

Wildviews (Hillcrest Heights) Open Space

MANAGEMENT PLAN

This Management Plan, hereinafter referred to as the "Plan", is entered into this 17th day of October, 1997, between the Wild View at Little Gaynor Lake Homeowner's Association, Inc, a Colorado non-profit corporation, hereinafter referred to as the "Association", and the County of Boulder, a body corporate and politic, hereinafter referred to as the "County".

RECITALS

A. County has entered into that certain Purchase Agreement between County and Lesley Jonathan Murakami, dated October 8, 1997, hereinafter referred to as the "Purchase Agreement", for purchase of Outlots A, B, C and D of Hillcrest Heights Replat B, County of Boulder, State of Colorado, according to the plat recorded in Planfile P-30, F-1, 50-51 (the "Plat"), hereinafter individually referred to as "Outlot A", "Outlot B", "Outlot C" and "Outlot D", and collectively referred to as the "Property", which Property is the subject of this Plan.

B. The Purchase Agreement is contingent upon this Plan being agreed upon and executed between the Association and County prior to the closing for purchase of the Property. The terms of the Purchase Agreement further provide for the recording of this Plan, and any and all amendments hereto, in the records of the Office of the Clerk and Recorder of Boulder County, Colorado.

C. Once signed by the Association and County, this Plan shall be in effect as of the date of closing of the Purchase of the Property by the County pursuant to the Purchase Agreement. Should closing according to the Purchase Agreement not occur within six months of execution hereof, this Plan shall be deemed null and void and both parties shall be released herefrom.

MANAGEMENT PLAN

1. Purpose

The purpose of the Plan is to protect Critical Wildlife Habitat #16 (which may be renamed or redesignated from time to time) as currently designated in the Environmental Resources Element of the Boulder County Comprehensive Plan, which in the case

of the subject property includes Outlots A, B, C, and D. This Critical Wildlife Habitat designation is based upon the habitat provided by Little Gaynor Lake (Outlot A) and associated wetlands (Outlots B, C and D). Wildlife supported by this habitat includes an exceptional density and diversity of migratory waterfowl.

This Management Plan provides consistency in the regulation and management of the habitat protected by the Property. This Management Plan is also consistent with the conditions set forth by the Board of County Commissioners in Docket EP-96-02: Hillcrest Heights Replat C.

2. Description of Baseline Conditions

Location, extent and grade elevations of Little Gaynor Lake and associated wetlands are displayed in Exhibit A, Wetland and Wildlife Exhibit attached hereto and incorporated herein by this reference. Features displayed in Exhibit A include Little Gaynor Lake (Outlot A) at 5,014.7', high water mark for Little Gaynor Lake at approximately 5,015.5', and wetland delineation boundaries for Outlots B and D. The extent of wetlands in Outlot D is primarily controlled by the drain that feeds the culvert under North 95th Street. The drain grate elevation is 5,017.5'. This elevation was raised with a concrete collar from the original drain elevation of 5,013.29'. Additional baseline documentation may be found in the Project Summary Form for the Colorado Division of Wildlife Non-Game Habitat Protection, Restoration, and Enhancement Grant application by Boulder County, the Boulder County Wetlands Inventory, and development reports for Hillcrest Heights Replat C and Darvey Farms NUPUD.

The baseline conditions set forth above are approximate conditions based upon the Plat. The County may contract for an engineering analysis to determine the actual baseline conditions of Little Gaynor Lake. In such event, the information contained in the engineering analysis shall supersede the baseline conditions described above and shall for purposes of the Management Plan become the new baseline conditions.

For purposes of this Management Plan, the parties agree that the baseline conditions for Outlots A and D shall include manipulated water levels for wildlife management purposes as determined by the County, in the County's sole discretion, within an acceptable range as determined in the Management Plan Goals set forth in Paragraph 3 below.

3. Management Plan Goals

Management Plan goals are to maintain Outlots A and D in their approximate current condition, while allowing for change in the site conditions and habitat enhancement within an acceptable range. The acceptable range is defined by adverse impacts related to high water on one extreme and a significant decline in the extent of wetland vegetation, vigor of the wetland vegetation, or lack of suitable migratory and nesting habitat for waterfowl on the other extreme.

Within these balanced goals, the County is expected to maintain approximate baseline conditions of Outlots A and D. As part of its maintenance of the wetlands, the County shall have the discretion to manipulate water levels in Outlots A and D for wildlife management purposes.

4. Management Plan Direction

Outlots A and D

- A. Subject to any necessary appropriation from the State of Colorado water court and the availability of the water, the County will provide 2 shares of Boulder and Left Hand Irrigation Water Company water toward the above described Management Plan Goals (hereinafter referred to as the "Water Rights").

The parties understand and acknowledge that the availability of water for the Water Rights will vary year to year and the quantity of available water for the Water Rights will vary year to year and that the County's commitment to provide the Water Rights will be subject to these variations. Boulder County makes no representation that it will commit any greater amount of water for

meeting the Management Plan goals than is available annually for the shareholders of the mutual ditch company.

- B. Water levels in Little Gaynor Lake will be documented by the installation of a staff gauge by Boulder County that displays current water level. Boulder County shall be responsible for monitoring seasonal water levels in order to establish a long term record for Little Gaynor Lake. This record will be the basis of evaluation of optimal water levels to achieve Management Plan goals.
- C. Subject to any necessary appropriation from the water court, Boulder County will make the Water Rights available to Little Gaynor Lake in an effort to create/maintain habitat for migratory waterfowl from March 1 to May 1 and from October 1 to December 15 of each year and during waterfowl nesting season from May 1 to July 1 and will maintain the approximate baseline condition and extent of wetlands.
- D. Upon approval of the ditch company, Boulder County shall place a headgate in the Boulder and Left Hand Irrigation Ditch and, in an effort to obtain Management Plan goals, physically transfer water to Outlot A through Lot 8, west of Outlot C, as depicted in Exhibit A.
- E. Exposed shoreline for migratory shorebird habitat is desirable from July 15 to September 15.

Outlot D Wetland

- A. The existing drain grate along North 95th Street (elevation 5,017.5') is the seasonal high-water level for this wetland, and is not a minimum water level. No additional extension of the concrete collar at the drain grate is allowed.
- B. Subject to any necessary appropriation from the water court, Boulder County will maintain the approximate baseline condition and extent of wetlands.

- C. With approval of the ditch company, Boulder County shall construct a headgate on the Boulder and Left Hand Irrigation Ditch and, in an effort to obtain Management Plan goals, physically transfer water to Outlot D through the Wildlife Movement Corridor as depicted in Exhibit A.
- D. Wetland enhancement activities will not adversely impact the drain tile outlot at Lots 2 and 3 (elevation 5,017.4') as depicted in Exhibit A.

5. **Monitoring Site Conditions**

Boulder County is responsible for monitoring site conditions. The County may include the Wild View Homeowners Association, environmental organizations, and other appropriate community organizations in the monitoring programs and provide monitoring information upon request. Boulder County is responsible for notifying the homeowners association of any changes in the Management Plan.

6. **Amendments**

Amendments to this Management Plan will be made by Boulder County after review by appropriate agencies and stakeholders, including the Wild View Homeowners Association. Amendments shall not become effective until reviewed and approved by the Wild View Homeowners Association. In the event the Wild View Homeowners Association does not approve an amendment, the Board of County Commissioners shall review the proposed amendment and the Board's decision shall be final.

7. **Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same agreement.

8. **Recording**

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

9. **Severability**

Seller shall not assign its rights and obligations hereunder unless County first consents thereto in writing, which consent shall not be unreasonably withheld. If any part of this Agreement is found, decreed or held to be void or unenforceable such finding, decree or holding shall not affect the other remaining provisions of this

10. **Governmental Immunity**

By entering into this Management Plan, the County in no way waives or intends to waive the limitations on liability which are provided to the County and its employees under the Colorado Governmental Immunity Act, C.R.S. §§24-10-101 et seq., as amended.

11. **Beneficiaries**

The enforcement of the terms and conditions of this contract and all rights of action relating to such enforcement, shall be strictly reserved to the County and the Town, and nothing contained in this contract shall give or allow any claim or right of action whatsoever by any other or third person. It is the express intent of the parties to this contract that any person receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

12. **Funding**

Financial obligations of the County payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. All payment obligations under this Plan are from year to year only and do not constitute a multiple-



fiscal year direct or indirect debt or other financial obligation of the County. This Plan is subject to the appropriation of funds for the fiscal year 1997, and each year thereafter. If such funds are not appropriated, the County has the right to terminate this Plan and be released from all obligations under this Plan, and both parties shall be released herefrom.

13. Acts Beyond the Control of County

If the County is rendered unable wholly or in part to carry out its obligations under this Management Plan due to acts beyond the County's control, the obligations of the County shall be suspended during the continuance of the force majeure and/or interfering action. Acts beyond the County's control shall mean, but not be limited to, forces or events beyond the County's control which interfere with the County's obligations, including force majeure, any action or order by Federal or State government or court of competent jurisdiction, or any act by third parties who may have an interest in the property which is the subject of this Management Plan.

This Plan is agreed to and accepted as of the day and year first above written.

**WILD VIEW AT LITTLE GAYNOR LAKE
HOMEOWNERS ASSOCIATION, INC.,**
a Colorado non-profit corporation

By: 

Marvin J. Davis, President

Signed this 17th day of October, 1997, Nunc Pro Tunc, July 11, 1997.

COUNTY OF BOULDER)
) ss.
STATE OF COLORADO)

The foregoing instrument was acknowledged before me this 13th day of October, 1997, by Ronald K. Stewart, Chair, Jana L. Mendez, Vice-Chair, and Paul D. Danish, Commissioner, of the Board of County Commissioners of the County of Boulder, a body corporate and politic.

Witness my hand and official seal.



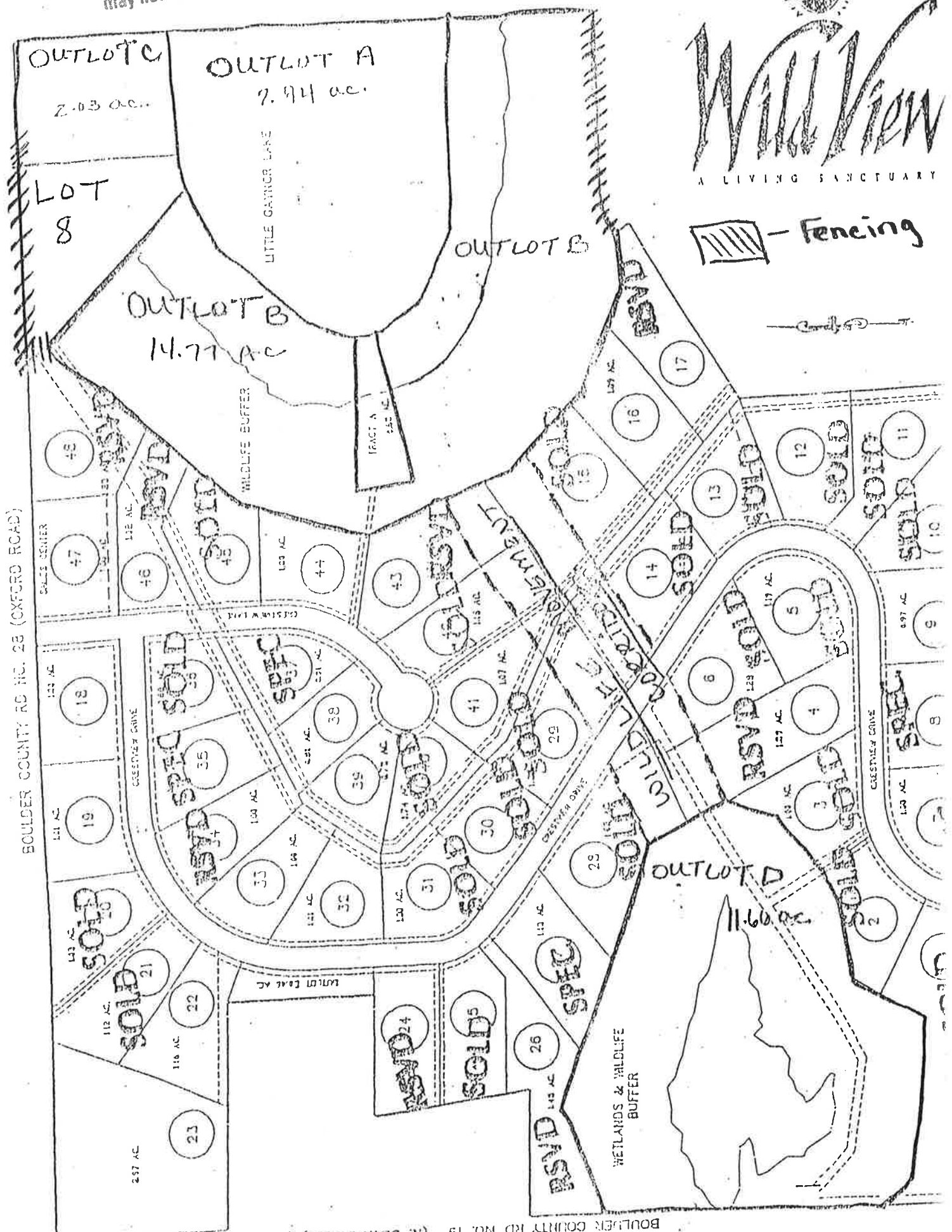
Susan M. Ashcraft
Notary Public

My commission expires: 10/17/2001

Recorder's Note: 10-28-97
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EXHIBIT A



BOULDER COUNTY RD NO. 28 (OXFORD ROAD)

BOULDER COUNTY RD NO. 19 (THE BURNING)