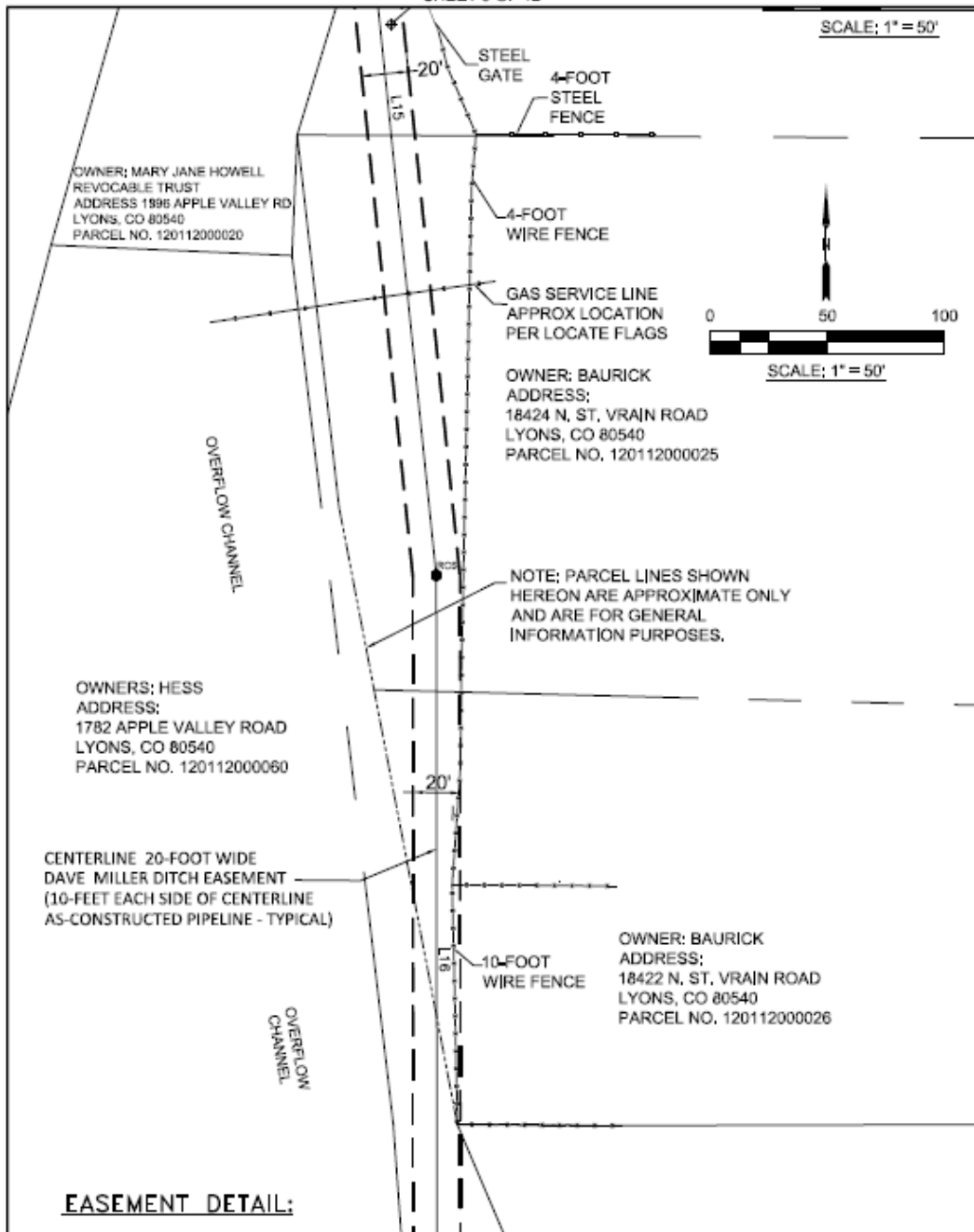
**EASEMENT DETAIL:**



PREPARED BY:  
**ROCK CREEK SURVEYING, LLC**  
 LAND SURVEYING SERVICES  
 EMAIL: rockcreeksurvey@gmail.com  
 Phone: 303-521-7376



20-FOOT WIDE DAVE MILLER MUTUAL DITCH COMPANY, LLC EASEMENT  
 LOCATED IN SECTION 12, TOWNSHIP 3 NORTH, RANGE 71 WEST OF THE 6TH P.M.,  
 COUNTY OF BOULDER, STATE OF COLORADO  
 SHEET 9 OF 12

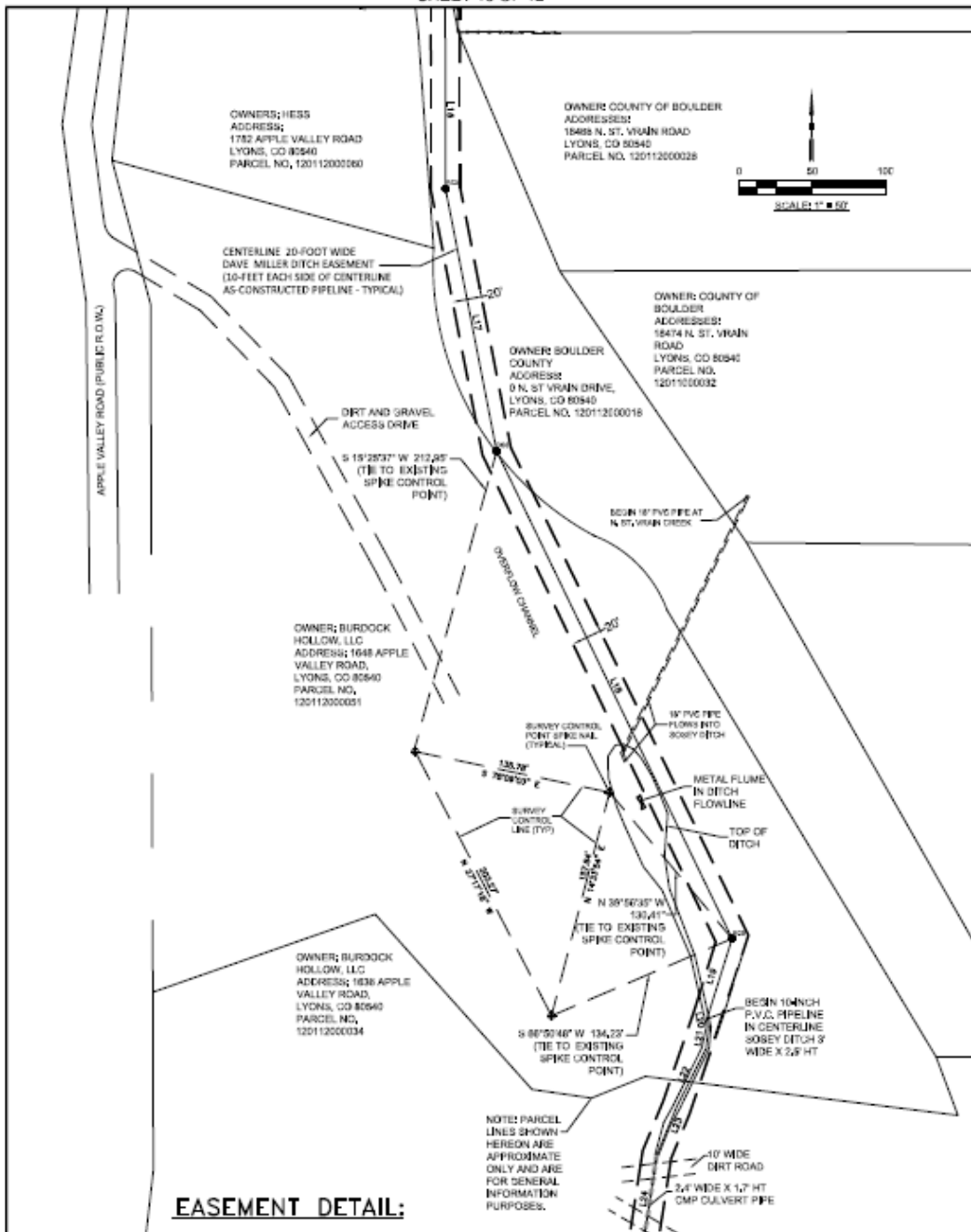


**EASEMENT DETAIL:**



PREPARED BY:  
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 LAND SURVEYING SERVICES  
 EMAIL: rockcreeksurvey@gmail.com  
 Phone: 303-521-7376

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 COUNTY OF BOULDER, STATE OF COLORADO  
 SHEET 10 OF 12**



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