



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

**BOULDER COUNTY
BOARD OF COUNTY COMMISSIONERS
PUBLIC MEETING**

July 10, 2025 at 9:30 a.m.

All Commissioners' public hearings and meetings will 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.

PUBLIC MEETING RE: SD-23-0003 RODRIGUEZ TDR/PUD SKETCH PLAN

STAFF RECOMMENDATION

STAFF PLANNER: Pete L'Orange, Senior Planner

DATE ISSUED: July 3, 2025

Docket SD-23-0003: Rodriguez TDR/PUD Sketch Plan

Request: Request for a Sketch Plan review for a Transferred Development Rights (TDR) / Planned Unit Development (PUD) receiving site consisting of a total of four residential lots on approximately 39.5 acres.

Location: 6184 Niwot Road, located at the southwest corner of Niwot Road and N. 63rd Street, in Section 34, Township 2N, Range 70W.

Zoning: Rural Residential (RR)

Applicants/Owners: Ifrain & Shannon Rodríguez

Representative: Sean Stewart, Lyons Gaddis

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SUMMARY

On May 6, 2025, Community Planning & Permitting Department (CPP) staff presented docket SD-23-0003: Rodriguez TDR/PUD Sketch Plan, a request for a Sketch Plan review for a Transferred Development Rights (TDR) / Planned Unit Development (PUD) receiving site consisting of a total of four residential lots on approximately 39.5 acres.

The May 6, 2025 hearing was tabled to a public meeting on July 10, 2025 to allow a third commissioner to attend and have the Board take action. At the July 10 public meeting, the Commissioners are asked to discuss and take action on the docket SSD-23-0003: Rodriguez TDR/PUD Sketch Plan.

Link to the video of the May 6, 2025 BOCC hearing is here: [Meeting of the Board of County Commissioners](#) The docket hearing begins at 11:28 of the recording.

Please note: The July 10, 2025 proceedings will be a public meeting (versus a public hearing) since the public hearing portion of the docket was closed on May 6. No more public comment will be accepted on July 10.



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**BOULDER COUNTY
BOARD OF COUNTY COMMISSIONERS
PUBLIC HEARING**

May 6, 2025 at 1:00 p.m.

All Commissioners' public hearings and meetings will 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.

PUBLIC HEARING RE: SD-23-0003 RODRIGUEZ TDR/PUD SKETCH PLAN

STAFF RECOMMENDATION

STAFF PLANNER: Pete L'Orange, Senior Planner

DATE ISSUED: April 29, 2025

Docket SD-23-0003: Rodriguez TDR/PUD Sketch Plan

Request: Request for a Sketch Plan review for a Transferred Development Rights (TDR) / Planned Unit Development (PUD) receiving site consisting of a total of four residential lots on approximately 39.5 acres.

Location: 6184 Niwot Road, located at the southwest corner of Niwot Road and N. 63rd Street, in Section 34, Township 2N, Range 70W.

Zoning: Rural Residential (RR)

Applicants/Owners: Ifrain & Shannon Rodríguez

Representative: Sean Stewart, Lyons Gaddis

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Claire Levy County Commissioner

Marta Loachamin County Commissioner

Ashley Stolzmann County Commissioner

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SUMMARY

The applicants request Sketch Plan review for a Transferred Development Rights Planned Unit Development (TDR/PUD) in order to subdivide an existing 39.5-acre parcel into four residential lots. The proposed lot sizes are: one lot of 35.59 acres and three lots of 1.3 acres.

In June 2023, the applicants submitted an application to subdivide the subject 39.5-acre parcel into ten residential lots. Staff reviewed the proposal and determined that it did not meet the applicable Boulder County Land Use Code (Code) criteria and recommended denial. Prior to the originally scheduled Planning Commission hearing in October 2023, the applicants requested that the hearing be tabled to give them time consider staffs’ findings and modify their proposal. In August 2024, the applicants submitted a revised proposal for four residential lots. Staff have reviewed the revised proposal and find it also does not meet the criteria for approval set forth in the Code; as such, staff recommend denial of the proposal. The application was heard by the Boulder County Planning Commission on November 20, 2024; the Planning Commission recommended denial of the request. Following the Planning Commission hearing, the applicants requested the scheduling of a hearing before the Board of County Commissioners be delayed while they considered their options. On March 7, 2025, the applicants requested that the hearing before the County Commissioners proceed, with the application as heard by the Planning Commission.

DISCUSSION

The subject parcel is located at the southwest corner of the intersection of Niwot Road and N. 63rd Street (see Figure 1 below). The parcel is currently 39.5 acres and is located in the Rural Residential zoning district. North of the subject parcel are several existing subdivisions dating from the 1960s; including: Haystack Mountain Ranch (platted 1965); Brigadoon Glen (platted 1964); Range View 1 (platted 1965); Range View (platted 1967); and Oriol Estates (platted 1964). There is also a small Nonurban Planned Unit Development (NUPUD) located east of the subject parcel – the Robl Farm NUPUD (platted 1990). This NUPUD consists of only two developed parcels and several outlots that have been encumbered by Boulder County-held conservation easements. The areas south and west of the subject parcel are unsubdivided and are generally residential and/or agricultural in use.

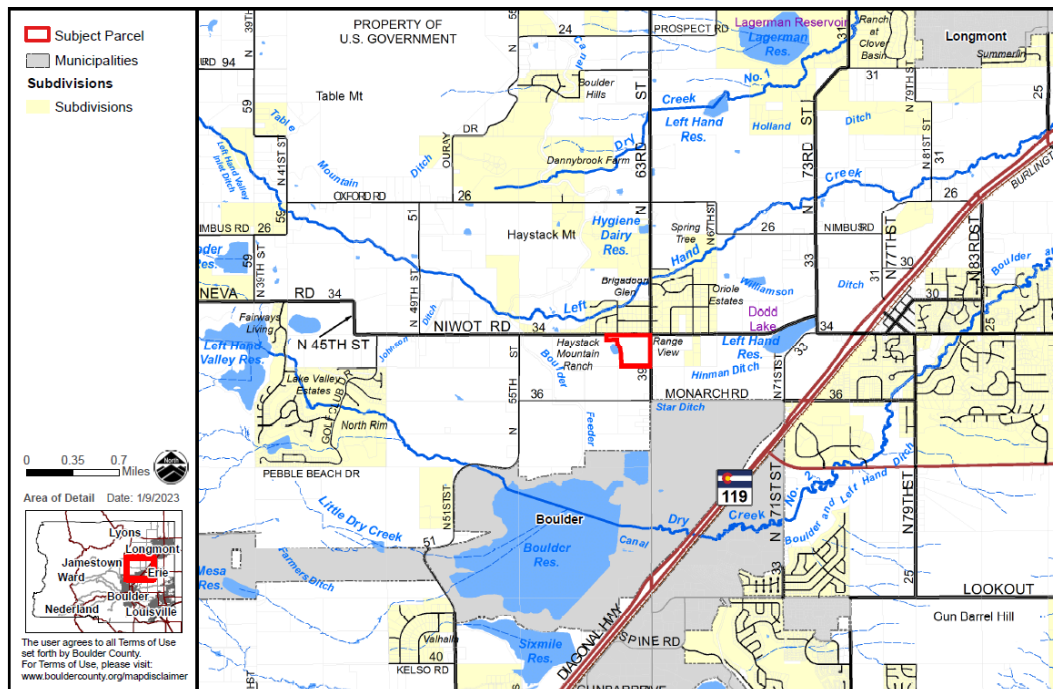


Figure 1. Vicinity Map, with subject parcel indicated in red.

As discussed in further detail below (see Article 6-700 analysis below), the subject parcel is eligible to apply for designation as a TDR receiving site. Per Article 6-700.D.1, a receiving site allows for two units of density per 35 acres; as the parcel is 39.5 acres, it includes two units. The remaining two units of density would be transferred to the site by the applicant purchasing the development rights from another entity (TDRs). In this case, the applicants have confirmed that Boulder County Parks & Open Space has sufficient TDRs available for purchase.

As proposed, the existing 39.5-acre parcel would be subdivided into four parcels, each with a single-unit residential dwelling (see Figure 2 below). The proposal would result in one parcel of 35.59 acres and three parcels of 1.3 acres each. The subject parcel is currently developed as follows: a 5,266-square-foot residence; a 2,160-square-foot barn; and a 168-square-foot shed. Based on the submitted Sketch Plan, the existing residence and accessory structures would be located on the 35.59-acre parcel.

A Sketch Plan review is first step of the three-step approval process to create new lots by platting unsubdivided land. The Sketch Plan is a conceptual level review to determine the feasibility and design characteristics of the development proposal. If a proposed Sketch Plan is approved, it can then proceed to a Preliminary Plan review. This is the second step and reviews the proposed subdivision in more detail, including preliminary engineering and mitigation measures required to address identified potential land use impacts. Only after the Preliminary Plan approval can a proposal move forward to Final Plat review. This third and final step reviews the final engineering plans, the development agreement, letters of credit, conservation easements, homeowners' covenants, the plat, and any other necessary

documents, reports, or studies. The Final Plat review may also address sketch plan or preliminary plan issues which have been deferred, such as building height and floor area restrictions, landscaping, and building envelopes. Each step of the review process requires hearings before the Boulder County Planning Commission and the Board of County Commissioners.

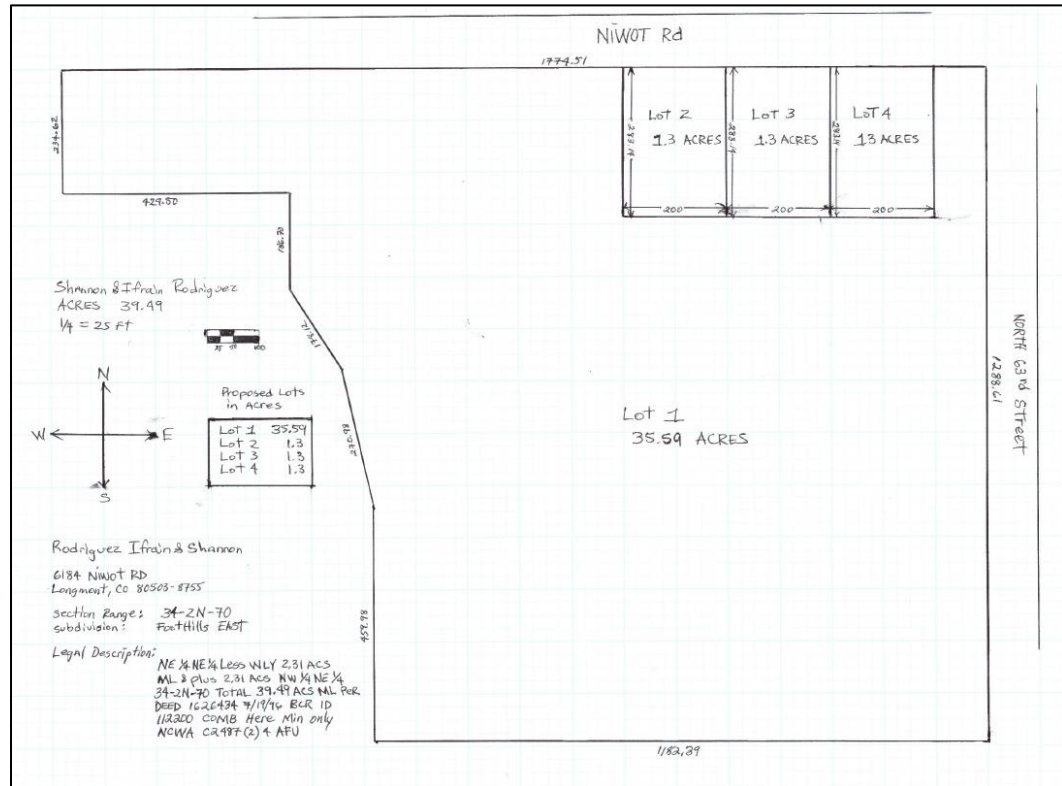


Figure 2. Revised Sketch Plan.

While the Code allows for the Sketch Plan, Preliminary Plan, and Final Plat to be combined into a single review, this is only allowed when the proposed development contains seven or fewer lots and does not require extensive engineering. As the proposal is anticipated to require extensive engineering related to drainage, access and utility infrastructure, and sewage, staff find it does not qualify for a combined review process.

The Boulder County Comprehensive Plan identifies several important resources on the subject parcel: the Boulder Valley Ranch/Beech Open Space Environmental Conservation area; a Riparian Area; and Agricultural Lands of Statewide Importance (see Figure 3 below). There are also view protection scores on both Niwot Road (scores between 1.0 and 1.41 out of 5) and N. 63rd Street (score of 0.55 south of Niwot Road and of 1.36 north of Niwot Road); these view protection scores are discussed under Article 6-1000.A below.



Figure 3: Comprehensive Plan map.

As detailed in the criteria analysis below, staff find that the proposed TDR/PUD development cannot meet all of the applicable Code criteria.

REFERRALS

This application was referred to the typical agencies, departments, and adjacent property owners. The original application was referred on July 18, 2023; the revised proposal was re-referred on August 22, 2024. All responses received are attached and summarized below.

Boulder County Building Safety and Inspection Team: This team responded to the original referral, but did not provide a separate response to the re-referral. This team provided standard comments related to building permit requirements.

Boulder County Development Review Team – Access & Engineering: This team responded to both the original referral and the re-referral. They noted that the existing parcel has legal access via Niwot Road. In their original referral response, they commented on the design and configuration of access road as originally proposed and provided details on the additional access and engineering information which will need to be included as part of any Preliminary Plan application. In their re-referral response, the team noted that a 15-foot right-of-way dedication will be required along the property line on Niwot Road and that all site and drainage improvements must be located in a way to avoid any conflicts with the additional right-of-way dedication. They also stated they could not support the access configurations proposed for Lots 2-4 and strongly encouraged a private road on the subject property to access these lots. Finally, they noted that additional information will be required as part of any future Preliminary Plan application, including: demonstration that

the roads and outlots meet the Boulder County Multimodal Transportation System (MMTS) requirements; a preliminary geotechnical report; a traffic report; a preliminary drainage report; a grading and drainage plan; pavement design details; and a complete set of preliminary construction drawings for the roads.

Boulder County Long Range Planning: This team responded to both the original and re-referral; their comments remained substantially the same for both responses. This team provided comment on the application in relation to the Boulder County Comprehensive Plan (the “Plan”) and found that the proposal is not in compliance with the Plan. They noted the proposal conflicts with multiple specific goals and policies related to the following elements of the Plan: the Niwot/Lefthand/Boulder Creek Subregion; the Agricultural Element; the Housing Element; the Sustainability Element; and the Transportation Element. They also found the proposal is not in line with the 2023 Boulder County Sustainability plan as the development would be auto-dependent, which is not a sustainable land use pattern. Finally, they found that the proposed development would not be in character with the existing adjacent subdivisions.

Boulder County Parks & Open Space – Natural Resource Planner: The Natural Resources Planner responded to the original referral but did not provide a separate response to the re-referral. The Natural Resource Planner reviewed the application materials and stated that they do not support the proposal. They noted that the proposed subdivision and subsequent development would result in the loss of approximately 22.5 acres of agricultural land and would be in conflict with past efforts to conserve land in the area. They also noted that the subject parcel is 140 feet outside of Area III of the Boulder Valley Comprehensive Plan (BVCP) and that rural preservation is one of the goals for Area III; as such, they find subdivisions are contrary to the BVCP. The Natural Resources Planner also noted that the development of nine new homes would have significant negative visual impacts on the View Protection Corridor along N. 63rd Street and its view of Haystack Mountain Natural Landmark, and that strategic house placement and/or landscaping would be unlikely to result in any significant mitigation of those impacts. They also expressed concerns about where the stormwater drainage would go and how it might impact the adjacent subdivisions. The Natural Resources Planner noted that the subject parcel is a known raptor foraging area for Bald Eagles, an identified wildlife species of concern, as documented by Colorado Parks and Wildlife and a 1990s raptor study; they also noted that they have observed hawks foraging on the subject parcel. Finally, they noted that the Riparian Area, Environmental Conservation Area, and the agricultural ditch would not be directly impacted. The Natural Resources Planner recommended denial of the application.

Boulder County Stormwater Team: This team responded to the original referral but did not provide a separate response to the re-referral. The Boulder County Stormwater Quality Coordinator reviewed the application materials and noted that a stormwater quality permit (SWQP) is required for the overlot grading and infrastructure associated with the proposed development. They also noted that development on each of the created parcels will require a Boulder County SWQP. Finally, they noted that the development will need to adhere to

the Boulder County Storm Drainage Criteria Manual (SDCM), which will require a drainage report meeting the requirements in Section 200 and demonstrating that the project meets Low Impact Development, detention, and permanent stormwater quality outlined in Section 1200.

Boulder County Public Health: This team responded to the original referral but did not provide a separate response to the re-referral. Boulder County Public Health noted that each of the proposed lots will require a separate onsite wastewater treatment system (OWTS), and that each lot will require a unique soils analysis and OWTS design; the submitted preliminary engineer report cannot be used for the new individual lots. They also provide standard comments regarding OWTS permitting and inspection requirements.

Boulder Rural Fire Protection District: In their original response, this agency stated that they have no conflict with the proposed subdivision. If the property is subdivided, however, they noted that additional fire hydrants will be necessary and that driveways, turn-arounds, et cetera, would need to be sized to accommodate fire engines. In their response to the re-referral, this agency noted that there is an existing fire hydrant within 1,000 feet of the proposed new parcels, so no cistern will be required.

Colorado Division of Water Resources: This team responded to the original referral but did not provide a separate response to the re-referral. This agency reviewed the application materials and determined that the Left Hand Water District is capable of providing water to the proposed development without injury to any existing decreed water rights.

Colorado Geological Survey: This team responded to both the original referral and the re-referral; their comments remained substantially the same for both responses. This agency reviewed the proposal and determined that there are no geological hazards or constraints that would prevent the proposed residential development. They did note, however, that there is very shallow groundwater on the subject property. As such, they recommend against any basement construction. They also recommend that the bottom of footing elevation should be at least two feet above the seasonal high groundwater table, which is anticipated to be close to three feet below ground surface. As such, to achieve a bottom of foundation elevation of at least two feet (preferably three to five feet) above the seasonal high groundwater table, the site grades will need to be raised or an underdrain system sufficient at lowering water levels installed.

Left Hand Water District: This team responded to the original referral but did not provide a separate response to the re-referral. This agency reviewed the application materials and noted that the applicants will be required to submit a Subdivision Service Review Form with the Water District.

City of Boulder Open Space and Mountain Parks (OSMP): This team responded to the original referral but did not provide a separate response to the re-referral. This agency reviewed the application materials and noted that the property is within 150 feet of the

Boulder Valley Comprehensive Plan planning area, and any subdivision/development should be respectful of the context and adjacency to the rural preservation area. They also noted that any development should be mindful of potential viewshed impacts to Haystack Mountain. OSMP noted that the proposal would result in the loss of irrigatable agricultural lands. They also noted the subject property is likely a raptor foraging area and requested that an environmental survey be required to inventory and determine impacts on the plant, wildlife, and other resources on the property (and using the property) as well as proposed mitigation measures if development were to be permitted. They stated that the Hinman Ditch, which serves adjacent OSMP properties and other OSMP lands in the ditch's service area, bisects the property and cannot be interrupted or interfered with. Finally, they stated that the applicants should be aware that adjacent properties are used for agricultural purposes, and they should expect the operation of machinery, spreading of manure and other fertilizers, the feeding and pasturing of livestock and the application of herbicides, insecticides, or application of irrigation water.

St. Vrain Valley School District: This team responded to both the original referral and the re-referral; their comments remained substantially the same for both referrals. The school district reviewed the application materials and determined that the potential increase in students resulting from the creation of four lots would not result in any of the applicable schools exceeding their attendance benchmarks. Additionally, the school district stated that a dedication of land to the school district was not required, but that a cash-in-lieu payment to Boulder County would be required. Finally, they noted that bussing to elementary, middle, and high school would be provided by the school district.

Xcel Energy: This team responded to the original referral but did not provide a separate response to the re-referral. This agency reviewed the application materials. They noted a potential conflict in that an existing natural gas service line to 6060 Niwot appears to run through the proposed Lot 1 of the original proposal, which would place this pipeline in trespass; they stated that an easement may be necessary. They also provide language to be included in the Preliminary Plan and Final Plat related to required six-foot utility easements on the resulting lots.

New Hinman Ditch Company: This agency responded to the re-referral. They stated that they opposed the proposal, citing concerns that, without significant flood mitigation, the proposed building sites would experience significant flooding. They also stated that if the application were to be approved, the New Hinman Ditch Company would request release from any and all liability, to both property and persons, due to future possible flooding in the New Hinman Ditch.

Lumen Technologies/CenturyLink: This agency responded to the re-referral. They stated they had no objections to the proposal, with the stipulation that if any CenturyLink facilities are found and/or damaged within the project area, that the applicant will bear the cost of relocation and repair of said facilities.

Adjacent Property Owners: Notices were sent to the property owners within 1,500 feet of the subject property. Staff received approximately 120 public comments related to the original proposal; staff received 81 comments related to revised proposal. Most the public comments received have been in opposition, citing concerns with traffic, visual impacts, the rural/agricultural character of the area, and property values; the few comments in support have cited the need for more housing in Boulder County or expressing support for property owners being able to do what they want with their property.

Agencies that responded with no conflict: Boulder County Historic Preservation Team and Mile High Flood District.

Agencies that did not respond: Boulder County Assessor; Boulder County Office of Sustainability, Climate Action, and Resilience (OSCAR); Boulder County Sheriff; Boulder County Treasurer; Boulder County Public Works; Boulder County Surveyor; Boulder County Audubon Society; Left Hand Watershed Center; Northern Colorado Water Conservancy District; Poudre Valley REA; Boulder Valley & Longmont Conservation District; and History Colorado.

REVIEW CRITERIA

The specific Code Sections applicable to this proposal include the following:

- Subdivision Regulations, Article 5-102 Standards and Conditions for Sketch Plan Approval
- Planned Development Districts, Article 6-100 Purpose and Intent
- Planned Development Districts, Article 6-200 General Requirements for all Planned Unit Developments
- Planned Development Districts, Article 6-700 Transferred Development Rights Planned Unit Development
- Planned Development Districts, Article 6-800 Conservation Easement
- Planned Development Districts, Article 6-1000 Standards and Criteria for Approval of a Planned Unit Development
- Development Standards, Article 7-200 Development Design
- Development Standards, Article 7-400 Sewage Treatment
- Development Standards, Article 7-1100 Fire Protection
- Development Standards, Article 7-1200 Utility Location

The Community Planning & Permitting staff has reviewed the standards for Sketch Plan Approval and Transferable Development Rights Planned Unit Development as set forth in the Code and finds the following:

Article 5-102 Standards and Conditions for Sketch Plan Review

A. The Planning Commission and the Board of County Commissioners shall not approve a sketch plan proposal until the applicant has adequately shown that the proposal meets the following:

1. *The design conforms to the criteria established in Section 7-200.*

Staff reviewed the proposed subdivision design in relation to the requirements in Article 7-200 of the Code (discussed in more detail below). Generally, it appears that the proposed subdivision will be able to meet the majority requirements of this Section. However, there are some criteria under Article 7-200 that cannot be determined at this time, and there is one criterion (Article 7-200.A.14) with which the proposal does not conform. In order to meet this criterion, however, a proposal must conform with all of the criteria under Section 7-200 of the Code.

Therefore, staff find this criterion is not met.

2. *A water source is designated and the method of distribution within the proposed platted subdivision is defined. Also necessary, as applicable, are a preliminary agreement for water service from the appropriate water provider, well permits from the State Engineer, preliminary evidence on the availability of water, and/ or a preliminary water augmentation proposal. In accordance with Section 7-300, the water supply must be adequate for the type of platted subdivision proposed.*

The applicants submitted a letter from the Left Hand Water District stating that the Water District is able and willing to provide water service for the originally proposed ten lots. While the applicants did not submit a separate letter for the revised proposal, since the new proposal involves fewer total parcels, staff find the original able and willing letter satisfies this criterion.

Therefore, staff find this criterion is met.

3. *Either a written commitment to provide a public sewage disposal system or a sewage disposal system which complies with state and local laws and regulations, in accordance with Section 7-400.*

Per the application materials, the applicants do not propose to provide or connect to any public sewer system. Rather, each lot would be served by an individual onsite wastewater treatment system (OWTS). The applicants have submitted a preliminary septic suitability report for the proposed development. Per this report, the soil on the subject parcel does not meet Boulder County Public Health's guidelines for percolation rate for a non-engineered OWTS. As such, engineered OWTS designs will be necessary for development. Each of these would be reviewed as part of each lot development. Since the specifics of each OWTS cannot be known at this time, staff has not included analysis of Section 7-400. However, staff anticipates that each lot-specific OWTS can be designed to meet the requirements of Section 7-400. Per Article 3-203.E.4.m, detailed information about the location and results of soil percolation tests and proposed OWTS and a boring log will be required as part of any potential future Preliminary Plan application.

Therefore, staff find this criterion can be met.

4. *The development proposal conforms with the Comprehensive Plan, any applicable intergovernmental agreement affecting land use or development, and this Code.*

Staff reviewed the proposed subdivision for conformance with Boulder County Comprehensive Plan (BCCP) and find that the proposal does not conform with a number of goals and policies in the BCCP. The specific goals and policies with which the proposal conflicts include the following:

Countywide Goal 1 Cluster Development. The first countywide goal of the BCCP states: *“Future urban development should be located within or adjacent to existing urban areas in order to eliminate sprawl and strip development, to assure the provision of adequate urban services, to preserve agriculture, forestry and open space land uses, and to maximize the utility of funds invested in public facilities and services.”*

Staff find that the proposed TDR/PUD is not within or adjacent to any urban area but, rather, is located in a generally agricultural area. As such, the proposal would not be consistent with this goal. The proposal would result in extending suburban-type sprawl into a rural, primarily agricultural lands. There are existing subdivisions north of the subject property; however, they all date back to the 1960s, prior to the County’s established goal of limiting sprawl. One of the purposes of the Comprehensive Plan is to respond to growth patterns which are deemed to be undesirable; as such, development which occurred prior to the current Comprehensive Plan does not necessarily justify new development which conflicts with the Plan just because the proposed development is adjacent to the older, undesirable development pattern.

Agricultural Element Policy AG 1.01 Agricultural Land Preservation. This policy states: *“It is the policy of Boulder County to promote and support the preservation of agricultural lands and activities within the unincorporated areas of the county, and to make that position known to all citizens currently living in or intending to move into this area.”*

Agricultural Element Policy AG 1.03 Agricultural Land of Importance. This policy states: *“It is the policy of Boulder County to encourage the preservation and utilization of those lands identified in the Agricultural Element as Agricultural Lands of National, Statewide, or Local Importance and other agricultural lands for agricultural or rural uses.”*

Agricultural Element Policy AG 1.12 Land Unification. This policy states: *“The county shall continue to discourage the fragmentation of large parcels of agricultural land*

and to encourage the assemblage of smaller parcels into larger, more manageable and productive tracts.”

Staff find the proposal conflicts with all three of these policies. As the subject property is located within an area identified as Agricultural Lands of Statewide Importance, staff find that it would be contrary to the county’s policies as it would fragment an existing 39.5-acre largely undeveloped parcel into smaller parcels, three of which would be incapable of being used for agricultural purposes. Additionally, the proposal does not include any provisions for preserving any of the existing parcel for agricultural use. For example, in more recently approved TDR/PUD developments, the proposals included larger outlots over which a county-held conservation easement were proposed, protecting at least those portions of agricultural land in perpetuity. No such provision for agricultural outlots is included in this proposal. As discussed below in staff’s analysis of the criteria under Article 6-800.A of the Code, a conservation easement over a significant percentage of the existing parcel may serve to reduce or mitigate these conflicts. The applicants have indicated that they will agree to a conservation easement for the largest proposed parcel, but the specific use and activity restrictions have not yet been determined.

Economics Element Policy EC 3.04 Transit Oriented Development. This policy states: *“Boulder County works with local cities and towns to encourage patterns of commercial and residential development that support use of public transit and walkable mixed-use neighborhoods, including modifying development regulations to facilitate commercial or mixed-use projects at sites near transit stops.”*

The subject property is not located near any existing, proposed, or identified potential future public transit services. The subject parcel is approximately two miles away from the nearest public transit location (the RTD Park-n-Ride located at Niwot Road and CO 119). As such, staff find the proposal is not in accordance with this policy.

Housing Element Policy HO 1.04 Limited Increases in Density. This policy states: *“In circumscribed situations, the county may enable increased residential density that meets affordability needs, is integrated within or adjacent to existing developed areas, is capable of being served by adequate public facilities, is considerate of long-term cost impacts on public facilities, and has strong multimodal transportation connections or potential for such connections.”*

This policy provides specific circumstances in which it may be acceptable for the county to allow increased residential density. One of these is if the proposal supports affordable housing needs; there is no indication that the proposal would support affordable housing in the county. As discussed in more detail in staff analysis of Article 6-1000 below, staff find that the development of each lot will require extensive engineering and designing in order to build a house due to shallow

groundwater levels; staff find that this will increase the cost of developing each lot, further reducing any potential for affordability. Additionally, as discussed in more detail below, the proposed development does not have any strong multimodal transportation connections. As such, staff find the proposed TDR/PUD is not in accordance with this policy.

Sustainability Element Policy SU 1.02 TDR Program Objectives. This policy states: *“This TDR program should consider facilitating the attainment of any or all of the following objectives:*

- *Preserving vacant lands identified in the Comprehensive Plan as having significant environmental, agricultural, visual or cultural values;*
- *Maintaining the character of established rural communities;*
- *Avoiding or reducing the fragmentation and disturbance of important ecological and environmental areas;*
- *Avoiding development in hazardous areas;*
- *Providing incentives for the promotion and retention of a diverse housing stock;*
- *Protecting and securing scenic vistas;*
- *Promoting the county’s goals of achieving sustainable land uses and reducing the impacts of the built environment; and*
- *Encouraging the voluntary participation of landowners.”*

This policy provides specific guidance on the objectives for the Transfer of Development Rights program. Staff find that the proposal is not in accordance with this policy as it would not result in the preservation of any vacant lands with significant environmental, agricultural, visual, or cultural values; rather, it would result in the development of lands identified as Agricultural Lands of Statewide Importance. Additionally, the proposal would not maintain the rural character of the area. See staff’s analysis under Article 6-100.D below for detailed discussed of these objectives.

Transportation Element Policy TR 4.01 Reduce Single-Occupant-Vehicle Travel. This policy states: *“Reduce single-occupant-vehicle (SOV) travel and shift SOV travel to off-peak periods through a variety of programs and techniques, including Transportation Demand Management (TDM).”*

Transportation Element Policy TR 5.01 Reduce Vehicle Miles Traveled. This policy states: *“Set goals for vehicle miles traveled (VMT) per capita reductions for 2015, 2020 and 2030. Encourage incorporated areas inside the county to adopt similar goals.”*

Staff find that the proposal does not align with these policies. The subject property is not located near any commercial, business, or employment centers. As such, residents of the proposed development would be required to drive to reach any

employment or shopping areas, potentially increasing both single-occupant-vehicle travel and the number of miles driven. Therefore, staff find the proposed TDR/PUD is not in accordance with these policies.

Niwot, Lefthand, Boulder Creek Subarea Policy NIW 1.01 Preservation of Agricultural Character. This policy states: *“Based upon past and present land use, lack of community services, physical conditions and citizen desires, it is county policy to recognize and designate the existing land use character of the Lefthand/Niwot/Boulder Creek Subregion (with the exception of the Niwot Community Service Area) as being agricultural in nature and to ensure that the accompanying Land Use Plan Map and attendant Boulder County Land Use Code will acknowledge such character in the designation and implementation of future land use types.”*

Niwot, Lefthand, Boulder Creek Subarea Policy NIW 1.02 Limitations on New Building Sites and Residential Structures. This policy states, in part: *“In recognition and support of the designated agricultural character of the Subregion, the Boulder County Land Use Code shall be developed in such a manner as to discourage the further subdivision of lands, situated outside of designated “Community Service Areas” for the purpose of creating new building sites for residential, commercial, or industrial land uses (except as otherwise permitted within these policy statements or by state statutes).”*

The subject parcel is located within the Niwot, Lefthand, Boulder Creek Subarea; however, it is not located in the Niwot Community Service Area, so it is in an area which has been identified as agricultural in nature and where further subdivision of lands is discouraged. Additionally, the Niwot Community Service Area is identified as an area which is appropriate for further development and densification. Specifically, the Comprehensive Plan’s description of the Niwot Community Service Area states: *“The community of Niwot is the only area within the Subregion where significant public and private commitments have occurred in the form of centralized sewer, water, a range of residential densities, and housing types, fire protection, public educational facilities, [. . .] Consequently, Niwot is planned to be the only designated service area within the Subregion and the geographic area wherein the majority of future growth will be accommodated.”* As such, staff find that the proposed subdivision conflicts with both of the NIW policies discussed above as it is not in the Niwot Community Service Area and, therefore, the subject property is intended to remain rural and agricultural in nature.

Additionally, staff find that the proposal is in conflict with the Boulder Valley Comprehensive Plan (BVCP). The BVCP is a jointly administered planning document between Boulder County and the City of Boulder. It is intended to help direct and control development in the unincorporated portions of Boulder County near the City of Boulder municipal boundaries. While the subject property is outside of the BVCP

area, it is only approximately 150 feet from the BVCP boundary. As such, staff find that considering the impacts of the proposed development on the BVCP is appropriate. Specifically, the portion of the BVCP nearest to the subject property is identified as Area III, "Rural Preservation." The goals and requirements for Area III focus on land conservation and retaining/protecting the rural and agricultural feel of the area. Subdivisions and other forms of intensive development are considered contrary to these goals and have the potential to negatively impact the BVCP area.

As the proposed subdivision is in conflict with multiple goals and policies of the Boulder County Comprehensive Plan and has the potential to negatively impact the Boulder Valley Comprehensive Plan area, staff find the proposal does not conform with the Comprehensive Plan.

Therefore, staff find this criterion cannot be met.

5. *The proposed methods for fire protection comply with Section 7-1100.*

Currently, there is a single fire hydrant located on the north side of Niwot Road just west of N. 63rd Street and one on the west side of Strath Street just north of Niwot Road (see Figure 4 below). Per the re-referral response from the Boulder Rural Fire Protection District, since the proposed parcels would be within 1,000 feet of a hydrant, no additional cistern will be required.

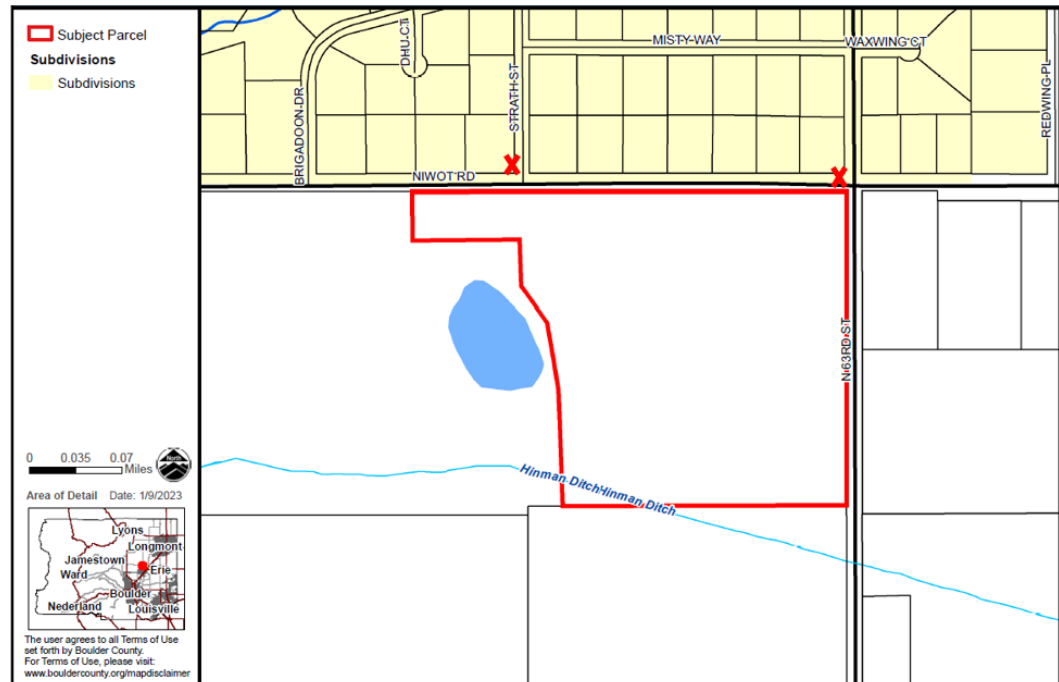


Figure 4. Subject parcel with existing fire hydrants indicated by red Xs.

This application did not include any information or proposal for meeting the requirements of Section 7-1100; as such, staff has not included any analysis related to this specific Section. However, staff find that the specifics for compliance with Section 7-1100 of the Code are details that can be developed prior to the submission of any application for Preliminary Plan review.

Therefore, with the inclusion of the required Fire Protections under Article 7-1100 of the Code in any Preliminary Plan Review, staff find this criterion can be met

6. *The proposed uses for all areas are appropriate and the design is based on the constraints of topography, soil types, geologic hazards, aggregate resources, environmental resources, flood plain, airplane flight overlays, or other constraints.*

The existing uses in the area around the subject property are residential and agricultural in nature. The applicants have proposed that the new lots would be used for residential purposes. As such, staff find the proposed use is appropriate.

However, as noted in the referral response from the Colorado Geological Survey, there is very shallow groundwater on the subject property, which may pose a significant constraint to development on the proposed lots. Staff has significant concerns about the potential implications and impacts of the shallow groundwater for the actual development of homes on the lots (discussed in more detail under Article 6-1000.A.11 below); however, staff find that, since the shallow groundwater levels are present on entire parcel, the design of the lots cannot be altered in such a way as to avoid this constraint.

Therefore, staff find this criterion is met.

7. *Services are available and adequate to meet the needs of the proposed platted subdivision including transportation, police protection, schools, recreation, telephone, mail, gas, electric power and other services, and comply with Section 7-1200.*

No specific information was submitted related to locations or designs for any utility services as required in Section 7-1200 of the Code. However, based on the size and configuration of the proposed lots, it appears that the proposed subdivision would likely be capable of meeting the requirements of this Section. Initial proposed easements and locations for utilities must be included in any plans submitted for Preliminary Plan review.

Xcel Energy noted that an existing natural gas service line to 6060 Niwot appears to run through the proposed Lot 1 and that an easement may be necessary. Staff find this does not appear to hinder the proposed subdivision's ability to have adequate services; however, this easement would have to be shown on the plans submitted

for any Preliminary Plan review. Additionally, Xcel noted that specific language and graphic representations of utility easements would need to be included in plans for any Preliminary Plan review.

While specific water requirements were not submitted with the application materials, the applicants have provided a “willing and able” letter from Left Hand Water District, stating that the District would be able to provide adequate water for the proposed development. This was also confirmed by the Colorado Division of Water Resources, which determined that adequate water could be provided to the development without posing risk or injury to any existing water rights.

No other service agencies have responded with any concerns.

Therefore, with the inclusion of the required utility easements and locations in any Preliminary Plan Review, staff find this criterion can be met.

Article 6-100 Purpose and Intent for Planned Development Districts

D. In addition to those purposes outlined within these Regulations, NUPUD, NCNUPUD, and TDR/PUD submission, review, and action shall be guided by the following objectives:

- 1. To accomplish the preservation of those lands identified within the Boulder County Comprehensive Plan as agricultural lands of National, Statewide, and Local Importance and other valuable agricultural lands; to accomplish such preservation through the strategic and planned location of subdivided lots.***

As shown in Figure 3 above, the subject property is located in an area identified as Agricultural Lands of Statewide Importance. Staff find the proposed development does not advance this objective as the sending site locations for the Transferable Development Rights are already preserved, and no new agricultural lands of significance are proposed to be preserved. A conservation easement as required per Article 6-800.A (discussed below) may allow the proposal to meet this objective; as discussed elsewhere, the applicants have indicated that they will agree to a conservation easement, but the specifics of that have not yet been determined.

Therefore, staff find this objective is not currently met.

- 2. To accomplish the preservation of those natural and cultural resources as identified in the Cultural and Environmental Resources Elements of the Comprehensive Plan; to accomplish such preservation through the strategic and planned location of subdivided lots.***

As shown in Figure 3 above, portions of the subject property are within the Boulder Valley Ranch/Beech Open Space Environmental Conservation Area (ECA). Based on

the revised Sketch Plan, the northwest portion of Lot 1 would be within the mapped ECA (see Figure 5 below).

In 2017, the Parks and Open Space Natural Resources Planner submitted a referral response related to the Site Plan Review for the existing residence (SPR-17-0091). The response stated that the mapped boundaries of the ECA were created with “a broad brush,” and that “the on-the-ground boundary in the subject area would extend to 63rd Street.” Based on this information, staff find that the entire parcel has similar environmental values to the mapped ECA; as such, staff also find the amount of environmentally sensitive land which would be impacted by the proposed subdivision is likely greater than that indicated in Figure 5. Staff find that the establishment of building envelopes, landscaping requirements, and other site design restrictions could potentially minimize or mitigate these impacts. However, as no such envelopes, landscaping, or other site design proposals have been submitted at this time, staff cannot provide any analysis as to the potential effectiveness or appropriateness of any such measures at this time. Potential mitigation measures (including, but not limited to, building envelopes, landscaping requirements, and other measures as appropriate) must be included in any application for Preliminary Plan review.

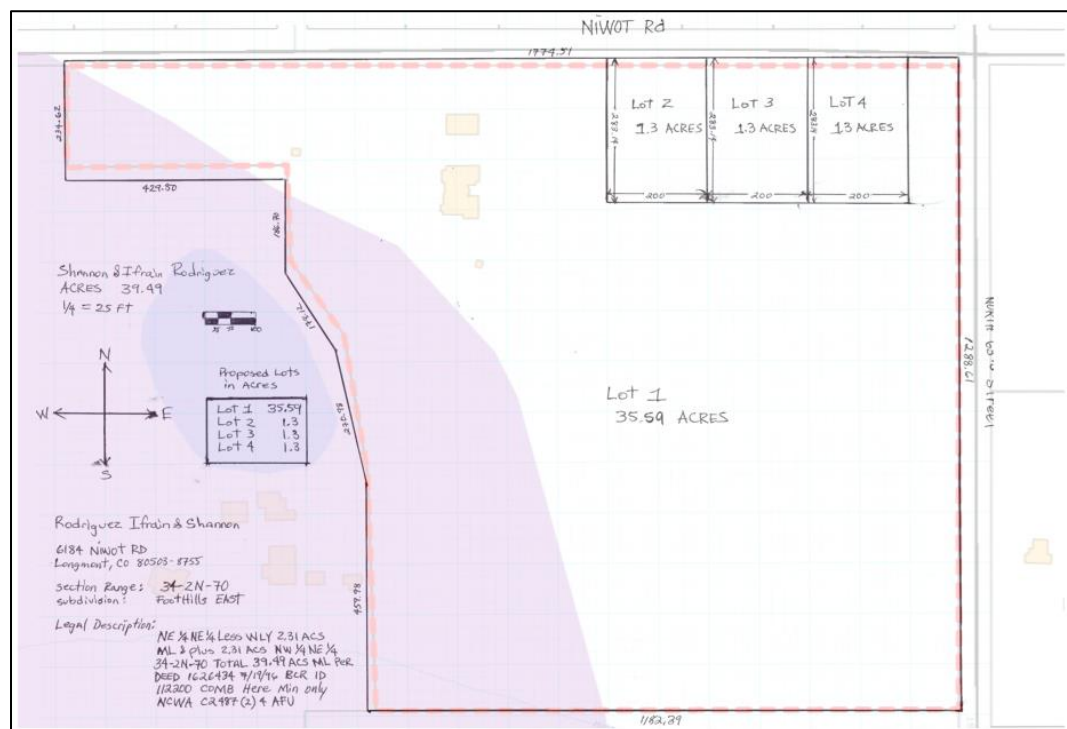


Figure 5. Revised Sketch Plan with ECA indicated in purple.

Staff have additional concerns regarding the potential for the proposed TDR/PUD and subsequent development to negatively impact wildlife in the area of the subject property. Per the referral responses from the Natural Resources Planner and the City

of Boulder Open Space and Mountain Parks, the existing prairie dog colony located on the subject property is actively used as a foraging location by Bald Eagles, rough-legged hawks, and Northern Harriers; it is also possibly used for foraging by ferruginous hawks and for burrows by burrowing owls. The rough-legged hawk, the Northern Harrier, and the ferruginous hawk are all county species of concern. As the specifics of the potential development on the lots has not been included in this application, staff cannot determine the specific potential impacts on these raptors, but it is reasonable to presume that adverse impacts to the prairie dog colony are likely to have an impact on the raptors' foraging activities. Therefore, staff recommend that a full environmental impact study, to inventory and determine impacts on the plant, wildlife, and other resources on/using the property as well as proposed mitigation measures be included in any application for Preliminary Plan review.

No cultural resources have been identified on or near the subject parcel.

Due to the impacts to the ECA, staff find this objective is not met.

3. *To offer density bonus as an incentive to discourage the development of valuable agricultural and other resource lands in Boulder County.*

As discussed in Article 6-100.D.1 above, staff find that the proposal does not currently result in the protection of any agricultural land, instead relying on TDRs from already protected areas. Allowing the subdivision and development of the subject parcel without corresponding offsets does not advance this objective as it would encourage the development of agricultural land.

Therefore, staff find this objective is not met.

4. *To offer the NUPUD and TDR/PUD processes as a viable alternative to municipal annexation for development purposes.*

The subject parcel is not located adjacent to any municipal boundary and is not a candidate for municipal annexation. It is also not located in any municipal influence area which might indicate the potential for annexation.

As this objective is related to giving properties an alternative to annexation, staff find this objective is not applicable to this proposal.

5. *To stabilize nonurban land values.*

One of the objectives of the TDR program is to discourage the purchasing of larger rural properties with the intent of splitting them into smaller lots to be sold off as speculative investments, which can cause land values in the area to spike and make

land less affordable in Boulder County. Staff find the proposed subdivision and subsequent development of the lots would likely result in an increase in value of these nonurban lands.

Therefore, staff find this objective is not met.

- 6. *To create a process for platting unsubdivided land whereby agricultural property owners may realize profits from the conveyance of portions of their land or the development rights from that land without being forced to sell large or entire agricultural tracts.***

This objective is related to the previous objective of stabilizing nonurban land values as it is intended to allow property owners to sell smaller portions of larger agricultural tracts instead of selling off large tracts. The revised Sketch Plan with the required conservation easement discussed under Article 6-800.A below, would result in the applicants retaining ownership of approximately 90% of the existing parcel. As discussed elsewhere, the applicants have indicated that they will agree to a conservation easement, but the specifics of that have not yet been determined.

Therefore, staff find this objective is not currently met.

- 7. *To provide for subdivided lots of such size, location, design, and orientation to minimize future demands for services while providing opportunities for the support of a variety of lifestyles.***

The proposed lots are all of sufficient size and design that they could be developed without needing any future demands for services above what are currently available.

Therefore, staff find this objective is met.

Article 6-200 General Requirements for all Planned Unit Developments

A. The parcel being considered for a PUD must be a legal building lot.

The subject parcel is greater than 35 acres. Per Article 9-100.A.2 of the Code, this constitutes a legal building lot.

Therefore, staff find this criterion is met.

- B. Any proposed PUD, or substantial modification to an approved PUD, is subject to the requirements of this Article and the public hearing process defined in Article 3 of this Code.***

The applicant has submitted a complete application as required and is currently proceeding through the required review and public hearing process. Once the docket

has been heard by the Boulder County Planning Commission and they have issued a recommendation, it will be scheduled for a public hearing before the Board of County Commissioners.

Therefore, staff find this criterion is met.

- C. Any proposed plat for a NUPUD or NCNUPUD must meet the applicable general requirements included in Section 6-300 for all PUDs as well as the specific requirements for that type of PUD as described below. A TDR/PUD is not subject to the requirements of 6-300, but is subject to the specific requirements of Section 6-700, below.***

Per this provision, since the proposal is for a TDR/PUD, it is subject to the requirement of Section 6-700 of the Code. These requirements are discussed below.

- D. Any common areas proposed within a PUD shall be included within the overall area covered by the development plan.***

This application does not propose to create any common areas.

Therefore, staff find this criterion is not applicable.

- E. No PUD shall be approved without a plan setting forth the provisions for unified development of the PUD, including but not necessarily limited to easements, covenants and restrictions relating to use, location, and bulk of buildings and other structures; intensity of use or density of development; utilities; private and public streets, ways, roads, pedestrian areas, and parking facilities; common (or dedicated) open spaces; and other public facilities.***

No plan for the unified development of the TDR/PUD has been included in this Sketch Plan review application. This plan will be required for any Preliminary Plan application.

Therefore, with the inclusion of a plan for the unified development of the proposed subdivision in any Preliminary Plan review, staff find this criterion can be met.

- F. A PUD must be maintained during construction and occupation under unified development control or a unified development plan.***

Conformance with this criterion would be required as a condition of approval associated with the approval of a future Final Plat application.

Therefore, staff find this criterion is not applicable to this Sketch Plan review.

- G. Ownership and maintenance of the common areas designated for the enjoyment of residents shall be the responsibility of a homeowners association and/or architectural control committee pursuant to appropriate covenant, unless a different arrangement is determined to be adequate.***

As discussed above, no common areas were included or identified as part of this Sketch Plan application, however outlots for any necessary private access roads will be included in any plans for Preliminary Plan reviews. The ownership and maintenance of these private access roads will be a condition of approval for any Final Plat application.

Therefore, staff find this criterion is not applicable to this Sketch Plan review.

- H. No PUD shall be approved without the written consent of the landowner whose properties are included within the PUD.***

The proposed TDR/PUD would be created from a single, existing parcel, which is owned by the applicants. Since they are sole owners of the subject parcel, they are the only landowners who must give consent, and that has been established through the submission of the Sketch Plan application.

Therefore, staff find this criterion is met.

- I. The proposal shall be in accordance with the Comprehensive Plan, and any applicable intergovernmental agreement affecting land use or development.***

As discussed in staff analysis of Article 5-102.A.4 above, staff find the proposal is not in accordance with Boulder County Comprehensive Plan and would negatively impact the goals of the Boulder Valley Comprehensive Plan.

Therefore, staff find this criterion is not met.

Article 6-700 Transferred Development Rights Planned Unit Development

Per Article 6-700.C, sites proposed for development as a TDR/PUD must meet the criteria and standards for approval defined in 6-700.E, G, and K; these areas are referred to as receiving sites. Additionally, 6-700.J defines sites which cannot be considered for receiving sites. Each of these are discussed below.

- D. Zoning Requirements: The uses approved as part of a TDR/PUD shall be limited to the following:***

- 1. Residential and nonresidential density, uses, minimum lot area, minimum receiving land area, building height, and yard requirements shall be determined at the TDR/PUD sketch plan approval. The receiving site will include 2 units per 35 acres plus the density transferred to the site.***

As included in the project discussion above, the Sketch Plan application has identified the density, uses, lot areas, and receiving land area; the Sketch Plan application did not include any proposed building height or yard requirements. As such, the standard height limit of 30 feet above existing grade and the standard yard setbacks for the Rural Residential Zoning District would apply unless different limits are established through any Final Plat approval.¹

Per this Article, if approved as a receiving site, the subject parcel would be allowed two units; the remaining two units would be transferred via the TDRs the applicants have proposed to purchase from Boulder County Open Space.

- 2. Residential TDR/PUDs: Residential development rights may be transferred from any designated sending site in the A, RR, ER, and SR zoning districts, to any approved residential receiving site meeting the applicable criteria for receiving sites under these regulations. The maximum allowable total units within a residential TDR/PUD shall be 200.***

The TDR/PUD as proposed would have four lots (“units”), which is well below the maximum of 200 allowed under this criterion.

As discussed below, the subject property meets the minimum requirements to be considered for designation as a receiving site (Article 6-700.E); however, it does not meet all of the criteria for development on a receiving site (Article 6-700.G). As such, staff find the subject property cannot be approved as a receiving site.

Therefore, staff find this criterion cannot be met.

- 3. Residential/nonresidential TDR/PUDs: Residential development rights may be transferred from any designated sending site in the A, RR, ER, and SR zoning districts, and converted to nonresidential uses and density on any receiving site in the B, C, LI, and GI zoning districts which meets the applicable receiving site criteria under these regulations. The sketch plan for a nonresidential TDR/PUD shall establish the ratio of nonresidential floor area to be developed on the receiving site, to the number of residential development rights being sent. In establishing this ratio, the effect of the proposed nonresidential floor area shall be of no greater impact to the surrounding area than would the equivalent amount of residential development which is transferred into the site. In evaluating the land use impact of the proposed nonresidential floor area, the impacts considered shall include but not be limited to traffic and circulation patterns, compatibility with***

¹ The minimum setbacks in the Rural Residential Zoning District are the following: front yard – 25 feet; side yard – 7 feet; and rear yard – 15 feet. Additionally, there is a supplemental Major Road Setback of 110 feet from the centerline of Niwot Road.

adjoining development and land uses, and the effect on designated open space, environmentally sensitive lands, and critical wildlife habitats or corridors.

The proposed TDR/PUD does not include any nonresidential uses. As such, staff find this criterion is not applicable.

E. Development Criteria for Receiving Sites which Accept Transferred Development Rights

- 1. In order to be eligible for additional density from development rights, a property-owner must apply for and receive approval to plat a TDR/PUD on the parcel.***

The applicant has applied for approval to plat a TDR/PUD and that application is proceeding through the required review process. However, no approval for a TDR/PUD has been granted at this time; ultimately, any such approval would be through the Final Plat review process.

Therefore, staff find this criterion does not apply to the Sketch Plan review.

- 2. Adequate facilities and services must be provided to serve a TDR/PUD development. Receiving sites shall be subject to any school impact fee in effect and to any other requirements, such as phasing of the project, necessary to mitigate the impact of new students on overcrowding of schools, or to assure that other facilities and services are adequate and available to serve the TDR/PUD.***

As discussed above, there are adequate facilities and services for the proposed TDR/PUD.

Additionally, per the referral response from the St. Vrain Valley School District (SVVSD), if approved, the proposal would not result in any schools exceeding their capacity benchmarks. Also, the SVVSD will not require any land dedication, and cash-in-lieu payments as determined by Boulder County would be required instead.

Therefore, staff find this criterion can be met.

- 3. Defined Subareas for transfer - For every TDR/PUD, 75% of the total number of development rights needed to complete the project must be acquired from designated sending sites located in the same subarea as the proposed receiving site unless the applicant proposes a specifically defined and identified sending area which is designated by the BOCC in the TDR/PUD approval.***

As discussed above, the proposed TDR/PUD would require two development rights to be transferred to the subject property. A minimum of 75% of those would be required to come from sending sites located in the same subarea as the subject property; in this case, to meet that 75% requirement, both of the required

development rights would have to come from sites in the same subarea as the subject parcel. The subject property is located in the Agricultural Lands of Statewide Importance subarea, so those two credits would have to come from that subarea. This would be a post-approval requirement if the TDR/PUD Final Plat is ultimately approved.

Therefore, staff find this criterion can be met.

G. Standards and Conditions of Approval for Development on a Receiving Site: A PUD utilizing transferred development rights shall be approved only if the Board of County Commissioners finds that the proposed development meets the following standards and conditions:

1. The proposed TDR/PUD must be adjacent to and compatible with adjoining development and land uses, as well as compatible with the land uses designated for the area in adopted municipal master or comprehensive plans.

As discussed above, the subject property is located adjacent to the Brigadoon Glen subdivision (platted 1964); it is also near Haystack Mountain Ranch (platted 1965); Range View 1 (platted 1965); Range View (platted 1967); and Oriol Estates (platted 1964). All of these subdivisions are residential in use. As such, staff find the proposal meets the requirement to be adjacent to and compatible with the adjoining land uses.

However, as discussed in the staff analysis of Article 5-102.A.4 above, the proposal is not in accordance with the Comprehensive Plan.

Therefore, staff find this criterion cannot be met.

2. The proposal must be located adjacent to a major arterial, collector, or transit route.

The subject parcel is located adjacent to Niwot Road, a paved county owned and maintained right-of-way (ROW) with a functional classification of collector. It is also adjacent to N. 63rd Street, a county owned and maintained ROW classified as a minor arterial.

Therefore, by the subject parcel's adjacency to Niwot Road, staff find this criterion is met.

3. Except as provided in 6-700(G)(7), below, receiving sites shall not be located on national significant agricultural land, designated open space, environmentally sensitive lands, or critical wildlife habitats or corridors, as identified in the Comprehensive Plan.

As discussed above, the subject property is located in Agricultural Lands of Statewide Importance and at least partially within an Environmental Conservation Area, which is a category of environmentally sensitive lands. However, as discussed below, the subject parcel does qualify for an exception to this criterion as provided in 6-700.G.7.

Therefore, staff find this criterion is met.

4. *Within any residential TDR/PUD not more than 5% of the total land area may be developed for structural nonresidential uses.*

As discussed above, the proposed subdivision would be a residential TDR/PUD. Since the total size of the TDR/PUD would be 39.5 acres, the maximum allowed size for structural nonresidential uses would be 1.975 acres. The applicants have not proposed any structural non-residential uses. However, as discussed in Article 7-200.A.8 below, staff recommend that all four of the proposed lots share a single point of access from Niwot Road; staff find this could be done through a private street, created as a separate outlot. While the specific acreage of the outlot for the access road has not been determined at this time, it appears likely that the proposal would be able to meet the 1.975 acre limit. The exact size of the outlot for the access road must be included in any plans submitted for any Preliminary Plan review.

Therefore, provided the total acreage of all structural nonresidential uses is included as part of any Preliminary Plan submission and is limited to 1.975 acres, staff find this criterion can be met.

5. *Within any residential TDR/PUD, the nonresidential portions of the TDR/PUD will not be issued a Certificate of Occupancy until such time as 75% of the residential portions of the development are complete.*

Compliance with this criterion would be required as a post-approval condition of a Final Plat approval.

Therefore, staff find this criterion does not apply to the Sketch Plan review.

6. *The proposed development shall include, where appropriate, methods to contribute to the costs for the provision of capital facilities including schools.*

As discussed above, per the St. Vrain Valley School District, a cash-in-lieu payment from the applicants to Boulder County will be required. No other capital facility improvement costs have been identified at this time. All contribution requirements will be included as post-approval conditions on any Final Plat approval.

Therefore, staff find this criterion does not apply to the Sketch Plan review.

- 7. Exceptions to the above approval criteria may be granted by the Board of County Commissioners if the following conditions apply:**
- a. The proposed project is located within an approved Community Service Area, or**
 - b. The proposed project is located adjacent to existing subdivided land which is developed at greater than rural density or is a platted subdivision within a municipality.**

No exception shall alter receiving sites as designated in the Niwot Area or in an approved TDR IGA.

The subject parcel is not located in any approved Community Service Area (CSA), so the proposal cannot qualify for an exception to any of the approval criteria for development on a receiving site under provision “a” of this Article.

However, the subject parcel is located adjacent to existing subdivided land which is developed at a greater than rural density. “Greater than rural density” is considered to be any development which is approved for more than one unit per 35 acres. The existing Brigadoon Glen subdivision is considered “subdivided land which is developed at a greater than rural density.” As such, the subject parcel does qualify for exceptions under provision “b” of this Article.

Finally, the subject parcel is not designated as a receiving site in the Niwot Sending and Receiving Area or any approved TDR IGA (“intergovernmental agreement”). As such, this restriction does not apply to the subject parcel.

Therefore, staff find this criterion is met.

- J. The following parcels will not be considered for a TDR/PUD receiving site:**
- 1. Parcels of less than 35 acres, unless**
 - a. they are adjacent to an approved sending site or an approved conservation easement so that the total land area committed to agricultural or other open space use is at least 35 acres; or**
 - b. they are located within a municipal community service area or municipal influence area as described in the Boulder County Comprehensive Plan or a jointly adopted intergovernmental agreement between Boulder County and the relevant municipality, subject to the concurrence and approval of that municipality.**
 - 2. Any parcel of less than 35 acres meeting the criteria of Sections 6-700(1)(a) or 6-700(1)(b), above, which is located more than one-half of a mile away from a municipal boundary, shall not be developed at a gross density of more than one unit per acre.**

The subject parcel is larger than 35 acres. Therefore, staff find provisions 1 and 2 are not applicable.

3. *A subdivided lot shown on a plat recorded prior to August 17, 1994, the date of the first public notice of Planning Commission consideration of these regulations.*

The subject parcel is not currently subdivided or shown on any recorded plat. Therefore, staff find this provision is not applicable.

4. *Parcels of LESS than 70 acres created after August 17, 1994, will only be eligible for development rights at the base density of the zoning district in which the parcel is located. No additional development rights may be granted to those parcels.*

Based on staff review of the history of the subject parcel, it was created in its current configuration prior to August 17, 1994. Therefore, staff find this provision is not applicable.

As outlined above, staff find the subject parcel is not restricted from being considered for a TDR/PUD receiving site under the provisions of Article 6-700.J.

K. *The following additional requirements shall apply within the Niwot Sending and Receiving area:*

As discussed above, the subject parcel is not located within the Niwot Sending and Receiving area. Therefore, staff find this Section is not applicable.

Article 6-800 Conservation Easement

A. *Before the Board of County Commissioners may approve a NUPUD, a NCNUPUD, or a TDR/PUD the applicant shall agree to grant to Boulder County a deed of conservation easement in gross pursuant to Article 30.5 of Title 38, C.R.S., as amended, protecting the preserved land from development in accordance with the approved conservation values. Conservation easements encumbering required outlots shall provide for long-term preservation and appropriate management of the property's conservation values and shall be granted in perpetuity, subject to transfer or termination only pursuant to the express terms of these regulations and the governing conservation easement.*

The application as originally submitted did not include any proposed conservation easement or newly protected land. Staff recommended that the conservation easement cover the entirety of the proposed 35.59-acre parcel identified as Lot 1 in the revised sketch plan. Such a conservation easement would result in the permanent protection of approximately 90% of the existing parcel area. However, as part of the Planning Commission hearing, the applicants stated that they would agree to grant the county a conservation easement as recommended by staff. The specific area and potential

provisions for such a conservation easement must be included in any application for Preliminary Plat review.

Therefore, with the submission of additional information as part of any Preliminary Plan application, staff find this criterion can be met.

6-1000 Standards and Criteria for Approval of a Planned Unit Development

A. The PUD shall be approved only if the Board of County Commissioners finds that the development meets the following standards and criteria:

- 1. the development achieves the purposes of the PUD and the Comprehensive Plan when development at one unit per 35 acres would interfere with or be counter to those purposes;***

As discussed in staff's analysis of Article 5-102.A.4 above, staff find the proposed TDR/PUD does not achieve the purposes of the Boulder County Comprehensive Plan (BCCP). Additionally, no conditions of approval have been identified which would allow the proposal to achieve the purposes of the BCCP.

Therefore, staff find this criterion cannot be met.

- 2. the PUD would be a benefit through the provision of interconnected open space, conservation of environmental features, aesthetic features and harmonious design, and/or energy efficient site design;***

The proposal does not include any provisions for interconnecting any open space nor will it result in the conservation of any environmental or aesthetic features. Additionally, no specific benefits to the county have been identified, other than payment to the county for the purchase of the TDRs.

Therefore, staff find this criterion is not met.

- 3. the development will not have a material adverse impact on the surrounding area and will be in harmony and compatible with the neighborhood (compatibility includes but is not limited to size, scale, mass, architectural design, and landscaping);***

As discussed above, the applicants have proposed to create lots of the following sizes: one lot of 35.59 acres and three lots of 1.3 acres each. Based on staffs' review of other parcels in the area, the proposed lots are generally compatible with other parcels in the area in terms of parcel size. The parcels in the Brigadoon Glen subdivision immediately to the north are approximately one acre in size, and the parcels in the Range View subdivision, located to the northeast, are approximately 1.5 acres in size. Staff find the three 1.3-acre proposed lots are generally consistent with the near-by and adjacent platted subdivisions. Unsubdivided parcels in the area

are much larger, mostly over 35 acres. The one proposed larger lot is also over 35 acres. As such, staff find the proposed lot sizes are in harmony with the existing platted subdivision parcels and the unsubdivided parcels in the area.

Regarding harmony in terms of size, scale, mass, architectural design, and landscaping, the application does not include any proposed details related to any residential structures on the proposed lots. As such, staff cannot determine whether any potential houses would be in harmony with the area's existing structures. It is possible to ensure that the residences on the resulting lots are in harmony with other residences in the area by placing restrictions on size, scale, mass, architectural design, and landscaping; however, no such restrictions have been proposed at this time. At a minimum, however, staff find that limiting the maximum residential floor area in the proposed subdivision would be necessary.

Therefore, with the submission of additional information as part of any Preliminary Plan application, staff find this criterion can be met.

4. the proposal fully complies with the minimum zoning and Subdivision Regulations requirements set forth in this Code;

As discussed in staff's analysis of Article 5-102 above, staff find the proposal does not comply with all of the Subdivision Regulations requirements of the Code. Additionally, while some potential conditions of approval have been identified, they would not be sufficient for staff to find that the proposal complies with the minimum Code requirements.

Therefore, staff find this criterion cannot be met.

5. the development will be in accordance with the Comprehensive Plan, and any applicable intergovernmental agreement affecting land use or development;

As discussed in staff's analysis of Article 5-102.A.4 above, staff find the development is not in accordance with the goals and objectives of the Boulder County Comprehensive Plan; additionally, staff find the proposal would have significant negative impacts on the goals and objectives of the Boulder Valley Comprehensive Plan. Staff has not identified any conditions of approval which would allow the proposed development to come into compliance with either plan.

Therefore, staff find this criterion cannot be met.

6. the project will be served by adequate facilities including streets, fire protection, water and sanitation;

Based on the referral responses from the Left Hand Water District and the Colorado Division of Water Resources, there appears to be adequate water service for the proposed development. Additionally, the proposed development would be served by the Boulder Rural Fire Protection District, which has stated they have no conflict with the proposal, with the condition that more detailed plans be developed for the installation of additional fire hydrants and that the internal access roads be designed to accommodate fire vehicles.

The applicants have stated that they intend for each lot to be served by an onsite wastewater treatment system (OWTS). The applicants have submitted a preliminary septic suitability report which indicates that the soil conditions on site will likely require engineered OWTS designs. However, staff find that, with the appropriately engineered designs, the lots would be capable of being served by adequate sanitation facilities.

As discussed above, the revised application does not propose any shared streets. However, as further discussed in Article 7-200.A.8 below, staff recommend that all four of the proposed lots share a single point of access from Niwot Road; staff find this could be done through a private street, created as a separate outlot. Staff find it likely that such a shared access could be designed to ensure that the proposed lots are served by adequate access.

Therefore, with the submission of additional information as part of any Preliminary Plan application, staff find this criterion can be met.

7. the PUD results in no significantly greater burden on present and projected public facilities and services than development at one unit per 35 acres;

The Boulder Rural Fire Protection District has no conflict with the proposal, Left Hand Water District is able and willing to provide water, and no other public service provider has responded with any conflicts or concerns.

As such, staff find this criterion is met.

8. undue traffic congestion or traffic hazards will not result from the proposed PUD; roadways, existing and proposed, are suitable and adequate to carry anticipated traffic within the proposed PUD and in the vicinity of the proposed PUD;

No traffic analysis has been submitted, so staff cannot provide a detailed analysis of the potential traffic impacts of the proposed development. A full traffic system impact study will be required for any Preliminary Plan application submission.

Therefore, at this time, staff cannot determine if this criterion can be met.

9. *the development will not cause significant air, water, or noise pollution;*

While impacts to air, water, or noise pollution are to be expected during the construction of any new residences, the development is not anticipated to cause any significant air, water, or noise pollution in the long-term.

Therefore, staff find this criterion is met.

10. *detrimental conditions will not result due to development on excessive slopes or in geologic hazard areas;*

There are no excessive slopes or identified geological hazard areas on or near the subject parcel. The proposed development is not anticipated to result in any detrimental conditions related to excessive slopes or geological hazards.

Therefore, staff find this criterion is met.

11. *the soil and drainage conditions are of a sufficiently stable nature to support development, including whatever sewage disposal treatment is used;*

Per the referral response from the Colorado Geological Survey, the groundwater level on the subject parcel is quite shallow. As a result, the Geological Survey recommends against any basement construction. Additionally, they recommended that the bottom of the footing elevation for each residence be at least two feet above the seasonal high groundwater table, which is anticipated to be close to three feet below ground surface. As such, to achieve a bottom of foundation elevation of at least two feet above the seasonal high groundwater table (three to five feet is recommended), the bottom of the footing elevation should be no more than one foot below the existing grade; and, if the recommendation from the Colorado Geological Survey for three to five feet above the seasonal high groundwater table were to be followed, the bottom of the footings would be at or above existing grade. Additionally, per the preliminary septic suitability report submitted by the applicants and as discussed above, the shallow groundwater on site will require engineered OWTS designs for each proposed lot development.

Per the referral response from the Boulder County Stormwater Quality Coordinator, the proposal will require a stormwater quality permit (SWQP) for the overlot grading and infrastructure associated with the proposed TDR/PUD. As the proposed development will result in construction activity that is considered a part of a larger common plan of development which will ultimately disturb more than one acre of surface area, even if multiple, separate, and distinct land development activities take place at different times, future development on the created parcels will also require a Boulder County Stormwater Quality Permit (SWQP) for each lot. Finally, the development will be required to adhere to the Boulder County Storm Drainage

Criteria Manual which will require a drainage report meeting the requirements in Section 200 and demonstrating that the project meets Low Impact Development, detention, and permanent stormwater quality requirements outlined in Section 1200. Plans submitted for any Preliminary Plan review must demonstrate compliance with these stormwater requirements.

As such, staff find that the soil and drainage conditions pose a significant challenge to the development; however, staff also finds it likely that the development could be engineered in such a way as to meet this criterion.

Therefore, staff find this criterion can be met.

12. fire hazards will not be created or increased;

The subject parcel is located in Wildfire Zone 2, and standard Zone 2 wildfire mitigation will be required for all new development on the proposed lots. Staff find that, based on compliance with standard Zone 2 wildfire mitigation measures, the proposed TDR/PUD will not create or increase fire hazards.

Therefore, staff find this criterion is met.

13. the PUD will not adversely affect any land of significant historical, cultural, recreational or aesthetic value;

No historic, cultural, or recreational resources have been identified on or near the subject parcel. As such, staff find the proposed TDR/PUD will not adversely impact any historic, cultural, or recreational resources.

However, staff has concerns related to the potential for the development to negatively impact lands of aesthetic value. The subject parcel is located adjacent to Niwot Road, which has viewshed protection scores between 1.0 and 1.41, and N. 63rd Street, which has viewshed protection scores between 0.55 and 1.36. These viewshed protection scores are intended to help identify roadway corridors in Boulder County where care needs to be taken to ensure that any proposed development does not adversely impact the visual aesthetic and viewsheds; these scores go from 0 to 5.0, with 5.0 being corridors of highest concern for viewshed protection. While the viewshed protection scores in the vicinity of the subject parcel are fairly low, the visual impacts of potential development on the proposed lots must still be considered. As discussed above, no details on any potential architectural design restrictions have been provided as part of this Sketch Plan review. Staff find that, in order to minimize and mitigate the aesthetic impacts of potential development on the proposed lots, strict architectural design standards must be included for review as part of any Preliminary Plan application. At a minimum, these standards must take into consideration the height of the potential

structures, the rural/agricultural character of the area in architectural design, and the landscaping of the proposed lots.

Therefore, with the inclusion of architectural design standards, staff find this criterion may be able to be met.

14. the benefits of preservation of the larger land area which is accomplished by the banking or transfer of units shall clearly outweigh the potential impacts of approving a development which preserves a smaller area; and

As discussed above, no additional land area has been identified or proposed for preservation. As such, staff find there are no benefits that might outweigh the potential impacts of the proposed TDR/PUD subdivision development discussed throughout this staff recommendation. However, as also discussed above, staff find that a conservation easement, as required under Article 6-800, may serve to address this criterion. The specific area and potential provisions for such a conservation easement must be included in any application for Preliminary Plat review.

Therefore, staff find this criterion is not currently met.

15. the PUD will not otherwise be detrimental to the health, safety, or welfare of the present or future inhabitants of Boulder County.

Staff have not identified any additional detrimental impacts to the health, safety, or welfare of the present or future inhabitants of Boulder County aside from staff's concerns discussed throughout the staff recommendation, and no referral agencies have responded with any additional concerns.

Therefore, staff find this criterion is met.

Article 7-200 Development Design

Per Article 5-102.A.1, as discussed above, a proposed Sketch Plan must conform with the requirements of Article 7-200 of the Code.

A. The following shall be considered requirements for development design.

1. All subdivisions shall result in the creation of lots which are developable and capable of being built upon in conformance with this Code, the Building Code, or other County adopted regulations.

As discussed above, staff find the proposed lots are of sufficient size and design that they would be capable of being developed in accordance with the Land Use Code, the Building Code, and other regulations.

Therefore, staff find this criterion is met.

2. *The design of the development shall eliminate or mitigate the potential effects of hazardous site conditions.*

There are no identified or mapped hazardous conditions on the subject site. Therefore, staff find this criterion is not applicable.

3. *Lots shall be laid out to provide positive drainage away from all buildings.*

As discussed in staff's analysis of Article 6-1000.A.11 above, the proposal will require a stormwater quality permit (SWQP) and will have to adhere to the Boulder County Storm Drainage Criteria Manual (SDCM). And as noted in staff's analysis to that criterion, staff find that the soil and drainage conditions pose a significant challenge to the development; however, staff also find it likely that the development could be engineered in such a way as to meet these requirements.

Therefore, staff find this criterion can be met.

4. *Individual lot drainage shall be coordinated with the general storm drainage pattern for the area.*

As discussed above, the proposal will require a SWQP and will have to adhere to the SDCM. These requirements will ensure individual lot drainage is coordinated with the general stormwater drainage pattern in the area. A drainage report and plan that will address drainage across the subdivision and each lot will be required as part of plans submitted for any Preliminary Plan review application.

Therefore, with the inclusion of the required drainage report and plan, staff find this criterion can be met.

5. *Drainage shall be designed to avoid concentration of storm drainage from any lot to an adjacent lot.*

As discussed above, the proposal will require a SWQP and will have to adhere to the SDCM. These requirements will prevent the development from resulting in any concentration of storm drainage on adjacent lots. A drainage report and plan that will address drainage across the subdivision and each lot will be required as part of plans submitted for any Preliminary Plan review application.

Therefore, with the inclusion of the required drainage report and plan, staff find this criterion can be met.

- 6. Lot area, width, frontage, depth, shape, location, and orientation shall conform to all provisions of this Code and be appropriate for the location of the development and for the type of use allowed.**

Staff find the sizes, configuration, and orientation of the proposed lots comply with the Code. Additionally, staff find that, should the subject parcel be approved for a TDR/PUD, the resulting lots would be appropriately located within the proposed subdivision for the development of residences.

Therefore, staff find this criterion is met.

- 7. All lots shall front on and have access to a public right-of-way or approved private access easement.**

Staff find that all of the proposed lots would front on a public right-of-way (Niwot Road). However, as discussed in more detail below, staff recommend that all four of the proposed lots have a single, shared access point.

Therefore, staff find this criterion is met.

- 8. All proposed points of access must comply with the Transportation Standards.**

The proposed Sketch Plan as submitted does not include design details for any proposed points of access. As such, staff cannot determine their compliance with the Boulder County Multimodal Transportation Standards (MMTS) at this time. However, staff have determined that, in order to meet the MMTS, the four proposed lots should have a single, shared access point; preferably, this would use the existing driveway to the existing residence. This could be accomplished by creating a separate, platted outlot to create an internal, private access road. Plans submitted for any Preliminary Plan review will be required to include engineered road designs reflecting compliance with the MMTS.

Therefore, with the inclusion of engineered road design plans for a single, shared access for any Preliminary Plan application, staff find this criterion can be met.

- 9. No lot shall be divided by a municipal or County boundary line, road, alley or other lot.**

None of the proposed lots are divided by a municipal or county boundary line, road, alley, or other proposed lot.

Therefore, staff find this criterion is met.

10. Internal and external links to public trails and open space abutting the property shall be provided.

The subject parcel does not abut any public trails or open space. Therefore, staff find this criterion is not applicable.

11. Extensions required for future development shall be provided.

No future development (e.g. – future filings) is planned or anticipated related to the proposed TDR/PUD. Additionally, a conservation easement over the proposed 35.59-acre parcel would preclude any future filings. Therefore, staff find this criterion is not applicable.

12. Lot boundaries should conform to descriptions in liens or mortgages so that the division of a lot through a foreclosure does not occur.

There are no identified existing liens or mortgages which would result in the division of lots through a foreclosure. None of the proposed lot boundaries cross any existing liens or mortgages; as such, staff find no conflicts with this criterion.

Therefore, staff find this criterion is met.

13. Maintenance of common facilities must be accomplished either through covenants and a homeowners association, a separate maintenance agreement, or some other perpetual agreement.

No common facilities have been identified or proposed as part of the submitted Sketch Plan; however, as discussed above, staff find that a shared, private access road is necessary to meet the MMTS. Additionally, specific provisions for the perpetual maintenance of these access roads would be a requirement for any Final Plat approvals.

Therefore, staff find this criterion can be met.

14. The overall development design should conform to the Comprehensive Plan.

As discussed in detail in staff's analysis of Article 5-102.A above, staff find the proposed development does not conform to the Boulder County Comprehensive Plan; additionally, no potential conditions of approval have been identified which might allow the proposed TDR/PUD to be in compliance with the Comprehensive Plan.

Therefore, staff find this criterion cannot be met.

B. *The following guidelines shall be used to the greatest extent possible.*

- 1. The design and development of subdivisions should preserve the natural terrain, drainage, existing topsoil, and vegetation, including tree masses and large individual trees.***

There are no tree masses or large individual trees on the subject parcel, except for a few trees located adjacent to the Hinman Ditch on the southern portion of the parcel. However, staff find these trees are located on the southern end of proposed Lot 1, which is already developed with the existing residence. Additionally, as these trees are located within the established setback for the ditch, additional development that might impact these trees is unlikely.

As discussed above, staff find that, due to the shallow groundwater on the subject property, extensive engineering will likely be necessary for the development of each of the proposed lots. Such engineering would severely impact the existing terrain, drainage, existing topsoil, and other vegetation. Staff are especially concerned with the impacts of the existing topsoil; as Agricultural Land of Statewide Importance, this parcel includes soils that generally meet the requirements for prime farmland and that can economically produce high yields of crops when treated and managed according to acceptable farming methods. The proposed subdivision and subsequent development of the proposed lots would likely have significant negative impacts on the existing topsoil.

Therefore, staff find the proposal is not in accordance with this guideline.

- 2. The layout of lots and blocks should provide desirable settings for structures by making use of natural contours, maintaining existing views, affording privacy for the residents and protection from adverse wind, noise, and vehicular traffic.***

The subject parcel is very flat, with no significant contours. Any new development on the proposed lots would likely have desirable views. However, given the open, agricultural nature of the area, extensive development (such as the construction of multiple new residences) would have a significant impact on the views for existing properties and from the public rights-of-way in the area.

In regard to providing privacy for residents of the proposed lots, staff find that the three new proposed lots would front on Niwot Road; additionally, the rear portions of the three new lots would be very visible from N. 63rd Street, and Lot 4 would be particularly visible as it very nearly fronts on N. 63rd Street. This may expose residents to the impacts of traffic noise. Staff find that these impacts could likely be mitigated through fencing and/or vegetative screening; however, staff also finds that such fencing and/or screening would likely have additional impacts on the view for existing properties in the area.

Therefore, staff find the proposal may not be in accordance with this guideline.

3. *Development design should provide for efficiency in the installation and provision of all public and private facilities and services.*

Generally, the proposed lots are regular in shape. Additionally, with the shared single access road necessary for the proposal to meet the MMTS as discussed above, it is possible for the proposal to provide an efficient way to install and provide all public and private facilities and services. Plans submitted for any Preliminary Plan review will be required to include platted easements for any and all utilities.

Therefore, with the inclusion of platted utility easement locations in plans submitted for any Preliminary Plan application, staff find this guideline can be met.

4. *The development should provide for solar access on site and on adjacent properties.*

As no architectural guidelines or proposed building envelope locations have been proposed, staff cannot provide any specific analysis on the proposed development's impacts to solar access on the proposed lots. However, staff find that required design guidelines and restrictions on the location, size, scale, mass, architectural design, and landscaping for any new development on the proposed new parcels can serve to ensure that all of the proposed lots and adjacent properties have adequate solar access.

Therefore, staff find the proposal can be in accordance with this guideline.

5. *The development design should maintain stands of trees or other vegetative cover to reduce the effects of winds on buildings.*

As discussed above, there are no existing stands of trees to reduce the effects of winds on the buildings.

Therefore, staff find the proposal is in accordance with this guideline.

6. *Lot dimensions should be adequate to allow for the provision of necessary private service and off-street parking facilities needed by the type of use and development allowed.*

Staff find the proposed lots are all of adequate size to provide service and off-street parking.

Therefore, staff find the proposal is in accordance with this guideline.

- 7. Double frontage lots should be avoided except where essential to provide separation of residential development from expressways, major arterials, or to overcome specific disadvantages of topography and orientation.**

The revised Sketch Plan only has one lot with a double frontage – the existing parcel, which would become Lot 1. As the existing parcel is located on a corner, staff find the proposal would not change this.

Therefore, staff find the proposal is in accordance with this guideline.

- 8. Landscaping should be provided, especially as a buffer between different types of uses both within and adjacent to the development. Xeriscape should be used instead of traditional landscaping.**

No landscaping plans or proposals have been included as part of the Sketch Plan review. However, staff find the specifics for landscaping in accordance with this guideline should be included in any Preliminary Plan review application.

Therefore, with the inclusion of landscaping plans for any Preliminary Plan review, staff find the proposal can be in accordance with this guideline.

- 9. Side lot lines should be at right angles to, or radial to the center of curvature of the street or road on which the lot fronts. Where lot lines are not at right angles or radial to street lines, this shall be indicated on the final plat.**

All of the proposed lot lines for the new parcels are at right angles to the existing road.

Therefore, staff find the proposal is in accordance with this guideline.

- 10. Lots should be arranged to minimize the number of outlots.**

As discussed above, there are currently no outlots proposed, however it will be necessary to include one outlot for the shared private access drive as recommended by the Access & Engineering team. Staff find that this adequately minimizes the number of outlots in the proposed TDR/PUD.

Therefore, staff find the proposal can be in accordance with this guideline.

- 11. Lots should use natural and man made divisions, such as fences and easements, as their boundaries.**

Staff find there are no existing natural or man-made divisions relevant to the proposed subdivision and subsequent development. Additionally, as discussed

above, no architectural or landscaping plans have been included as part of this Sketch Plan review. However, based on staff's review of the proposed lot configuration, it appears that any plans submitted for Preliminary Plan review can adequately incorporate such divisions.

Therefore, staff find the proposal can be in accordance with this guideline.

12. All lots should have reasonable access to open space, trails, park land or recreation facilities that are set aside for either development use or use by the general public.

As discussed above, there are no open space, trails, parks, or recreation facilities existing or proposed as part of this TDR/PUD. Therefore, staff find this guideline in not applicable.

13. Recreation facilities should be centrally located to all residents of the development.

As discussed above, there are no recreation facilities existing or proposed as part of this TDR/PUD. Therefore, staff find this guideline in not applicable.

14. The development design should be coordinated with the storm water drainage and flood control systems.

As discussed above, the proposal will require a SWQP and will have to adhere to the SDCM, which will address the subdivision as a whole.

Therefore, staff find the proposal can be in accordance with this guideline.

15. Utility, access, or drainage easements should not divide a lot.

No utility or drainage easements have been included in the plans submitted for Sketch Plan review; however, staff find that the design of the proposed lots would allow for utility and drainage easements to be established without dividing any of the proposed lots. These utility and drainage easements must be included in any plans submitted for Preliminary Plan review. Additionally, the access road as proposed does not divide any of the proposed lots.

Therefore, with the inclusion of utility and drainage easements in plans submitted for any Preliminary Plan review, staff find the proposal can be in accordance with this guideline.

16. Common water and sanitation facilities should be located on separate outlots commonly owned by the users.

No common water or sanitation facilities are proposed or anticipated for the proposed TDR/PUD. Therefore, staff find this guideline is not applicable.

17. Residential lots should be located to minimize adverse influences due to airports and airport operations.

The subject parcel is not located within any airport influence area, and no airport operations are anticipated to have any impact on the proposed TDR/PUD.

Therefore, staff find the proposal is in accordance with this guideline.

18. The newly created residential lots should be located nearest to utilities and roads to minimize the amount of construction of these improvements and the loss of agricultural land.

All of the proposed lots are located near to existing and/or proposed roads. Staff find this would minimize the amount of construction impacts to, and the loss of, agricultural land resulting from the construction of utilities and roads.

Therefore, staff find the proposal can be in accordance with this guideline.

C. The following applies where phasing of the development is requested.

No phasing is proposed or anticipated as part of this proposal. Therefore, staff find this criterion is not applicable.

Section 7-400 Sewage Treatment

As discussed above, the applicants propose for each lot to have separate, individual onsite wastewater treatment systems (OWTS); however, the specifics for each OWTS have not been submitted. The applicants have submitted a preliminary septic suitability report for the proposed development. Per this report, the soil on the subject parcel does not meet Boulder County Public Health's guidelines for percolation rate for a non-engineered OWTS. As such, engineered OWTS designs will be necessary for development. This would be reviewed as part of each lot development. Since the specifics of each OWTS is not known at this time, staff has not included analysis of Section 7-400. However, staff anticipates that each lot-specific OWTS can be designed so as to meet the requirements of Section 7-400.

Section 7-1100 Fire Protection

As discussed above, this application did not include any information or proposal for meeting the requirements of Section 7-1100; as such, staff has not included any analysis related to this specific Section. However, staff find that the specifics for compliance with Section 7-1100 of the Code are details that must be developed prior to the submission of any application for Preliminary Plan review, including compliance with standard Zone 2 wildfire mitigation measures.

Section 7-1200 Utility Location

As discussed above, no specific information was submitted related to locations or designs for any utility services as required in Section 7-1200 of the Code. However, based on the size and configuration of the proposed lots, it appears that the proposed subdivision would likely be capable of meeting the requirements of this Section. Initial proposed easements and locations for utilities must be included in any plans submitted for Preliminary Plan review.

SUMMARY OF CRITERIA ANALYSIS

A total of 90 criteria, objectives, and guidelines were considered by staff in relation to this proposal; this does not include any of the specific criteria under Sections 7-400, 7-1100 and 7-1200, which cannot be analyzed at this time. Of those 90, staff find 19 items do not apply to the Sketch Plan review in general or this proposal in specific. Of the remaining 71 criteria, objectives, and guidelines, the proposed TDR/PUD does not meet 18 of the items.

PLANNING COMMISSION HEARING

This application was heard by the Boulder County Planning Commission at their regularly scheduled meeting on November 20, 2024. Commissioners Goldfarb, Libby, McMillan, Bloomfield, Gerstle, Lee, Manna, and Umstead were present; Commissioner Whitney was excused. Commission Libby departed the hearing briefly but rejoined virtually a few minutes later; Commissioner Lee departed the hearing midway through the proceedings and did not rejoin the hearing. The video of the full Planning Commission hearing is available [online](#).

Staff presented the application and staff's analysis. Staff then answered a number of questions from the commissioners regarding the review process for subdivisions, what kind and detail level of information is required and reviewed during each step, access to the proposed development, the project's adherence to the comprehensive plan, other planned unit development applications, the conservation easement requirements, the potential for future subdivisions in the area, and the TDR program.

Sean Stewart, of Lyons Gaddis, spoke on behalf of the applicant; Matteo Rodriguez, the applicant's son, also spoke on the applicant's behalf. The applicant's representative then responded to questions from the Planning Commission regarding the configuration of the proposed development, the conservation easement, and on-site drainage.

Eighteen members of the public spoke on the application; of these, 17 speakers use times pooled with another 20 members of the public. All of the members of the public spoke in opposition to the proposal, citing concerns with traffic, visual impacts, the rural/agricultural character of the area, potential for flooding and storm runoff, environmental and wildlife impacts, and conflicts with the county Comprehensive Plan.

Staff and the applicant's representative responded to additional questions from the commissioner members. The Planning Commission then closed the public hearing and went

into deliberations. Most the deliberations focused on whether the application was in accordance with the Comprehensive Plan and the Comprehensive Plan's role in the review process. Specifically, the commissioners focused much of their discussion on the Niwot, Lefthand, Boulder Creek Subarea Policy NIW 1.02: Limitations on New Building Sites and Residential Structures. Ultimately, the Planning Commission found that as this policy specifically discourages new subdivisions which are outside of the Niwot Community Service Area and as the proposal is not located within that community service area, the proposal is in direct conflict with this policy. Commissioner Libby moved that the Boulder County Planning Commission deny and recommend to the Board of County Commissioners denial of Docket SD-23-0003: Rodriguez TDR/PUD; the motion was seconded by Commissioner Gerstle. Commissioner McMillan offered a clarification that the reason for recommending denial was because the proposal does not conform to the Comprehensive Plan; this clarification was accepted. There was no additional discussion. The motion was carried 6:1, with Commissioner Bloomfield in opposition, noting he did not want it to be unanimous.

RECOMMENDATION

Staff have determined that the proposed Rodriguez Transferred Development Rights Planned Unit Development does not meet all the applicable criteria of the Boulder County Land Use Code for Sketch Plan Review and Transferred Development Rights Planned Unit Development. Therefore, staff recommend that the Board of County Commissioners ***DENIAL of docket SD-23-0003 Rodriguez TDR/PUD Sketch Plan.***