

STATE OF  
COLORADO

Eschberger - DNR, Amy &lt;amy.eschberger@state.co.us&gt;

---

## Fredstrom Mining M-2001-016

---

**Sandoval, Kathy** <ksandoval@bouldercounty.org>

Wed, Jun 24, 2020 at 4:08 PM

To: "Amy.eschberger@state.co.us" &lt;Amy.eschberger@state.co.us&gt;

Hi Amy,

Pursuant to our earlier conversation, I have attached a determination made by the Community Planning & Permitting Director for the Fredstrom Gravel Mining Pit. Feel free to contact our office if you have additional questions.

Be well,

Kathy Sandoval, AICP

(she/her/hers/ella)

Planner

Boulder County Community Planning & Permitting (CP & P) (formerly Land Use and Transportation) – [We've become a new department!](#)

[2045 13th., Boulder, CO 80302](#)

Mailing address: PO Box 471 Boulder CO 80306

Main (303) 441-3930 | Direct (720)564-2620

**PLEASE NOTE:** In an effort to mitigate the spread of COVID-19, the Boulder County Community Planning & Permitting physical office at [2045 13th St.](#) in Boulder is CLOSED to the public until further notice. We will continue to operate remotely, including the online acceptance of building permits and planning applications. Please visit our webpage at [www.boco.org/cpp](http://www.boco.org/cpp) for more detailed information and contact emails for groups in our department. You may also leave a message on our main line at 303-441-3930 and the appropriate team member will return your call. ***Thank you for your adaptability and understanding in this extraordinary time!***



---

**SU\_94\_22statusdeterm.pdf**

7528K



## Community Planning & Permitting

Courthouse Annex • 2045 13th Street • Boulder, Colorado 80302 • Tel: 303.441.3930  
Mailing Address: P.O. Box 471 • Boulder, Colorado 80306 • [www.bouldercounty.org](http://www.bouldercounty.org)

June 16, 2020

Christine Felz | Land and Environment Manager | Colorado, Arizona  
LafargeHolcim Aggregate Industries  
1687 Cole Blvd Suite 300  
Golden, CO 80401

Sent via Email: [Christine.Felz@lafargeholcim.com](mailto:Christine.Felz@lafargeholcim.com)

Dear Christine Felz:

This letter is in response to your September 27, 2019 letter and subsequent information submittals regarding the status of Resolution 95-93 approving Dockets #SU-94-22 (NEIGHBORS/REDMOND Gravel Pit), #SU-94-23 (FREDSTROM Gravel Pit), and #SU-94-24 (HYGIENE Gravel Pit). Resolution 95-93 consolidated these existing mining permits and approved a multi-year plan for gravel mining in the area.

In response to your request to review the status of the Special Use approval, I have determined that the Special Use approved in Dockets SU-94-22, 23, and 24 has lapsed. This determination is based on the language contained in Article 4-604. C of the Land Use Code (the "Code"). In reaching this determination, staff has reviewed the information contained in the files in the Community Planning & Permitting Department, permit documents from the Colorado Division of Reclamation, Mining and Safety (DRMS), and information submitted by Aggregate Industries.

Article 4-604. C. states:

Any approved use by Special Review which commences operation or construction as required under Subsection (B), immediately above, shall lapse, and shall be of no further force and effect, if the use is inactive for any continuous five-year period or such shorter time as may be prescribed elsewhere in this code or in a condition of a specific docket's approval. If this period of inactivity occurs, the use may not be recommenced without a new discretionary approval granted under this Code. An approved special use shall be deemed inactive under this Subsection (C) if there has been no activity under any portion of the special use permit for a continuous period of five years or more as a result of causes within the control of the special use permittee or agent.

My determination is limited to the question of whether no activity under this permit occurred for a continuous period of five years or more. My review does not consider whether the project meets or does not meet current Code criteria such as environmental impacts, transportation, or other issues that fall under the purview of the Board of County Commissioners.

**Deb Gardner** County Commissioner

**Elise Jones** County Commissioner

**Matt Jones** County Commissioner

Resolution 95-93 approved the specific special use of gravel mining. This Special Use approval not only governs gravel mining operations, but also the activities to plan and prepare for mining as well as necessary post-mining reclamation activities. In order for the permit to have lapsed, gravel mining activities, including pre-and post-mining activities, would need to cease for a continuous period of five years or more. Based upon my review, Aggregate Industries has not provided adequate information to show gravel mining has been continuous. In fact, the information provided reveals that mining activities, including pre-and post-mining activities have ceased for a continuous period of five years or more.

In reviewing the documents submitted by Aggregate and the docket for the Special Review, it is clear that mining and reclamation of the Hygiene gravel pit was completed in 2002. The mining and reclamation of the Hygiene gravel pit overlapped with the activities of the Neighbors/Redmond gravel pit. Documents submitted by Aggregate and the DRMS inspections clearly state that mining of the Neighbors/Redmond site was completed in 2006 and reclamation was completed in 2009. The 9/19/2018 DRMS inspection report establishes a clear end point of the Neighbors/Redmond gravel mining pit, when it states: "Reclamation of the area south of the river was completed in 2009." Page 2 of the 9/19/2018 DRMS Inspection Report.

Ensuing work at the site was not related to gravel mining or reclamation activities required by the mining permit and Special Use permit of the State and County, but instead was general land management work limited to weed management and revegetation. Flooding in 2013 and 2015 impacted the site and required flood repair work including repairs of the pond breach area and shoreline erosion, as well as revegetation of the affected areas. This flood-related work is considered ongoing land management and does not constitute mining or reclamation activity. Thus, it is not part of the approved special use activities and does not prevent a lapse resulting from a five-year period of continuous inactivity.

The September 27, 2019 letter from Aggregate Industries points to discussion in the record regarding Aggregate's plan for sequential mining of the Hygiene, Neighbors/Redmond, and Fredstrom sites, and Aggregate's anticipated 25 to 30 year time-frame to complete mining of all three sites. Staff does not dispute that Aggregate planned for sequential mining of the sites over a 25-30 year period, as referenced in Resolution 95-93, but this does not mean that the lapse provision in 4-604.C does not apply. To the contrary, mining related activities needed to continue throughout the 25-30 year period in order to prevent lapse. If a continuous five-year period occurred with no mining related activities, then the special use would lapse, regardless of whether the mining was to happen sequentially or over an extended period of time.

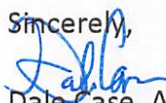
Review of the materials provided by Aggregate reveals that mining and reclamation was not continuous. Specifically, the gap of mining activity from the time reclamation was completed in 2009 to at least 2015 exceeded the five-year period allowed under 4-604.C of the Code. For the reasons explained above, staff disagrees with Aggregate's contention that the land management and flood-repair activities undertaken on the Neighbors/Redmond and

Fredstrom gravel pits constituted mining or reclamation activities under the special use permit

My determination that the approval of Docket SU-94-22, 23, 24 has lapsed is appealable to the Boulder County Board of Adjustment under Article 4-1200 of the Code. An appeal must be in writing, accompanied by a statement of the basis for the appeal and the required appeal fee. In addition, you must file the appeal with the Director no later than 30 days after the date of this determination. The County will consider this determination final if it is not timely appealed. If Aggregate seeks to undertake further mining activities on the site, it may apply for a new special use permit.

For additional information or questions, you may contact me directly at 720-564-2604 or via email at [dcase@bouldercounty.org](mailto:dcase@bouldercounty.org)

Sincerely,



Dale Case, AICP

Director

Boulder County Community Planning & Permitting

cc: Development Agreement - Resolution 95-93





Boulder County Clerk, CO AG

R 226.00 D 0.00

1714843

Page: 1 of 45

07/17/1997 10:38A

45

## DEVELOPMENT AGREEMENT

### GOLDEN'S ANDESITE MINING CO., a COLORADO CORPORATION, DOCKETS SU-94-22, 23 & 24; SE-95-20 & SE-95-24

THIS AGREEMENT IS MADE AND ENTERED INTO this 7 day of July, 1997, by and between the **Board of County Commissioners of Boulder County**, Colorado, hereinafter referred to as the County, and **Golden's Andesite Mining Co.**, hereinafter referred to as Golden's.

### RECITALS

A. In the above-referenced Dockets, the County has considered and approved a Special Use Permit and Site Specific Development Plan for gravel mining and appurtenant operations on three parcels (Hygiene, Neighbors/Redmond and Fredstrom properties); and Subdivision Exemptions for certain Boundary Line Adjustments involving the Fredstrom property and Community Facility Lot Splits for the Fredstrom and Neighbors/Redmond properties, in unincorporated Boulder County; and

B. The parties mutually acknowledge and agree that the matters hereinafter set forth are reasonable conditions and requirements to be imposed by the County in connection with its approval of the proposed mining and that such matters are necessary to protect, promote, and enhance the public health, safety, and welfare; and

C.. Independent of any other requirements which are imposed by the County by reason of its approval of the proposed mining, Golden's desires to donate to the County, and the County is willing to accept, approximately 94.94 acres of land on the Fredstrom Property, as open space in order to protect and preserve its scenic beauty, archaeological resources, wildlife habitat, and viewsheds.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements contained herein, and as a condition of the County's approval of the Dockets described herein, the parties agree as follows:

### AGREEMENT

1. **Definitions.** In addition to any other definitions set forth in this Agreement, the following shall control the meaning of terms used in this Agreement:

1.1 "Dockets" means and refers to Boulder County Land Use Dockets #SU-94-22, -23 & -24 and Dockets # SE 95-20 & SE 95-24.

1.2 "Hygiene", "Neighbors/Redmond" and "Fredstrom", or collectively, the "Permit Property", refer to those parcels of real property generally depicted on Exhibit A and more specifically described in Exhibit B.

1.3 "County's Approval" means Resolution 95-93 approving the Dockets (including its referenced Exhibit A), as adopted June 22, 1995, which is attached to and incorporated into this Agreement as Exhibit C.

2. **Approved Development.** The development which is the subject of this



Boulder County Clerk, CO AG

R 226.00 D 0.00

1714843

Page: 2 of 45

07/17/1997 10:38A

Agreement is described in the County's Approval (Exhibit C) and its referenced documents. The approved development consists of surface mining and reclamation, the creation of certain building sites and the preservation of designated lands, all as set forth in Exhibit C and its referenced documents. Golden shall adhere to all conditions of the County's Approval.

3. **Vested Property Right.** In consideration of the County's approval of the Development, as defined in Paragraph 2, above, the County, pursuant to C.R.S. § 24-68-101 et. seq., and the Boulder County Land Use Code, hereby grants to Golden's a Vested Property Right for the Development to proceed in accordance with the terms and conditions of the Approved Development. The Vested Property Right shall have a term of three (3) years from the date the County signs this Agreement (see § 4-601(A)(2)), subject to the provisions for modification, extension and termination contained herein or set forth in the Boulder County Land Use Code. The provisions of this Agreement do not in any way limit Golden's rights to establish vested rights pursuant to common law principles regarding establishment of vested rights and legal non-conforming uses. For the 3-year vesting period approved herein, the Development shall be subject to regulations lawfully adopted by the County after the effective date of this Agreement only to the extent permitted under C.R.S. § 24-68-105 as codified on the effective date of this Agreement.

4. **Termination of Vested Property Right.** The Vested Property Right granted in Paragraph 3, above, may be terminated if the County reasonably determines, in accordance with the applicable special use procedures of the Boulder County Land Use Code, that Golden's is not in compliance with the terms and conditions of the Approved Development.

5. **Donations of Land by Golden's.** Golden's desires to donate approximately 94.94 acres of the Fredstrom Property to the County and subsequent to, and separate from, the approval of the Dockets, has entered into an Agreement To Make Gifts which sets forth the lands and water rights to be donated to the County, the timing and conditions of the gift and the conditions upon which the County will accept the gift. The parties agree that the Agreement To Make Gifts, recorded on August 25 1995 under Reception No. 01542495 of the Boulder County Public Records and the Amendment and Agreement to Make Gifts recorded on August 5, 1996 under Reception No. 01631669, is in conformance with the terms of this Development Agreement.

6. **Option to Purchase.** The Parties have also entered into an Option to Purchase pursuant to which the County has the right to purchase approximately 230 acres of the Fredstrom Property. The parties agree that the Option to Purchase is in conformance with the terms of this Development Agreement and further acknowledge and confirm Golden's right to divide the property which is the subject of the Option to Purchase into four separate building lots if the County does not exercise its option. The Option to Purchase, recorded on 8-25, 1995 under Reception No. 01542494 on Film No. 2072, of the Boulder County Public Records, is in conformance with the terms of this Development Agreement.

7. **Periodic Review.** Public hearings shall be held after the first year of mining and again after three years of mining on each property (the Neighbors/Redmond Gravel Mine, the Fredstrom Gravel Mine and the Hygiene Gravel Mine) to determine

compliance with the conditions and terms of the County's Approval. In addition, the County may monitor Golden's compliance with this Agreement as necessary to enforce its terms.

**8. Processing of Mined Material.** Golden's shall be entitled to process material mined on the parcels approved in the above dockets at the processing sites approved pursuant to those dockets. Furthermore, Golden's shall be entitled to process materials from properties other than the Hygiene Neighbors/Redmond and Fredstrom properties provided that such processing is approved as part of the special review process for any such other property .

**9. Road Impact Fees.** Because the Approved Development will result in increased impact on public roads and highways, Golden's shall be required to participate in a County-wide road impact fee fund if the County adopts such a fee prior to the completion of mining, such participation to be based upon Golden's impact (LUC 7-601 (p.7-7)).

**10. Amendment and Waiver.** This Agreement may be amended or its provisions waived only upon the mutual written consent of the parties hereto, or as required to bring the Development into conformance with federal or state law.

**11. Enforcement.** The County and Golden's each have the authority to bring an action in Boulder District Court to compel the enforcement of this Agreement. If the Permit Property becomes included within the boundaries of any city or town, the County's right to enforce this Agreement shall automatically pass to the governing body of such city or town, subject to the limitations, if any, set forth herein.

**12. Binding Effect.** The terms and conditions of this Agreement inure to the benefit of, and are binding upon, the successors and assigns of the parties hereto. Subject to this binding effect, nothing contained herein shall limit or prohibit Golden's right to sell, assign or transfer any or all of the Permit Property or to lease, assign, sublet, license, sell or otherwise contract with relation to the mining rights approved by the County in the Dockets.

**13. Recordation.** Upon execution, the Developers shall record this Agreement shall be recorded by the County in the public records in the office of the Boulder County Clerk and Recorder.

**14. Integration.** This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein and in the exhibits hereto; and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between and parties hereto.



1714843  
Page: 4 of 45  
07/17/1997 10:38A  
R 226.00 D 0.00

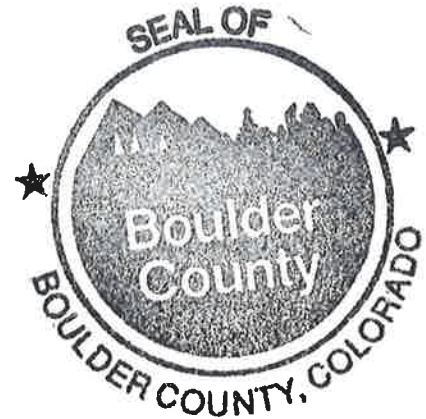
IN WITNESS WHEREOF, the parties hereto set their hands and seals as of the date set forth above.

**COUNTY OF BOULDER, a body corporate and politic**

By Ronald K Stewart  
Ronald K. Stewart, Chair

ATTEST:

Michael Ryder for  
Clerk to the Board 7/15/97



**GOLDEN'S ANDESITE MINING CO.**  
a Colorado Corporation

By Reginald N. Golden for  
Reginald N. Golden, Principal

ATTEST:

[Signature]





Boulder County Clerk, CO AG

R 226.00 D 0.00

1714843

Page: 5 of 45

07/17/1997 10:38A

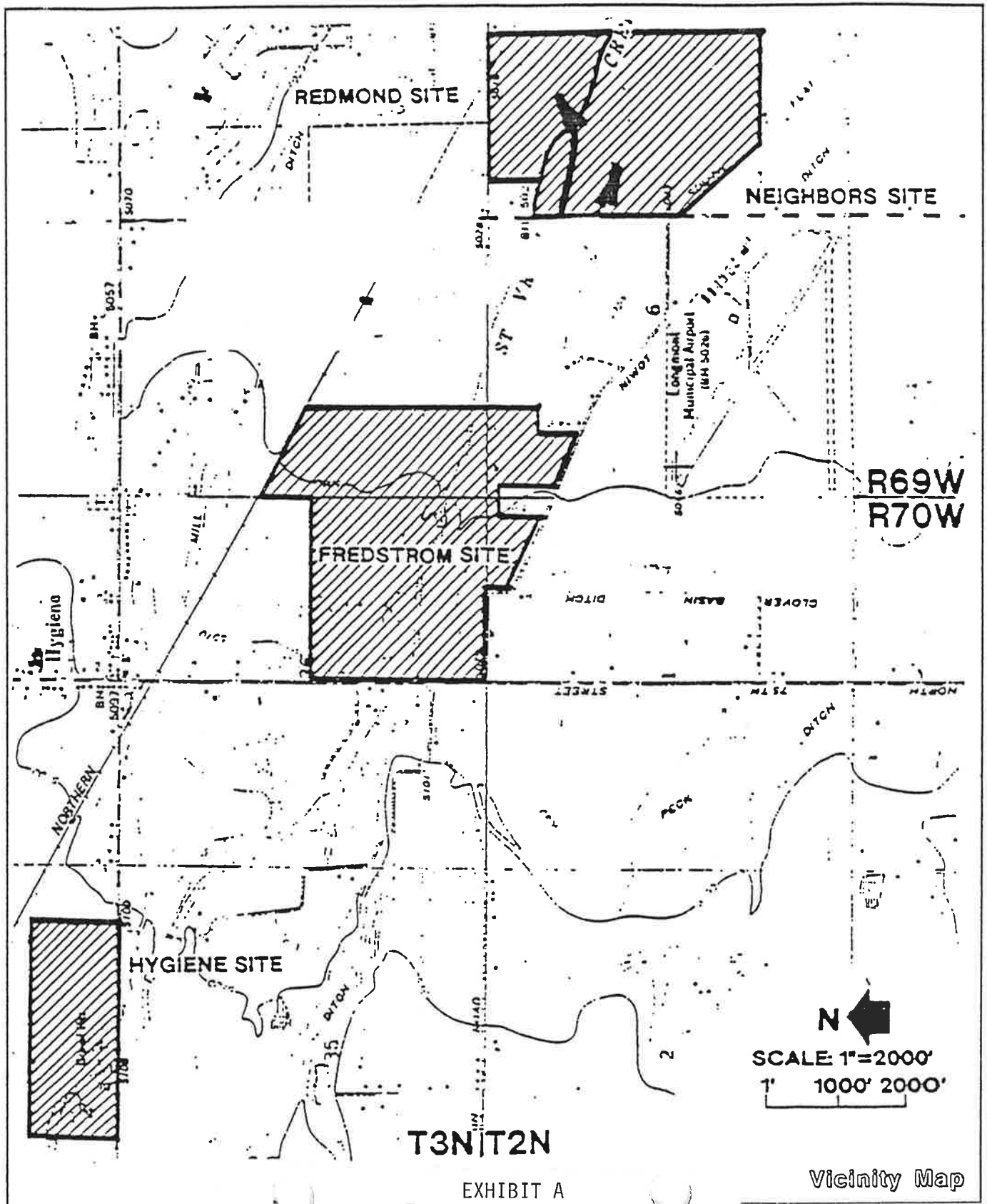


EXHIBIT A  
To Development Agreement  
(Fredstrom Farm)

Vicinity Map

# HASCALL SURVEYS, INC.

LAND SEISMIC GPS



1714843  
Page: 6 of 45  
07/17/1997 10:38A

R 226.00 D 0.00



1132 NORTH MAIN STREET  
LONGMONT, COLORADO 80501  
(303) 678-8324 FAX (303) 772-7755

## LEGAL DESCRIPTION HYGIENE SITE

THAT PART OF SECTION 26, TOWNSHIP 3 NORTH, RANGE 70 WEST OF THE SIXTH PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 AND THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 AND THAT PART OF THE EAST 1/2 OF THE SOUTHEAST 1/4 LYING SOUTH OF THE SOUTHERLY BOUNDARY LINE OF THE RIGHT OF WAY OF THE CHICAGO, BURLINGTON AND QUINCY RAILROAD AND WEST OF THE WESTERLY LINE OF THAT PORTION OF THE SOUTHEAST 1/4 OF SAID SECTION 26, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE SOUTH LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 26 FROM WHICH THE SOUTHEAST CORNER THEREOF BEARS S89°46'16"E, 888 FEET; THENCE N89°46'16"W, 60 FEET ALONG THE SOUTH LINE OF SAID SECTION; THENCE N00°18'44"E, 1509.3 FEET, MORE OR LESS, TO THE NORTHERLY RIGHT OF WAY BOUNDARY OF THE CHICAGO, BURLINGTON AND QUINCY RAILROAD; THENCE S61°52'16"E, 67.95 FEET ALONG THE NORTHERLY BOUNDARY OF SAID RIGHT OF WAY; THENCE SOUTH 00°10' EAST, A DISTANCE OF 1477.4 FEET, MORE OR LESS, TO THE POINT OF BEGINNING, COUNTY OF BOULDER, STATE OF COLORADO. EXCEPTING THEREFROM THE SOUTHERLY 30 FEET OF SAID LAND, AS DEEDED TO THE COUNTY OF BOULDER FOR ROAD PURPOSES, BY INSTRUMENT RECORDED JANUARY 12, 1904, IN BOOK 275, PAGE 239.

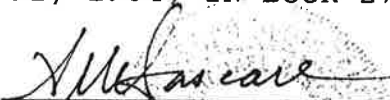
  
A. MICHAEL HASCALL  
4-9-97  
DATE

EXHIBIT B to Development Agreement  
(Fredstrom Farm)



1714843  
Page: 7 of 45  
07/17/1997 10:38A  
R 226.00 D 0.00

Boulder County Clerk, CO AG

R 226.00 D 0.00



# HASCALL SURVEYS, INC.

LAND SEISMIC GPS

1132 NORTH MAIN STREET  
LONGMONT, COLORADO 80501  
(303) 678-8324 FAX (303) 772-7755

## LEGAL DESCRIPTION (NEIGHBORS SITE)

### PARCEL 1:


THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 5 AND THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 2 NORTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN, BOULDER COUNTY, COLORADO; EXCEPTING THEREFROM THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 5 PREVIOUSLY CONVEYED TO THE DENVER, UTAH AND PACIFIC RAILROAD COMPANY, BY DEED RECORDED SEPTEMBER 4, 1882 IN BOOK 89, PAGE 237, AND ALSO EXCEPTING THOSE PORTIONS OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6 AS PREVIOUSLY CONVEYED TO JANE H. NELSON AND KENT P. NELSON BY DEED RECORDED JANUARY 22, 1976 AS RECEPTION NO. 164643 AND AS TAKEN BY COURT ORDER RECORDED JUNE 4, 1987 AS RECEPTION NO. 853966.

### PARCEL 2:

THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER AND THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 5, AND THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 6, TOWNSHIP 2 NORTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN, BOULDER COUNTY, COLORADO EXCEPTING THEREFROM THAT PORTION AS PREVIOUSLY CONVEYED TO THE COUNTY OF BOULDER BY DEED RECORDED OCTOBER 4, 1988 AS RECEPTION NO. 945781.

### PARCEL 3:

THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 2 NORTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN, BOULDER COUNTY, COLORADO EXCEPTING THEREFROM THAT PORTION AS PREVIOUSLY CONVEYED TO THE COUNTY OF BOULDER, BY DEED RECORDED DECEMBER 4, 1988 AS RECEPTION NO. 945782.

  
A. MICHAEL HASCALL  
4-9-97  
DATE



1714843  
 Page: 8 of 45  
 07/17/1997 10:38A  
 R 226.00 D 0.00

Boulder County Clerk, CO AG



# HASCALL SURVEYS, INC.

LAND SEISMIC GPS

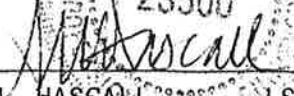
## LEGAL DESCRIPTION FREDSTROM SITE

1132 NORTH MAIN STREET  
 LONGMONT, COLORADO 80501  
 (303) 678-8324 FAX (303) 772-7755

**BEGINNING** AT THE EAST QUARTER CORNER OF SECTION 36, TOWNSHIP 3 NORTH, RANGE 70 WEST OF THE SIXTH PRINCIPAL MERIDIAN, FROM WHENCE THE SOUTHEAST CORNER OF SAID SECTION 36 BEARS S00°03'21"W, 2645.72 FEET AND WITH ALL OTHER BEARINGS CONTAINED HEREIN RELATIVE THERETO:

THENCE ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 3 NORTH, RANGE 69 WEST, N00°00'49"E, 732.76 FEET TO THE SOUTH LINE OF THAT TRACT OF LAND CONVEYED TO THE DENVER, UTAH AND PACIFIC RAILROAD COMPANY IN BOOK 89 AT PAGE 330 RECORDED NOVEMBER 21, 1885; THENCE ALONG THE SOUTH LINE OF SAID TRACT S60°38'42"E, 1453.93 FEET; THENCE LEAVING SAID SOUTH LINE, S00°15'45"E, 19.27 FEET TO A POINT ON THE NORTH LINE OF THE SOUTHWEST QUARTER OF SECTION 31, TOWNSHIP 3 NORTH, RANGE 69 WEST; THENCE ALONG SAID NORTH LINE N89°57'58"E, 24.19 FEET TO THE NORTHEAST CORNER OF THE NORTHWEST QUARTER, SOUTHWEST QUARTER OF SAID SECTION 31; THENCE ALONG THE EAST LINE OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SAID SECTION 31, S00°47'22"E, 2642.67 FEET TO THE SOUTHEAST CORNER OF SAID WEST HALF; THENCE ALONG THE EAST LINE OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 6 TOWNSHIP 2 NORTH, RANGE 69 WEST, S00°08'28"E, 1561.28 FEET TO THE CENTERLINE OF ST. VRAIN ROAD; THENCE ALONG SAID CENTERLINE, N65°35'29"W, 65.96 FEET; THENCE LEAVING SAID CENTER LINE N00°08'28"W, 1533.84 FEET TO THE NORTH LINE OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 6; THENCE ALONG SAID NORTH LINE S89°49'30"W, 542.16 FEET; THENCE S00°08'28"E, 1285.88 FEET TO THE CENTERLINE OF ST. VRAIN ROAD; THENCE ALONG SAID CENTERLINE N65°35'29"W, 803.76 FEET; THENCE LEAVING SAID CENTER LINE N00°00'53"E, 607.51 FEET; THENCE N73°49'23"W, 142.64 FEET; THENCE N84°23'14"W, 283.38 FEET; THENCE S00°00'53"W, 484.83 FEET TO THE CENTERLINE OF ST. VRAIN ROAD; THENCE ALONG SAID CENTERLINE N65°35'29"W, 996.33 FEET TO THE WEST LINE OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 2 NORTH, RANGE 70 WEST; THENCE ALONG SAID WEST LINE, N00°00'52"E, 348.86 FEET TO THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 3 NORTH, RANGE 70 WEST; THENCE ALONG THE EAST LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER N00°02'30"E, 165.00 FEET; THENCE S89°57'58"W, 264.00 FEET; THENCE S00°02'30"W, 165.00 FEET TO THE SOUTH LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER; THENCE ALONG SAID SOUTH LINE S89°57'58"W, 1062.42 FEET TO THE SOUTHWEST CORNER OF SAID SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER; THENCE ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF SECTION 36, N00°01'39", 2642.60 FEET TO THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 36; THENCE ALONG THE NORTH LINE OF SAID SOUTHEAST QUARTER N89°53'56"E, 2654.14 FEET TO THE POINT OF **BEGINNING**.

THUS DESCRIBED TRACT OF LAND CONTAINS 285.938 ACRES MORE OR LESS.

  
 A. M. HASCALL LS23500

4-11-97  
 DATE





1714843

Page: 9 of 45

07/17/1997 10:38A

Boulder County Clerk, CO AG

R 226.00 D 0.00

**RESOLUTION 95-93**

A RESOLUTION CONDITIONALLY APPROVING BOULDER COUNTY LAND USE DOCKETS #SU-94-22 (NEIGHBORS/REDMOND GRAVEL PIT), SU-94-23 (FREDSTROM GRAVEL PIT), SU-94-24 (HYGIENE GRAVEL PIT), SE-95-20 (BOUNDARY LINE ADJUSTMENTS AND COMMUNITY FACILITY LOT SPLIT FOR FREDSTROM SITE), AND SE-95-24 (COMMUNITY FACILITY LOT SPLIT ON THE NEIGHBORS SITE) (COLLECTIVELY: GOLDEN GRAVEL SPECIAL USE FOR MINING WITH ASSOCIATED SITE SPECIFIC DEVELOPMENT PLAN, AND SUBDIVISION EXEMPTIONS FOR RELATED RESIDENTIAL DEVELOPMENT AND AGRICULTURAL PRESERVATION), ON THREE PARCELS/SITES (NEIGHBORS/REDMOND, FREDSTROM, AND HYGIENE PITS), ALL LOCATED ALONG THE ST. VRAIN CREEK CORRIDOR WEST OF LONGMONT, ON THE EAST SIDE OF AIRPORT ROAD, ON THE EAST SIDE OF NORTH 75TH STREET, AND ON THE NORTH SIDE OF HYGIENE ROAD, IN SECTIONS 5 AND 6-T2N-R69W; SECTION 26-T3N-R70W; AND SECTION 31-T3N-R69W.

WHEREAS, Golden's Andesite Mining Company ("Applicant") has requested approval of a special use permit with associated site specific development plan for a comprehensive, long-term plan for the mining of three of its parcels/sites of property along the St. Vrain Creek corridor, on the properties which are located as described in the caption to this Resolution, above, in the Agricultural Zoning District in unincorporated Boulder County ("the Subject Properties"); and

WHEREAS, the Applicant is also requesting approval of subdivision exemptions for two boundary line adjustments involving the Fredstrom site; for a community facility lot split creating four building lots and two preserved agricultural parcels as well as a 230+-acre agricultural parcel proposed for acquisition by the County on the Fredstrom site; and for a community facility lot split involving creation of a 5-acre building site with existing dwelling from a 40-acre parcel which is part of the Neighbors site, all as further described in the letter dated June 21, 1995 from Rocky Mountain Consultants, Inc. to the Boulder County Land Use Department, which is attached to and incorporated into this Resolution as Exhibit A; and

WHEREAS, the above-referenced dockets were processed and reviewed as Dockets SU-94-22, -23, and -24, as well as Dockets SE-95-20 and -24 (as amended from the originally submitted Docket SD-94-28) (collectively, "the Docket"), all as further described in the Boulder County Land Use Department's Memoranda and written recommendations to the Boulder County Board of County Commissioners ("the Board") dated April 11, 1995, May 8, 1995, and June 22, 1995, with their attachments (collectively, "the Staff Recommendation"), which are incorporated into this Resolution by this reference; and

WHEREAS, on February 22, 1995, the Boulder County Planning Commission held a duly noticed public hearing on the Docket, and recommended conditional approval of the Docket to the Board; and

**WHEREAS**, on May 11, 1995, as tabled without a hearing from April 11, 1995, and as thereafter tabled for further testimony and Board discussion and action to June 1, 1995, June 8, 1995, June 20, 1995, and June 22, 1995, the Board held a duly noticed public hearing on the Docket ("the Public Hearing"), at which time the Board considered the Staff Recommendation and the recommendation of the Planning Commission, and also considered the documents and testimony of the County Land Use Department Planning Staff, the County Attorney's Office, several representatives of the Applicant, and several members of the public residing adjacent to or in the vicinity of the Subject Properties; and

**WHEREAS**, based on the Public Hearing, the Board finds that the mining request portion of the Docket, subject to the conditions stated below, meets the criteria for special use approval pursuant to Article 4 of the Boulder County Land Use Code ("the Land Use Code"), and, with the submission of the County's standard development agreement, meets the criteria for approval of a site specific development plan associated with the special use approval, and can be approved on that basis; and

**WHEREAS**, also based on the Public Hearing, the Board finds that the subdivision exemption request portion of the Docket, subject to the conditions stated below, meets the applicable criteria of Article 9 of the Land Use Code, and, therefore, falls outside the purposes of the County's Subdivision Regulations (Article 5 of the Land Use Code), and can be approved on that basis.

**NOW, THEREFORE, BE IT RESOLVED** that the Docket is hereby approved, on the basis and terms set forth in this Resolution, above, and subject to the following conditions:

(SPECIAL USE CONDITIONS)

1. The Redmond site be mined within 2 years from the date of commencement of mining, and filling/final reclamation to be completed within 1 year after mining.
2. The hours of mining operation at the Redmond site will be Mondays through Fridays 7:00 am to 5:30 pm in the summer and 7:00 am to 4:30 pm in the winter, and only equipment maintenance will be allowed on Saturdays.
3. The hours of mining operation at the Neighbors site will be Mondays through Fridays 7:00 am to 7:00 pm or daylight to dark (whichever is more restrictive). Equipment maintenance will be allowed on Saturdays. Hauling south from the Neighbors site will be allowed Mondays through Fridays, during the same time as the hours of mining operation, and on Saturdays from 9:00 am to 5:00 pm. Hauling north from the Neighbors site will be restricted to the same hours of mining operation as the Redmond pit. The applicant may request the Board of





County Commissioners to reconsider these hours of operation without a special use amendment. In the event of an emergency, such as imminent flooding, fire, etc., the applicant can operate outside of the allowed time frame, provided the County Land Use Director is immediately notified and the applicant is instructed to either cease or continue operations based on the emergency situation.

4. The hours of mining operation at the Hygiene and Fredstrom sites will be Mondays through Fridays 7:00 am to 7:00 pm or daylight to dark (whichever is more restrictive). Only hauling and equipment maintenance will be allowed on Saturdays. The applicant may request the Board of County Commissioners to reconsider these hours of operation without a special use amendment. In the event of an emergency, such as imminent flooding, fire, etc., the applicant can operate outside of the allowed time frame, provided the County Land Use Director is immediately notified and the applicant is instructed to either cease or continue operations based on the emergency situation.
5. Any material being hauled north out of the mining sites will be limited to local deliveries, and no trucks will drive past Westview Middle School or Hygiene Elementary School 30 minutes before and after school opens and closes.
6. If sustained winds exceed 30 MPH at mining sites, operations will cease until the wind speed drops below 30 MPH.
7. The applicant shall obtain all State and Local permits as required and necessary. Floodplain Development Permits must be obtained prior to mining commencement.
8. All State noise standards and State fugitive standards apply to the mining sites. All air and noise monitoring shall be performed by qualified personnel on a monthly basis at the Redmond site to assure compliance with State standards.
9. In addition to the Pella townsite, a surface archaeological resource survey be completed for any areas to be disturbed in mining operations. The findings of the survey must be forwarded to County staff and the Historic Preservation Office prior to mining commencement to determine any impact mitigation requirements.
10. Interim (prior to gravel mining) management plans for each site be prepared and reviewed/approved by the Soil Conservation Service and the County. These plans should protect natural resources while continuing compatible agricultural operations.
11. The applicant shall perform wetland and *Sprianthes diluvialis* (Ute ladies' tresses orchid) surveys for the Fredstrom and Neighbors/Redmond sites. These surveys will be reviewed by



1714843

Page: 12 of 45

07/17/1997 10:38A

Boulder County Clerk, CO AG

R 226.00 D 0.00

County staff prior to mining commencement to determine any impact mitigation requirements.

12. The applicant shall confirm boundaries of Fredstrom Pods 3 and 6 on the ground to avoid surface impacts to the preservation area. Dike removal shall not occur on the Fredstrom site.
13. The applicant shall install monitoring wells prior to mining to determine the existing ground water levels which are necessary to preserve the "protected areas" identified on the mining plan. The applicant shall mitigate adverse effects on these wetland areas and cottonwood groves, as well as any adverse impacts on any neighboring wells.
14. The applicant shall be subject to the terms, conditions, and commitments of record for Docket SU-94-22 Neighbors/Redmond pit, SU-94-23 Fredstrom pit, and SU-94-24 Hygiene pit.
15. Public hearings be held after one year and after three years of mining of each pit to determine compliance with conditions and terms of this approval.
16. The maximum disturbed area at any given time be limited to only one mining pod at a time or no more than 50% of two pods (one under reclamation and one in beginning stages of dewatering and mining) except for the processing site at each mine and the final reclamation of the pods including the placement of topsoil and the landscaping.
17. Signs be posted along perimeters of Neighbors/Redmond and Fredstrom sites stating that gravel mining will occur on site. The size and content of signs will be reviewed and approved by County Land Use staff. All signs must be easily visible from public roads.
18. The Development Agreement for the Special Uses be reviewed and approved by County Staff prior to recordation.
19. Prior to recordation of the Development Agreement for the Special Uses, current aerial maps for the Fredstrom and Neighbors properties be filed with County Land Use that indicate which groves of trees and other site features will be preserved during and after the mining operations.





Boulder County Clerk, CO AG

R 226.00 D 0.00

1714843

Page: 14 of 45

07/17/1997 10:38A

ADOPTED this 29<sup>th</sup> day of June 1995, nunc pro tunc the  
22nd day of June, 1995.

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

(EXCUSED)

Homer Page, Chair

Ronald K. Stewart

Ronald K. Stewart, Vice Chair

Jana Mendez

Jana Mendez, Commissioner

ATTEST:

Susan M. Ashcraft  
Clerk to the Board





(SUBDIVISION EXEMPTION CONDITIONS on Fredstrom site)

20. Post-approval requirements of Section 3-206(C) for Subdivision Exemptions be met.
21. Prior to construction of dwellings on the four building lots, Site Plan Review approval be obtained. Building height, size, location, and landscaping requirements will be reviewed at that time.
22. A deed restriction be placed on the agricultural parcels south of St. Vrain Creek providing that they are not legal building lots, it being the intent of this restriction that these parcels remain in active agricultural and/or conservation uses for the benefit of adjacent properties in the County. No structures shall be permitted on the agricultural parcel located in the southwestern corner of the Fredstrom site, and only accessory agricultural structures shall be allowed on the other agricultural parcel. A deed restriction shall also be placed on the four building lots that they shall not be further divided. All the deed restrictions required in this paragraph shall survive any annexation of the parcels into a municipality, and shall so state.
23. If the approximately 230-acre parcel is not acquired by the County (by gift or purchase) within the term of the option, the applicant may create four building lots (in addition to the four lots created with this approval). A subdivision exemption may be necessary to divide the parcel into four lots, if they are less than 35 acres in size. This total of 8 lots (one unit per 35 acres), as proposed, is the maximum density allowed on the Fredstrom property. Site Plan Review will be required prior to construction of dwellings.

(SUBDIVISION EXEMPTION CONDITIONS on Neighbors site)

24. Post-approval requirements of Section 3-206(C) for Subdivision Exemptions be met.
25. A deed restriction be placed on the 35-acre agricultural parcel split from the 40-acre parcel that it is not a legal building lot, and a deed restriction be placed on the 5-acre building lot that it can not be further divided.

A motion to approve the Docket, subject to the conditions stated above, was made by Commissioner Stewart, seconded by Commissioner Mendez, and passed by a 3-0 vote of the Board.

June 21, 1995

Ms. Rosi Koopman  
Boulder County Land Use  
P.O. Box 471  
Boulder, Colorado



Boulder County Clerk, CO AG

R 226.00 D 0.00

1714843

Page: 15 of 45  
07/17/1997 10:38A

Dear Rosi:

The following is a summary of the current status of the requests regarding the Golden's Master Plan currently under consideration:

1. Goldens is requesting approval of the Special Use Applications for Neighbors/Rcdmond, Hygiene and Fredstrom properties per the plans reviewed by the Planning Commissioners and County Commissioners.
2. There are no longer any NUPUD applications associated with this application. The applicant is requesting approval of the following Subdivision Exemption applications in order to divide the properties for future residential development and open space preservation. The requested density is consistent with the current use by right density associated with the properties. No additional density is being requested.

#### FREDSTROM PROPERTY

a. Gilbert Exemption

This exemption request contemplates a lot line adjustment and divides the portion of the special use application on the Fredstrom property owned by the Gilbert family. The existing parcel includes approximately 30 acres and is divided by a deeded railroad right of way into two parcels. The smaller parcel is approximately 11 acres. The larger of the two parcels includes 19 acres and an existing residence. The smaller parcel would be added to the Fredstrom property. This portion of the property will be deeded to Boulder County as Open Space at some point in the future. This would increase the acreage of the Fredstrom property to approximately 286 acres.

b. Reggie Golden Exemption

This exemption request contemplates a lot line adjustment. There is an existing 5 acre parcel, including a residence and associated farm out buildings adjacent to St. Vrain Road, surrounded by the Fredstrom property. The exemption request reconfigures the five acre parcel to allow for an adjacent, proposed residence to take advantage of a portion of the

Ms. Rosi Koopman  
June 21, 1995  
Page 2

Boulder County Clerk, CO AG



1714843  
Page: 16 of 45  
07/17/1997 10:38A  
R 226.00 D 0.00

**RMC**

existing agricultural outbuildings and realign the existing property lines to form a cluster with the proposed residential units to be developed on the property.

c. Fredstrom Exemption

This exemption request creates four building sites and two outlots, south of St. Vrain Creek. The four building sites are consistent with the sites proposed with the NUPUD Sketch Plan that was reviewed by the Commissioners. The outlots include the pasture as delineated on the previous sketch plan and two of the ponds to be created by the mining and reclamation at the site. The total area of the four lots and the two outlots is 55 acres. This leaves 231 acres to be preserved as open space. The four remaining density units associated with the Fredstrom property will be tied to the remaining 231 acres and will only be available for development if Boulder County does not acquire the property through a gift or exercise its option to purchase the property.

NEIGHBORS PROPERTY

a. Stewart and Sheron Golden Exemption

A 40 acre portion of the Neighbors property is currently held in a separate deed by Stewart and Sheron Golden. This parcel is adjacent to Airport Road and includes the Golden's residence and the other buildings, associated with the farm. We are requesting that the existing residence, and associated farm buildings be included in a separate 5 acre parcel. This will allow for the remaining 35 acre parcel to be included in future plans for open space associated with the property upon completion of the mining and reclamation. It is our understanding that there will no longer be any density associated with the remaining 35 acre parcel.

Maps illustrating the proposed exemptions are attached for your review. Please call me if you have any questions. Thank you for your assistance.

Sincerely,

ROCKY MOUNTAIN CONSULTANTS, INC.

  
Barbara Brunk  
Landscape Architect

Attachments

B:GOLDEN.COM/33



## AGREEMENT TO MAKE GIFTS

1. **PARTIES.** The parties to this Agreement are **GOLDEN LAND COMPANY, a Limited Liability Company**, hereinafter called ("Golden") and **COUNTY OF BOULDER, a body corporate and politic**, hereinafter called ("County").

2. **RECITALS AND PURPOSE.** Golden owns or has a contract to purchase the Gift Property (the "Gift Property") described in Exhibit A attached hereto and incorporated herein for all purposes. The Gift Property consists of approximately 84 acres of a 275 acre parcel more or less commonly known as the "Fredstrom Farm" and a 10.94 acre portion of the Gilbert Farm which Golden has under contract of purchase. Golden desires to donate the Gift Property to the County, and the County is willing to accept the Gift Property, on the terms and conditions hereinafter set forth, as open space in order to protect and preserve its scenic beauty, riparian corridor, archeological resources, wildlife habitat and view sheds. The conditions under which the County accepts the gift are intended to assure that the Gift Property will be maintained, in perpetuity, as open space.

The purpose of this Agreement is to define the terms of Golden's gift and the conditions under which the County accepts the gift.

3. **PROPERTY TO BE GIFTED.** Subject to the terms and conditions set forth in this Agreement, Golden commits to donate as open space, all of Golden's right, title and interest in the Gift Property described in Exhibit A. Sellers, through Boulder County Dockets SU-94-22, 23, 24 and SD-94-28 and SE-95-20 are requesting recognition of certain use by right residential development units associated with the Sellers' property. If so recognized, Seller intends to include one development unit as a part of the Gift Property lying south of the St. Vrain Creek corridor. The parties understand and agree that the donation may be in multiple conveyances spread over several years according to a schedule of parcels donated and time of donation reasonably acceptable to the Parties, but shall be completed on or before the County purchases the Property which is the subject of the option to purchase entered into by Golden and the County and dated June 23, 1995.

4. **ACCEPTANCE OF GIFT BY THE COUNTY.** Acceptance of deeds conveying portions of the Gift Property to the County and recording of those deeds shall constitute the County's acceptance of each of the donations subject to the following terms and conditions.

- 4.1 Public access to the portion of the Gift Property lying south of the center line of St. Vrain Creek shall be limited to guided programs conducted by Boulder County Parks and Open Space Department. Any additional deed restrictions applying to any or all of the Gift Property shall reasonably relate to mining and reclamation.
- 4.2 Golden shall donate the property to the County by special warranty deed subject to all matters of record not objected to by the County within 30 days after receipt of a title insurance commitment for the Gift Property furnished by Golden and a Phase I Environmental Audit of the Gift Property, which shall be at the County's sole option and expense. If the parcel proposed to be gifted contains less than 35 acres (or such other acreage as may require a subdivision proceeding or exemption) the County agrees to process a "community facilities lot split", or comparable procedure at its expense, and as a condition of the gift. With respect to those matters objected

to by the County, Golden shall have a reasonable time, not to exceed 120 days to correct those title defects and/or environmental problems. If the title defects or environmental problems cannot be corrected within that time, the County shall have the option to accept the gift subject to all exceptions, including those objected to which have not been cured, or to reject the donation. If the donation is rejected, the parties shall be released from all further obligations under this Agreement.

- 4.3 Golden may, at its discretion, name the Gift Property, subject to the County's reasonable right to accept such name. Once accepted, the County may not change the name designated by Golden. The County, at Golden's election and expense, shall erect and maintain signs on the Gift Property carrying the name designated by Golden for such Gift Property. Golden shall also have the right, at its sole election and expense, to erect and maintain an informational kiosk on the Gift Property describing the Gift Property, the mining and reclamation operations which were or are conducted on the Gift Property or in the vicinity by Golden, and any other information related to the Gift Property. The County shall have the right to approve the location, content and design of such kiosk.
- 4.4 Golden hereby reserves and retains all wetlands mitigation banking rights associated with the Gift Property which result from wetlands created with the County's consent.
- 4.5 After the County accepts title to any Gift Property, the County shall maintain the Gift Property in its reclaimed condition and, during the ten years immediately following the completion of the reclamation of the Gift Property, shall not make any significant changes in its condition without the prior written approval of Golden. Thereafter, the County shall maintain the Gift Property and limit uses to those commonly associated with County open space.

5. **LAND USE REGULATIONS.** It is the intent of both Golden and the County that all resolutions, decisions, conditions and restrictions which pertain to, or result from, Boulder County Dockets SU-94-22, 23, 24 and SD-94-28 and SE-95-20, (or additional dockets which reference the dockets described herein) shall be in conformity with the terms of this Agreement to Make Gifts. In the event that any term of this Agreement to Make Gifts conflicts with any aspect of the above described (or related) Land Use Dockets, any decision by the Board of County Commissioners regarding the above described dockets shall control and the remaining unaffected provisions of this Agreement to Make Gifts shall remain in full force and effect.

6. **REMEDIES FOR BREACH.** In the event that Golden breaches any of its obligations under this Agreement, the County's remedy for such breach shall be limited to an action for specific performance, injunctive relief, declaratory judgment and/or damages. If the County breaches this Agreement, the County shall have 90 days from the date of written notice of breach to cure such breach and, if the County fails to do so within 90 days, Golden shall have any remedies available under Colorado law.

7. **TAX CONSEQUENCES.** Golden acknowledges that neither the County, nor any of its agents or attorneys have made any representations as to the tax treatment to be accorded to this

Boulder County Clerk, CO AG  
1714843  
Page: 18 of 45  
07/17/1997 10:38A  
R 226.00 D 0.00

Agreement, or any gifts made pursuant to this Agreement, by the Internal Revenue Service under the Internal Revenue Code or by the tax officials of the State of Colorado under Colorado tax law, or as to the value of any gifts made pursuant to this Agreement.

8. **ASSIGNMENT.** Golden shall not assign its rights and obligations hereunder unless County first consents thereto in writing, which consent shall not be unreasonably withheld. Golden agrees that, so long as County is not in default hereunder, Golden shall not gift, sell or convey any of the Gift Property except to the County pursuant to this Agreement.

9. **NOTICES.** Whenever notice is required to be given hereunder, it shall be in writing and delivered to the party entitled thereto or mailing to the party entitled thereto, by registered or certified mail, return receipt requested. If delivered, said notice shall be effective and complete upon delivery. If mailed, said notice shall be effective and complete upon mailing. Until changed by notice in writing, notice shall be given as follows:

**To the County:** Boulder County Parks and Open Space Director  
P.O. Box 471  
Boulder, Colorado 80306

**With Copies to:** Boulder County Attorney  
P.O. Box 471  
Boulder, Colorado 80306

**To Golden:** Manager  
Golden Land Company, LLC  
21 Sunset Street  
Longmont, Colorado 80501

**With Copies To:** Grant, Bernard, Lyons & Gaddis, P.C.  
Attn: Wallace H. Grant  
P. O. Box 978  
Longmont, Colorado 80502-0978

10. **SEVERABILITY.** 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 Agreement which shall remain in full force and unaffected.

11. **EXHIBITS.** All exhibits referred to in this Agreement are, by this reference, incorporated in this Agreement for all purposes.

12. **ADDITIONAL DOCUMENTS OR ACTION.** The parties agree to execute any additional documents and to take any additional action necessary to carry out this Agreement.

13. **BINDING EFFECT.** The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties and shall survive delivery of deeds to part or all of the Gift Property. Either party may record this Agreement

Boulder County Clerk, CO AG  
1714843  
Page: 19 of 45  
07/17/1997 10:38A  
R 226.00 D 0.00

or a memorandum signed by both of those parties, setting forth the general terms of this Agreement, in the records of the Boulder County Clerk and Recorder.

14. **INTEGRATION AND AMENDMENT.** This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein. This Agreement shall supersede all previous communications, representations or agreements, either verbal or written, between the parties hereto. This Agreement may be amended only by an instrument in writing signed by the parties, their successors or assigns.

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

IN WITNESS WHEREOF, Golden and County have executed this Agreement as of this  
22<sup>nd</sup> day of ~~June~~, 1995.  
**AUGUST,**

COUNTY OF BOULDER, a body corporate and politic

By Homer Page  
Homer Page, Chair

By Jana L. Mendez  
Jana L. Mendez, Commissioner

By Ronald K. Stewart  
Ronald K. Stewart, Vice-Chair

STATE OF COLORADO   )  
  ) ss.  
COUNTY OF BOULDER   )

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> **AUGUST,** day of ~~June~~, 1995, by Homer Page, Chair; Ronald K. Stewart, Vice-Chair; and Jana L. Mendez, Commissioner, County Commissioners of Boulder County, a body corporate and politic.

Witness my hand and official seal.

My commission expires: 10-17-95.

Susan M. Aschcraft  
Notary Public

Boulder County Clerk, CO #6  
1714843  
Page: 28 of 45  
07/17/1997 19:38H  
R 226.00 D 0.00



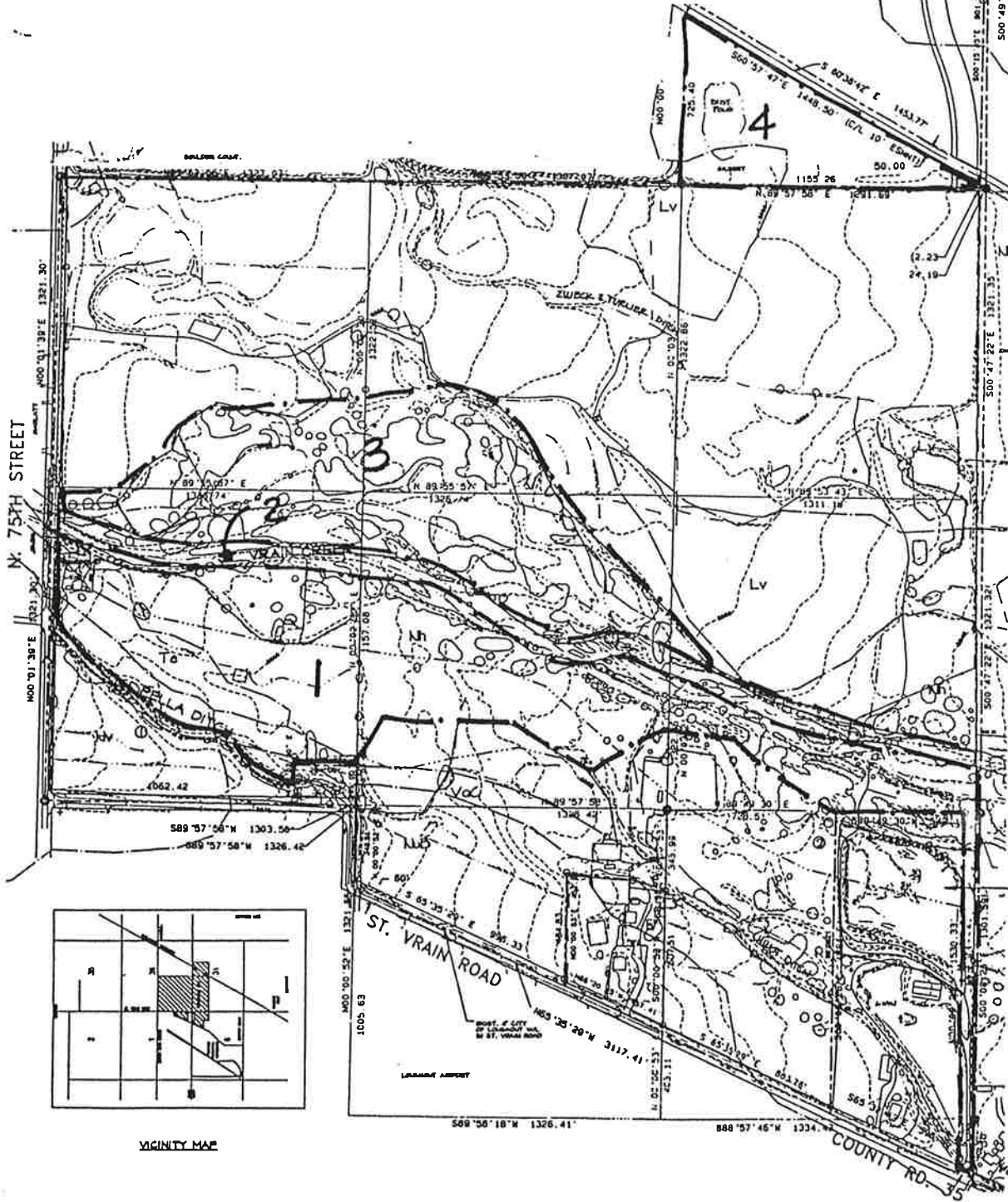
# EXHIBIT A

## GIFT PARCELS

PARCEL NO.	DESCRIPTION	WATER RIGHTS **	ACRES *
1	REMAINING AREA SOUTH OF THE CREEK INCLUDING 1 UNIT OF DENSITY AND WATER	16% OF THE GRANTOR'S INTEREST IN HAGERS MEADOW, 63.6 SHARES OF PELLA	32
2	RIVER CORRIDOR, 100' WIDE, 50' EACH SIDE OF THE CENTERLINE OF THE CREEK		9
3	COTTONWOOD GROVE INCLUDING ALL MINERALS, GRAVEL AND WATER	20% OF 5/12THS OF THE ZWECK & TURNER	32
4	GILBERT PROPERTY	ALL WATER RIGHTS ACQUIRED BY THE GRANTOR WITH THE PROPERTY	11
TOTAL			84

\* LEGAL DESCRIPTION AND EXACT ACREAGE TO BE PROVIDED AT CLOSING

\*\* GOLDENS RESERVES THE RIGHT TO UTILIZE ALL WATER RIGHTS IN CONNECTION WITH MINING, RECLAMATION AND AUGMENTATION IN CONNECTION WITH THE FREDSTROM/GILBERT PROPERTY



Boulder County Clerk, CO AG  
 1714843  
 Page: 21 of 45  
 07/17/1997 10:38A  
 R 226.00 D 0.00

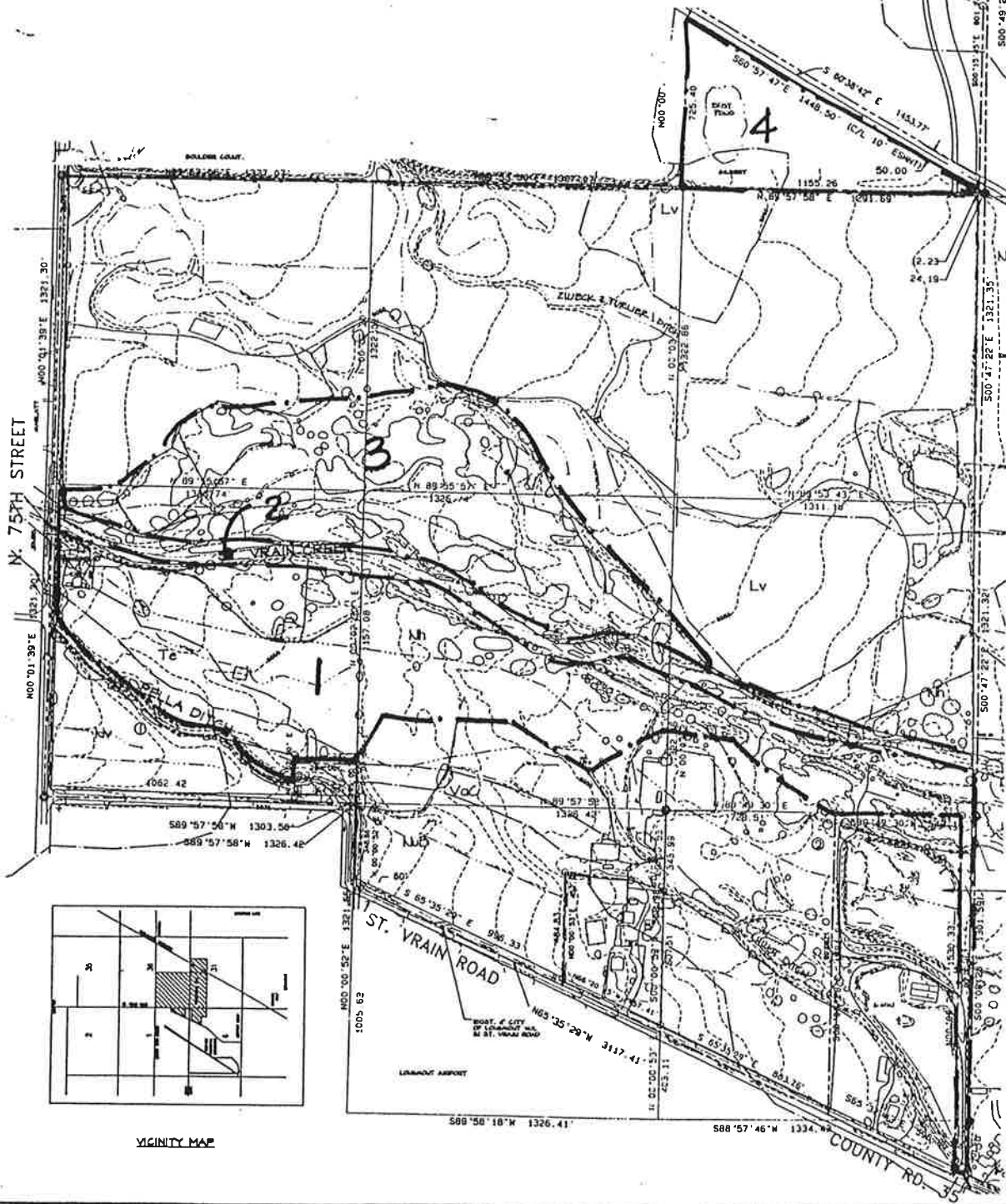


## GIFT PARCELS

PARCEL NO.	DESCRIPTION	WATER RIGHTS **	ACRES *
1	REMAINING AREA SOUTH OF THE CREEK INCLUDING 1 UNIT OF DENSITY AND WATER	16% OF THE GRANTOR'S INTEREST IN HAGERS MEADOW, 63.8 SHARES OF PELLA	32
2	RIVER CORRIDOR, 100' WIDE, 50' EACH SIDE OF THE CENTERLINE OF THE CREEK		9
3	COTTONWOOD GROVE INCLUDING ALL MINERALS, GRAVEL AND WATER	20% OF 5/12THS OF THE ZWECK & TURNER	32
4	GILBERT PROPERTY	ALL WATER RIGHTS ACQUIRED BY THE GRANTOR WITH THE PROPERTY	11
TOTAL			84

\* LEGAL DESCRIPTION AND EXACT ACREAGE TO BE PROVIDED AT CLOSING

\*\* GOLDENS RESERVES THE RIGHT TO UTILIZE ALL WATER RIGHTS IN CONNECTION WITH MINING, RECLAMATION AND AUGMENTATION IN CONNECTION WITH THE FREDSTROM/GILBERT PROPERTY



Boulder County Clerk, CO AG  
R 226.00 D 0.00

1714843  
Page: 22 of 45  
07/17/1997 10:38A



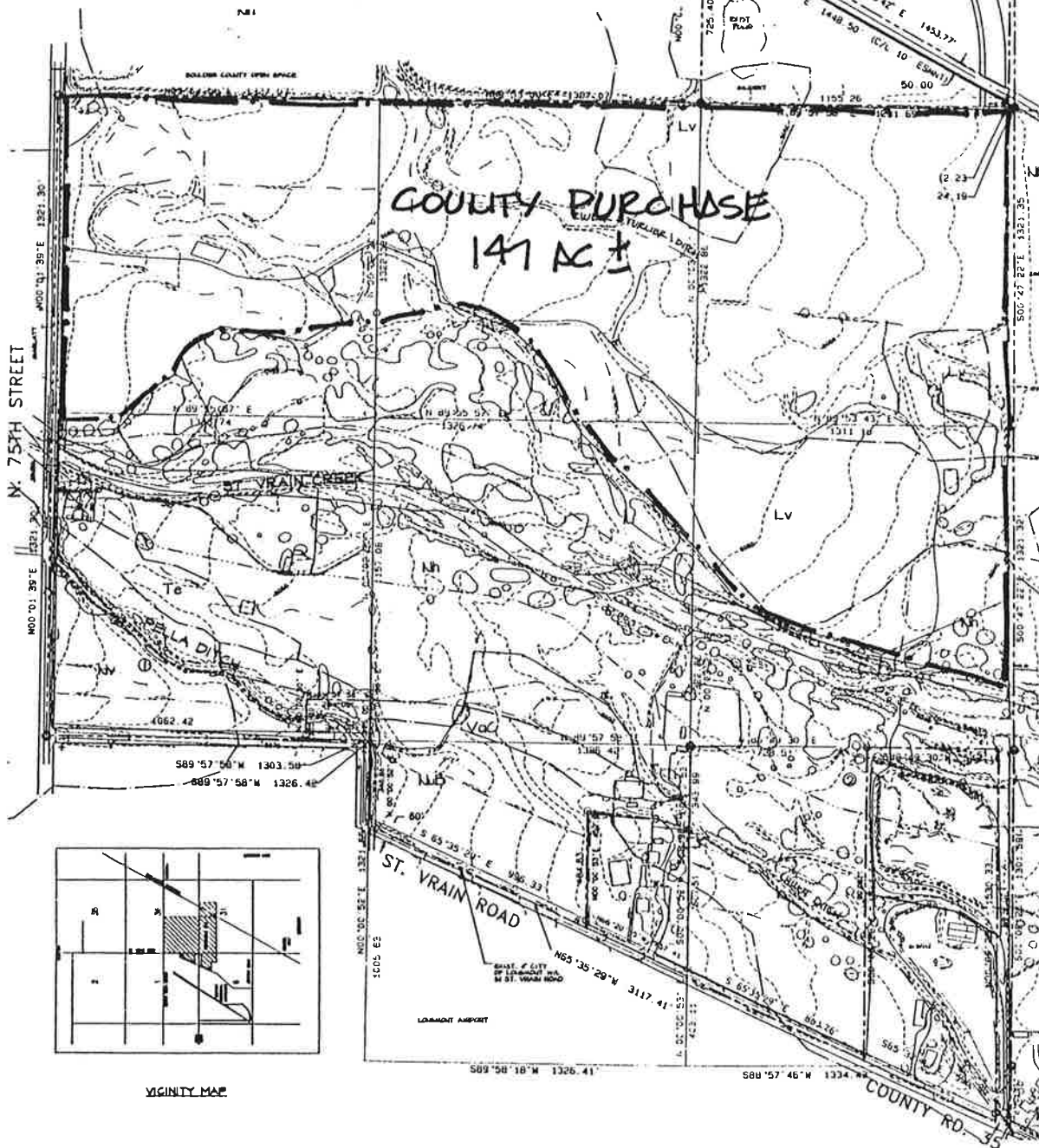
## COUNTY PURCHASE

147 ACRES +/-, LOCATED NORTH OF ST. VRAIN CREEK  
INCLUDES 3 UNITS OF DENSITY AND  
80% OF 5/12THS OF THE ZWECK AND TURNER DITCH.

SPECIFIC LEGAL DESCRIPTION AND EXACT ACREAGE TO BE  
PROVIDED AT THE TIME OF CLOSING.

GOLDENS RESERVES THE RIGHT TO UTILIZE ALL WATER RIGHTS  
IN CONNECTION WITH MINING, RECLAMATION AND AUGMENTATION  
IN CONNECTION WITH THE FREDSTROM/GILBERT PROPERTY

N. 75TH STREET



VICINITY MAP

Boulder County Clerk, CO RG  
1714843  
Page: 23 of 45  
07/17/1997 10:38A  
R 226.00 D 0.00

AMENDMENT TO  
AGREEMENT TO MAKE GIFTS

This Amendment to Purchase Agreement (the "Amendment") is made this 30<sup>th</sup> day of JULY, 1996, by and between the County of Boulder, a body corporate and politic, hereinafter referred to as "County", Golden Land Company LLC, a Colorado limited liability company, hereinafter referred to as "Golden Land", and Golden Gravel Company, a limited partnership, hereinafter referred to as "Golden Gravel".

RECITALS

A. County and Golden Land are parties to that certain Agreement to Make Gifts dated August 22, 1995, recorded on August 25, 1995, at Reception No. 01542495 in the real property records of Boulder County, hereinafter referred to as the "Agreement".

B. Upon receipt of that certain title commitment prepared by Commonwealth Land Title Insurance Company dated May 24, 1996, for the Property which is the subject of the Agreement, County and Golden Land recognize that Golden Land is not the sole owner of the Property. Title to Gift Parcel 4 is vested in Golden Gravel.

C. It is the intention of Golden Land and Golden Gravel that Golden Land be the sole owner of Gift Parcels 1 through 4 and as such, Golden Gravel has deeded Gift Parcel 4 to Golden Land by Quitclaim Deed dated July 1, 1996, recorded in the Boulder County Clerk and Recorder's Office on July 9, 1996, on Film No. 2139, as Reception No. 01623956, which transfer is acceptable to County.

D. County, Golden Land and Golden Gravel wish to amend the Agreement as set forth in this Amendment, to provide that Golden Gravel joins in the Agreement and ratifies it to the extent it affects Gift Parcel 4.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, County and Golden agree as follows:

A. The Agreement is amended as follows:

All references to "Golden" in the Agreement are hereby amended to reference Golden Land as to Gift Parcels 1-3 and Golden Gravel as to Gift Parcel 4. Golden Land is the owner of Gift Parcels 1-3, accepts all benefits and obligations of the Agreement with respect to Gift Parcels 1-3, and agrees to be

Golden/Fredstrom  
Gift Parcels Amendment

1

EXHIBIT E  
To Development Agreement  
(Fredstrom Farm)

Boulder County Clerk, CO AG

R 226.00 0 0.00

1714843  
Page: 24 of 45  
07/17/1997 10:38A



1714843

Page: 25 of 45

07/17/1997 10:38A

Boulder County Clerk, CO AG

R 226.00 D 0.00

bound by all terms and conditions of the Agreement with respect to Gift Parcels 1-3. Golden Gravel is the owner of Gift Parcel 4, accepts all benefits and obligations of the Agreement with respect to Gift Parcel 4, and agrees to be bound by all the terms and conditions of Golden Land under the Agreement with respect to Gift Parcel 4.

B. All other terms, provisions and conditions of the Agreement shall remain in full force and effect.

C. 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.

DATED this 30th day of July, 1996.

GOLDEN LAND COMPANY LLC,  
a limited liability company

By: [Signature]

GOLDEN GRAVEL COMPANY,  
a limited partnership

By: [Signature]

BOARD OF COUNTY COMMISSIONERS  
OF BOULDER COUNTY

By: [Signature]

Ronald K. Stewart, Chair

[Signature]  
Jana L. Mendez, Vice Chair

[Signature]  
Paul D. Danish, Commissioner





Boulder County Clerk, CO AG

R 226.00 D 0.00

COUNTY OF BOULDER )  
 )  
STATE OF COLORADO ) SS.

Subscribed and sworn to before me this 18 day of July, 1996, by RV Golden Manager of Golden Land Company LLC, a Colorado limited liability company.

( S E A L )

Sarah Jane Beaman  
Notary Public

My Commission Expires: My Commission Expires: 05/09/1998

COUNTY OF BOULDER )  
 )  
STATE OF COLORADO ) SS.

Subscribed and sworn to before me this 18 day of July, 1996, by Stewart V. Golden, General Partner of Golden Gravel Company, a limited partnership.

( S E A L )

Sarah Jane Beaman  
Notary Public

My Commission Expires: My Commission Expires: 05/09/1998

COUNTY OF BOULDER )  
 )  
STATE OF COLORADO ) SS.

Subscribed and sworn to before me this 30<sup>th</sup> day of July, 1996, 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.

( S E A L )

Susan M. Ashcraft  
Notary Public

My Commission Expires: 10-17-97

Golden/Fredstrom  
Gift Parcels Amendment



Boulder County Clerk, CO AG

R 226.00 D 0.00

1714843  
Page: 27 of 45  
07/17/1997 10:38A

**GOLDEN LAND COMPANY, a Limited Liability Company:**

**GOLDEN LAND COMPANY,  
a Limited Liability Company**

By Reginald V. Golden Manager  
Reginald v. Golden, Manager

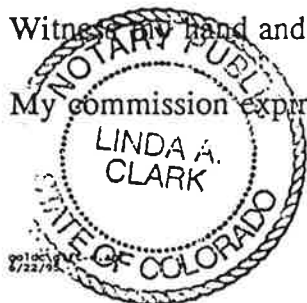
By James R. Golden Manager  
James R. Golden, Manager

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF BOULDER    )

The foregoing instrument was acknowledged before me this 22 day of June, 1995, by Reginald V. Golden and James R. Golden, Managers of Golden Land Company, a Limited Liability Company.

Witness my hand and official seal.

My commission expires: 7-25-98



Linda A. Clark  
Notary Public



Boulder County Clerk, CO AG

R 226.00 D 0.00

1714843

Page: 28 of 45

07/17/1997 10:38A

## OPTION TO PURCHASE

1. **PARTIES.** This Agreement, made and entered into this 22 day of June, 1995, by and between the **COUNTY OF BOULDER**, a body corporate and politic ("County"), and **GOLDEN LAND COMPANY**, a Limited Liability Company, ("Seller").

### 2. RECITALS.

2.1 The County desires to obtain an option to purchase from Seller and Seller desires to grant an option to the County to purchase that certain real property within the County of Boulder, State of Colorado, more particularly described in Exhibit A, attached hereto and incorporated herein by this reference and hereinafter referred to as the "Property".

2.2 The Property consists of approximately 147 acres of land and includes the following water rights (hereinafter referred to as the "water rights"):

80% of 5/12ths interest in the Zweck and Turner Ditch.

The parties understand that a subdivision exemption may be necessary to divide the Property into three lots, if any of the lots is less than 35 acres in size. The Parties further acknowledge that a Site Plan Review will be required prior to construction of dwellings on those lots.

2.3 Sellers, through Boulder County Dockets SU-94-22, 23, 24 and SD-94-28 and SE-95-20 are requesting recognition of certain use by right residential development units associated with the Sellers' property. If so recognized, Seller intends to include three development units as part of the Property to be conveyed. In the event the County does not exercise its option to purchase, the parties understand that a subdivision exemption may be necessary to divide the Property into three lots, if any of the lots is less than 35 acres in size. The Parties further acknowledge that a Site Plan Review will be required prior to construction of dwellings on those lots.

NOW, THEREFORE, in consideration of the recitals, promises, payments, covenants and undertakings hereinafter set forth, and other good and valuable consideration, which is hereby acknowledged and receipted for, the County and Seller agree as follows:

### 3. OPTION PROVISIONS.

#### 3.1 Option.

a. **Grant of Option.** In accordance with the terms and conditions herein contained, and in consideration of the payment of the sum of ONE HUNDRED DOLLARS (\$100.00), hereinafter referred to as the "Option Payment", Seller hereby grants to County an option to purchase the Property and the Water Rights for the purchase price described in Paragraph 3.2. The option shall extend to and include June 30, 1996.



- b. **Renewal of Option.** The County may extend the Option for one year at a time by paying to Seller the sum of \$25,000 (hereinafter referred to as the "option renewal payment") on or before July 1 of each year, beginning July 1, 1996 ("Option Renewal Date"). All option renewal payments shall apply against the purchase price at closing, if the County exercises its Option to purchase and closing occurs.
- c. **Option Exercise Date.** The date for exercise of the option shall be either: (1) on or before 90 days after Seller has given the County written notice that it has completed mining and reclamation of the Property or (2) July 1, 2025, whichever occurs earlier. The parties may consummate the sale and purchase of the Property and the water rights earlier by mutual agreement and written amendment to this Agreement.
- 3.2 **Purchase Price.** The purchase price for the Property together with the water rights shall be ONE MILLION DOLLARS (\$1,000,000.00). The purchase price shall be adjusted upward at the rate of 2½ % per annum from the date of this Agreement to the date of closing.
- 3.3 **Reservations.** The Seller expressly reserves all sand, gravel and associated materials and minerals in, on or under the Property and the right to use the water rights described in Paragraph 2.2 for augmentation of or use in connection with mining, reclamation, ponds, or wetlands. After mining and reclamation are completed, Seller shall convey all mineral rights to County by Quit Claim Deed.
- 3.4 **Exercise/Renewal and Failure to Exercise/Failure to Renew.** If the County elects to exercise its option to purchase the Property, it shall do so by giving written notice to Seller on or before the Option Exercise Date as said date is determined pursuant to Paragraph 3.1(c). Said notice of election is to be signed by the Chair of the Board of County Commissioners or by the County Attorney. Seller agrees that if the County: (a) fails to give notice of its exercise of the option herein granted to it on or before the Option Exercise Date, or b) fails to pay the option renewal payment on or before July 1 of any year, Seller shall not declare the County in default unless and until the Seller first gives the County written notice of the fact that the Option Exercise or Renewal Date has passed without action by the County and that the County will be in default unless it gives notice of the exercise of the option or payment for renewal of the option within 15 calendar days after receipt of said notice. If the County fails so to give notice of the exercise of the option or payment for renewal of the option within said 15 calendar days, the County shall be in default in the giving of notice of the exercise of the option or the renewal of the option, and the County shall forfeit and lose said option right.





3.5 **Survey.** Seller shall provide a copy of any engineering and/or survey work of the Property, if available. If none is available, the County at its sole option and sole expense may contract for a survey of the Property, and the legal description for the Property shall be furnished to the Seller on or before the closing.

3.6 **Title.**

- a. On or before June 1, 1996, Seller shall furnish to County a copy of Seller's title insurance commitment or policy on the Property showing merchantable title vested in the Seller, and subject to the conditions and requirements of this paragraph, Paragraph 3.6(a-d). The commitment or policy shall be current to within 30 days of delivery to the County.
- b. During the Option period, Seller agrees not to encumber the property without the County's written consent which consent shall not be unreasonably withheld. Written consent by the County to an encumbrance during the option period shall constitute a Permitted Exception to title, as set forth in Paragraph 3.6(d)(3).
- c. Provided the County exercises its option to purchase, the Seller shall furnish to the County at least 30 days prior to closing a title insurance commitment on the Property (except the water rights), on a form acceptable to the County and issued by a title insurance company authorized to do business in Colorado, in the amount of the purchase price, subject to the conditions and requirements of this paragraph. Seller shall be solely responsible for the cost of said title commitment and the policy.
- d. Title to the Property shall be merchantable in Seller, and the title commitments referred to in Paragraphs 3.6(a) and 3.6(c) shall contain no exceptions other than:
  - 1) Taxes and assessments of the year of closing, which shall be adjusted and pro-rated to the date of delivery of the Deed; and
  - 2) Rights-of-way, easements, restrictions, covenants and mineral reservations of record, acceptable to County. Sellers shall execute an affidavit and take all steps necessary to obtain the deletion of standard printed exception number 4.
  - 3) Permitted Exceptions. "Permitted Exceptions" as used herein shall mean and refer to all exceptions set forth or the title commitment delivered on or before June 1, 1996, pursuant to Paragraph 3.6(a) which the County does not object to as provided in Paragraph 3.7 and

all subsequent matters affecting the Property approved by or consented to in writing by the County.

- 3.7 **Merchantability of Title.** Should title as indicated by the title commitments/policy furnished to the County pursuant to Paragraphs 3.6(a) and 3.6(c) not be merchantable as aforesaid, or if either title commitment includes additional exceptions which have not been consented to by the County pursuant Paragraph 3.6(b) and which are not acceptable to the County (even though such additional exceptions would not make the title unmerchantable), a written notice of the defects shall be given to the Seller by the County within 30 days after receipt of the title commitment. Seller agrees to attempt to correct such defects at Seller's expense within 120 days from receipt of said notice of defects, and if necessary the closing shall be postponed for said 120 days. If Seller has not corrected such defects within said 120 days, the County, at its option, may complete the transaction notwithstanding the defects or may, upon notice to Seller in recordable form, declare this Agreement terminated, whereupon all payments made by County to Seller together with interest at the rate of 5% per annum (compounded annually), shall be returned to County and both parties shall be released herefrom.
- 3.8 **Conveyance of Water Rights.** Title to the Water Rights shall be merchantable in Seller at the time of closing.
- a. Seller at closing shall deliver to the County a properly executed and acknowledged special warranty deed conveying the unincorporated ditch and water rights, TOGETHER WITH all ditch and ditch rights, well and well rights, water and water rights appurtenant to the Property being purchased, free and clear of all liens, encumbrances and assessments except taxes and assessments for the current year, which shall be adjusted and prorated to the dates of delivery of the deeds for each parcel.
  - b. At the time of closing Seller shall deliver to the County a properly executed and acknowledged Transfer Request in the form set forth in Exhibit B requesting conveyance of shares in incorporated ditch companies, along with the stock certificate reflecting ownership of the shares.
  - c. In the event Seller is unable to surrender to County its stock certificates reflecting ownership of the appropriate amount of the Water Rights at the time these water rights are to be conveyed, Seller shall take all steps necessary and required by the appropriate ditch company to complete the transfer of the Water Rights.
  - d. County shall pay for all usual costs and fees imposed by the appropriate ditch company to transfer the Water Rights.

- e. Seller hereby represents and warrants to County that as of the date of the signing of this Agreement:
- 1) Seller has received no notice of and has no other knowledge of any litigation, claim or proceeding pending or currently threatened, which in any manner affects the Water Rights; and
  - 2) Seller has the full right, power and authority to sell and convey the Water Rights to County as provided in this Agreement and to carry out its obligations under this Agreement; and
  - 3) Seller has not and shall not enter into any agreement with any private person or entity or with any governmental or quasi-governmental entity with respect to the Water Rights that may result in liability or expense to the County upon the County's acquisition of the Water Rights without the written consent of the County which consent shall not be unreasonably withheld; and
  - 4) The execution and delivery of this Agreement and the performance of all of the obligations of Seller hereunder, will not result in a breach of or constitute a default under any agreement entered into by Seller or under any covenant or restriction affecting the Water Rights.

Seller shall, three weeks prior to each option renewal date and at time of closing, certify to County in writing that the above and foregoing representations and warranties remain true and correct.

**3.9 Closing.** Closing and delivery of deed shall take place at a mutually convenient time within 60 days after the County's exercise of the option in the office of the title company which provides the title commitment described in Paragraph 3.6(c) of this Agreement, or at a time and place agreed to by the County and the Seller. Settlement sheets for the closing shall be furnished to the County at least 5 business days before the closing.

- a. At the closing the Sellers shall deliver to the County the following:
- 1) A fully good and sufficient executed and acknowledged Special Warranty Deed conveying to the County good and marketable title to the Property, free and clear of all liens, tenancies and encumbrances except the Permitted Exceptions set forth in Paragraph 3.6(d)(3).
  - 2) Possession of the Property, free and clear of all liens, encumbrances and leases except for liens, encumbrances and leases which constitute Permitted Exceptions pursuant to Paragraph 3.6(d)(3).



- 3) Documents acceptable to County and the title company evidencing the authority of Seller to convey the Property and the Water Rights;
  - 4) All instruments, certificates, affidavits, and other documents necessary to satisfy the Requirements listed on Schedule B-1 of the title commitment;
  - 5) A certificate that the representations and warranties of Seller pursuant to Paragraph 3.8(e) and 3.11 hereof continue to be true and correct as of the date of closing.
  - 6) A current updated title commitment, at Seller's expense, showing title subject only to the Permitted Exceptions determined by Paragraph 3.6(d)(3) and Seller shall cause the title company to issue to County its standard form Owner's Policy of Title Insurance insuring good and marketable title to the Property, with the standard printed exceptions deleted, and subject only to the Permitted Exceptions as determined in Paragraph 3.6(d)(3);
  - 7) Seller's closing costs which include Seller's portion of all incidental costs and fees customarily paid by Seller in Boulder County land transactions and one-half of the cost of any closing fee. Seller shall pay all real and personal property taxes and assessments to the date of closing.
  - 8) An affidavit as contemplated by the Internal Revenue Code Section 1445 as to the non-foreign person status of Seller;
  - 9) All documents necessary for conveyance of the Water Rights including Special Warranty Deeds for unincorporated water and ditch rights pursuant to Paragraph 3.8;
  - 10) An affidavit as contemplated by Paragraph 3.13(c), if applicable; and,
  - 11) Any other documents required by this Agreement to be delivered by Seller to title company or reasonably required by County or title company in connection herewith.
- b. At closing the County shall:
- 1) Deliver to Seller the applicable Purchase Price, by certified funds or County Warrant or other good funds;





- 2) The County shall pay for all usual costs and fees imposed by the appropriate ditch or reservoir company or other entity to transfer the Water Rights;
  - 3) Pay its closing costs which include all incidental costs and fees customarily paid by purchaser in Boulder County and one-half of the cost of any closing fee;
- c. Prior to the closing, Seller agrees to remove from the Property all equipment, vehicles, salvage and other personal property not included in the sale.
- 3.10 **Time of the Essence.** Except as provided in Paragraph 3.4, it is agreed that time is of the essence hereof. If after the execution of this Agreement, the County should fail or default in prompt payment of any payment required according to the terms and conditions of this Agreement, and such failure is not attributable to any failure by Seller to timely and fully perform all of Seller's obligations hereunder, Seller, at Seller's option, may in writing declare this Agreement terminated and retain all monies paid to Seller. It is agreed that retention of all payments made by the County are the Seller's sole and only remedy for County's failure to perform the obligations of this Agreement. Seller expressly waives the remedies of specific performance and additional damages. If Seller is in default and fails to cure the default within 120 days after written notice of the default has been delivered to the Seller, (a) County may elect to treat this Agreement as terminated, and shall have the right to have payments returned together with interest at the rate of 5% per annum (compounded annually), or (b) County may elect to treat this Agreement as being in full force and effect, and County shall have the right to an action of specific performance.
- 3.11 **Seller's Representation and Warranties.** Seller hereby represents and warrants to the County that as of the date of the signing of this Agreement:
- a. Seller has received no notice of, and has no other knowledge of, any litigation, claim or proceeding, pending or currently threatened, which in any manner affects the Property other than Boulder County Dockets SU-94-22, 23, 24 and SD-94-28 and SE-95-20; and
  - b. Seller has received no notice, and has no other knowledge of, any current, existing violations of any federal, state or local law, code, ordinance, rule, regulation, or requirement affecting the Property; and
  - c. Seller has the full right, power and authority to transfer and convey the Property to the County as provided in this Agreement and to carry out the Seller's obligations under this Agreement; and



- d. To the best of Seller's knowledge, each and every document, schedule, item and other information delivered or to be delivered by the Seller to the County hereunder, or made available to the County for inspection hereunder, shall be true, accurate and correct; and
- e. Seller has not entered into any agreements with any private persons or entity or with any governmental or quasi-governmental entity with respect to the Property that may result in liability or expenses to County upon the County's acquisition of all or any portion of the Property; and
- f. There are no special assessments which now burden or encumber the Property and there are no special assessments currently proposed as to the Property; and
- g. The execution and delivery of this Agreement and the performance of all of the obligations of the Sellers hereunder will not result in a breach of or constitute a default under any agreement entered into by the Seller or under any covenant or restriction affecting the Property; and
- h. There are no leases, tenancies or rental agreements relating to the Property, or to any part thereof, except for leases and/or agreements that affect the Property on the date of this Agreement as described in Paragraph 3.8 3.6(d)(3).
- RS: 12/17/97  
i. Seller has not granted or created, and has no knowledge of any third parties who may have the right to claim or assert any easement, right-of-way or claim of possession not shown by record, whether by grant, prescription, adverse possession or otherwise, as to any part of the Property, ~~except as described in Exhibit B; and~~
- j. To the best of Seller's knowledge, no part of the Property has ever been used as a sanitary landfill, and no materials have ever been stored or deposited upon the Property which would under any applicable governmental law or regulation require that the Property be treated or materials removed from the Property prior to the use of the Property for any purpose which would be permitted by law but for the existence of said materials on the Property; and
- k. To the best of Seller's knowledge, no underground storage tank, as that term is defined by federal statute or Colorado statute, is located on the Property which under applicable governmental law or regulation require such underground storage tank to be upgraded, modified, replaced, closed or removed; and

1. To the best of Seller's knowledge, Seller has not caused or permitted the release of any hazardous substance on the Property. The terms "hazardous substance" and "release" as used herein shall have the same meaning and definition as set forth in Paragraphs (14), (22) and (23), respectively, of Title 42 U.S.C. Section 9601; provided, however that the term "hazardous substance" as used herein also shall include "hazardous waste", as defined in Paragraph (5) of 42 U.S.C. Section 6903, but shall expressly exclude chemicals and fertilizers approved for use in agricultural operations.

Seller shall, three weeks prior to each option renewal date and at the time of closing, certify to the County in writing that the above and foregoing representations and warranties remain true and correct.

- 3.12 **Breach.** In the event Seller: (a) breaches a representation or warranty contained in Paragraph 3.8(e) or 3.11; or is unable to make the representations and warranties described in Paragraph 3.8(e) or 3.11 as of closing; or (b) allows an additional lien, encumbrance or title exception to attach to the Property after execution of this Agreement without the written consent of the County, or (c) is unable to satisfy the requirements of Schedule B-2 of the title commitments and the County terminates this Agreement, in the event Seller is unable to cure or elects not to cure within 120 days of written notice of the Breach from the County to the Seller, the County shall have the right to return of all payments together with interest at the rate of 5% per annum (compounded annually) made pursuant to this Agreement.
- 3.13 **Inspection & Environmental Audit.** County, at all times during the term of this Agreement, shall have access to the Property for the purpose of conducting tests, studies and surveys thereon, including, without limitation, soil and subsoil tests.
  - a. County may have performed at its option and/or expense the following inspections:
    - 1) Soil and percolation tests;
    - 2) Inspections for asbestos, PCB's, underground tanks, or other hazardous substances;
    - 3) Any other tests and/or studies deemed necessary by County which do not materially damage the Property.
  - b. County shall promptly provide to Seller copies of the results of all such tests, inspections, and studies following the receipt of same by County. Any inspections conducted by County shall not mitigate or otherwise affect Seller's representations and warranties, above. County may at its sole expense, obtain a Phase I environmental audit of the Property: (1) prior to July 1, 1996

("First Phase I"), and (2) prior to closing on purchase of the Property ("Second Phase I"). Each Phase I environmental audit shall certify that environmental condition of the Property complies with then existing federal, state and local laws, regulations and standards. If, based upon the First Phase I or the Second Phase I, the environmental condition of the Property does not meet the above described standards County shall, within 15 days of the receipt of the Phase I, give Seller written notice of the environmental defects. Seller agrees to attempt to correct such defects at Seller's expense within 120 days from the receipt of said notice, or within a time agreed to, in writing, by both parties. If necessary, any closing shall be postponed for 120 days. If Seller has not corrected such defects within said 120 days, the County, at its option, may complete the transaction notwithstanding the defects or may, upon notice to Seller in recordable form, declare this Agreement terminated, whereupon all payments made by County to Seller together with interest at the rate of 5% per annum (compounded annually), shall be returned to County and both parties released herefrom.

- c. If the results of the First Phase I or the Second Phase I reveal underground tanks located upon the premises, County shall notify Seller of the presence of the tanks within 15 days of the receipt of the Phase I. Seller shall, at the Seller's sole expense, have the tanks removed within 120 days of said notice. Seller shall also provide, within 120 days of said notice, an affidavit, subscribed and sworn to by a registered professional engineer licensed in the State of Colorado and approved by the County, certifying that the Property meets all applicable federal, state and local laws, regulations, and standards regarding such sites. If the then existing federal, state and local laws, regulations, and standards are not met, the County in addition to any other remedies provided under this contract or the law, may elect to cancel this contract, and all sums paid hereunder by County to Seller together with interest at the rate of 5% per annum (compounded annually), shall be returned to County.

#### 4. MISCELLANEOUS AGREEMENTS.

- 4.1 **Land Use Regulations.** It is the intent of both the Seller and the County that all resolutions, decisions, conditions and restrictions which pertain to, or result from, Boulder County Dockets SU-94-22, 23, 24 and SD-94-28 and SE-95-20, (or additional dockets which reference the dockets described herein) shall be in conformity with the terms of this Option to Purchase. In the event that any term of this Option to Purchase conflicts with any aspect of the above described (or related) Land Use Dockets, any decision by the Board of County Commissioners regarding the above described dockets shall control and the remaining unaffected provisions of this Option to Purchase shall remain in full force and effect.





4.2 **Identification and Information About the Property.** Golden's may, at its discretion, name the Property, subject to the County's reasonable right to accept such name. Once accepted, the County may not change the name designated by Golden's. The County, at Golden's election and expense, shall erect and maintain signs on the Property carrying the name designated by Golden's for such Property. Golden's shall also have the right, at its sole election and expense, to erect and maintain an informational kiosk on the Property describing the Gift, the mining and reclamation operations which were or are conducted on the Property or in the vicinity by Golden's, and any other information related to the Property. The County shall have the right to approve the location, content and design of such kiosk.

4.3 **Golden's Rights.** Golden's hereby reserves and retains all wetlands mitigation banking rights associated with the Property which result from wetlands created with the County's consent. *Jan*

*9d/10*  
*RS*  
4.4 **Maintenance of the Property.** In the event the Property is purchased by the County, <sup>upon</sup> ~~a bond conveyance~~, the County shall maintain the Property in its reclaimed condition and, during the ten years immediately following the completion of the reclamation of the Property, shall not make any significant changes in its condition without the prior written approval of Golden's. Thereafter, the County shall maintain the Property and limit uses to those commonly associated with County open space.

4.5 **Real Estate Commission.** Any real estate commission due to any broker upon the sale of the Property to the County shall be paid by Seller. The County represents and warrants to the Seller that the County is not a party to a contract which requires the payment of any real estate commission upon sale of the Property to the County.

4.6 **Condemnation.**

- a. If a portion of the Property is condemned or if proceedings for such condemnation are commenced or notice of such condemnation is received by Seller from a condemning authority prior to the date of closing on any parcel of the Property, County, in addition to all other rights and remedies as set forth and provided in this Agreement, shall have the right to terminate this Agreement and make the same of no further force and effect, or proceed with the purchase of the portion of the Property not so condemned, pursuant to subparagraph (b) below.
- b. The County agrees that if another governmental entity or agency, having powers of eminent domain, acquires title to any of the real Property as to which the County has the right and option to purchase pursuant to the terms and conditions of this document, the County shall, in such event, release its



rights and option to purchase as to the parcel so condemned and shall make no claim as to the monies paid for the Property so taken by the condemning authority. In the event of such a condemnation, the money so paid by the condemning authority for the parcel so taken shall be and become the sole and separate property of the Seller. The provisions of this paragraph shall not be construed, however, as precluding or preventing the County from so condemning the real Property as to which the County has a right and option to purchase hereunder. Such condemnation proceedings shall not affect the rights and options herein granted unto the County as to such of the Property described in Exhibit A not so taken and, in such event County may either: (1) terminate this Agreement pursuant to subparagraph (a) above, or (2) continue with the option to purchase, or purchase, of the Property not condemned, pursuant to the terms of this Agreement, except that, the purchase price of the parcel shall be determined in the proportion that the acreage acquired by the County bears to the total acreage of the parcel prior to the taking under and pursuant to such condemnation proceedings. In such event, all option payments or renewal payments shall be applied to the Purchase price at closing in the proportion that the payments relate to the acreage acquired by the County compared to the total acreage of the Property prior to the taking pursuant to such condemnation proceedings.

- 4.7 **Assignment.** Seller shall not assign its rights and obligations hereunder unless County first consents thereto in writing, which consent shall not be unreasonably withheld. Seller agrees that, so long as County is not in default hereunder, Seller shall not sell or convey any of the Property except to the County pursuant to this Agreement.
- 4.8 **Tax Consequences.** It is acknowledged that the Seller believes the sale price of the Property to the County is less than the fair market value as determined by a certified appraisal and considers the reduction to constitute a bargain sale or partial donation for a public purpose to the extent that fair market value exceeds the sales proceeds. Seller acknowledges that neither County, nor any of its agents or attorneys have made any representations as to the tax treatment to be accorded to this Agreement or to any proceeds thereof by the Internal Revenue Service under the Internal Revenue Code or by the tax officials of the state of Colorado under Colorado tax law.
- 4.9 **Release of Option Rights.** If this Agreement expires for any reason before the County exercises its option to purchase, the County will execute promptly and deliver to Seller a Quit Claim Deed or other instrument which will release the Property from the provisions of this Agreement.
- 4.10 **Agreement to Survive Closing.** The parties hereto agree that this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns,



and that, except for such of the terms, conditions, covenants and Agreement hereof which are, by their very nature fully and completely performed upon the closing of the purchase-sale transactions herein provided for, all of the terms, conditions, representations, warranties, covenants and Agreements herein set forth and contained shall survive the closing of any purchase-sale transaction herein provided for and shall continue after said closing to be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

- 4.11 **Notices.** Whenever notice or consent is required to be given hereunder, it shall be in writing and delivered to the party entitled thereto or mailing to the party entitled thereto, by registered or certified mail, return receipt requested. If delivered, said notice shall be effective and complete upon delivery. If mailed, said notice shall be effective and complete upon mailing. Until changed by notice in writing, notice shall be given as follows:

**To the County:** Boulder County Parks and Open Space Director  
P.O. Box 471  
Boulder, Colorado 80306

**With Copies to:** Boulder County Attorney  
P.O. Box 471  
Boulder, Colorado 80306

**To the Seller:** Manager  
Golden Land Company, LLC  
21 South Sunset  
P.O. Box 328  
Longmont, Colorado 80502

**With Copies To:** Grant, Bernard, Lyons & Gaddis, P.C.  
Attn: Wallace H. Grant  
P. O. Box 978  
Longmont, Colorado 80502-0978

- 4.12 **Severability.** 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 Agreement which shall remain in full force and unaffected.

- 4.13 **Recording.** This Agreement shall be recorded in the Boulder County Real Estate records at the expense of the County.



4.14 Counterparts. This Agreement may be executed in counterparts, each one constituting an original.

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

IN WITNESS WHEREOF, Seller and County have executed this Agreement as of this 22<sup>nd</sup> day of AUGUST, 1995.

COUNTY OF BOULDER, a body corporate and politic

By Homer Page  
 Homer Page, Chair

By Jana L. Mendez  
 Jana L. Mendez, Commissioner

By Ronald K. Stewart  
 Ronald K. Stewart, Vice-Chair

STATE OF COLORADO )  
 ) ss.  
 COUNTY OF BOULDER )

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of August, 1995, by Homer Page, Chair; Ronald K. Stewart, Vice-Chair; and Jana L. Mendez, Commissioner, County Commissioners of Boulder County, a body corporate and politic.

Witness my hand and official seal.

My commission expires: 10-17-97.

Susan M. Ashcraft  
 Notary Public





Boulder County Clerk, CO AG

**SELLER:**

**GOLDEN LAND COMPANY,  
 a Limited Liability Company**

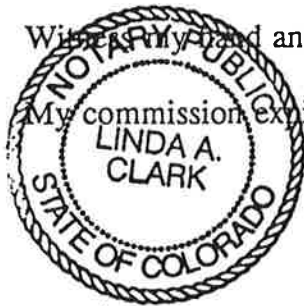
By *Reginald V. Golden* Manager  
 Reginald V. Golden, Manager

By *James R. Golden* Manager  
 James R. Golden, Manager

STATE OF COLORADO    )  
                                       ) ss.  
 COUNTY OF BOULDER    )

The foregoing instrument was acknowledged before me this 22 day of June 1995,  
 by Reginald V. Golden and James R. Golden, Managers of Golden Land Company, a Limited  
 Liability Company.

Witness my hand and official seal.

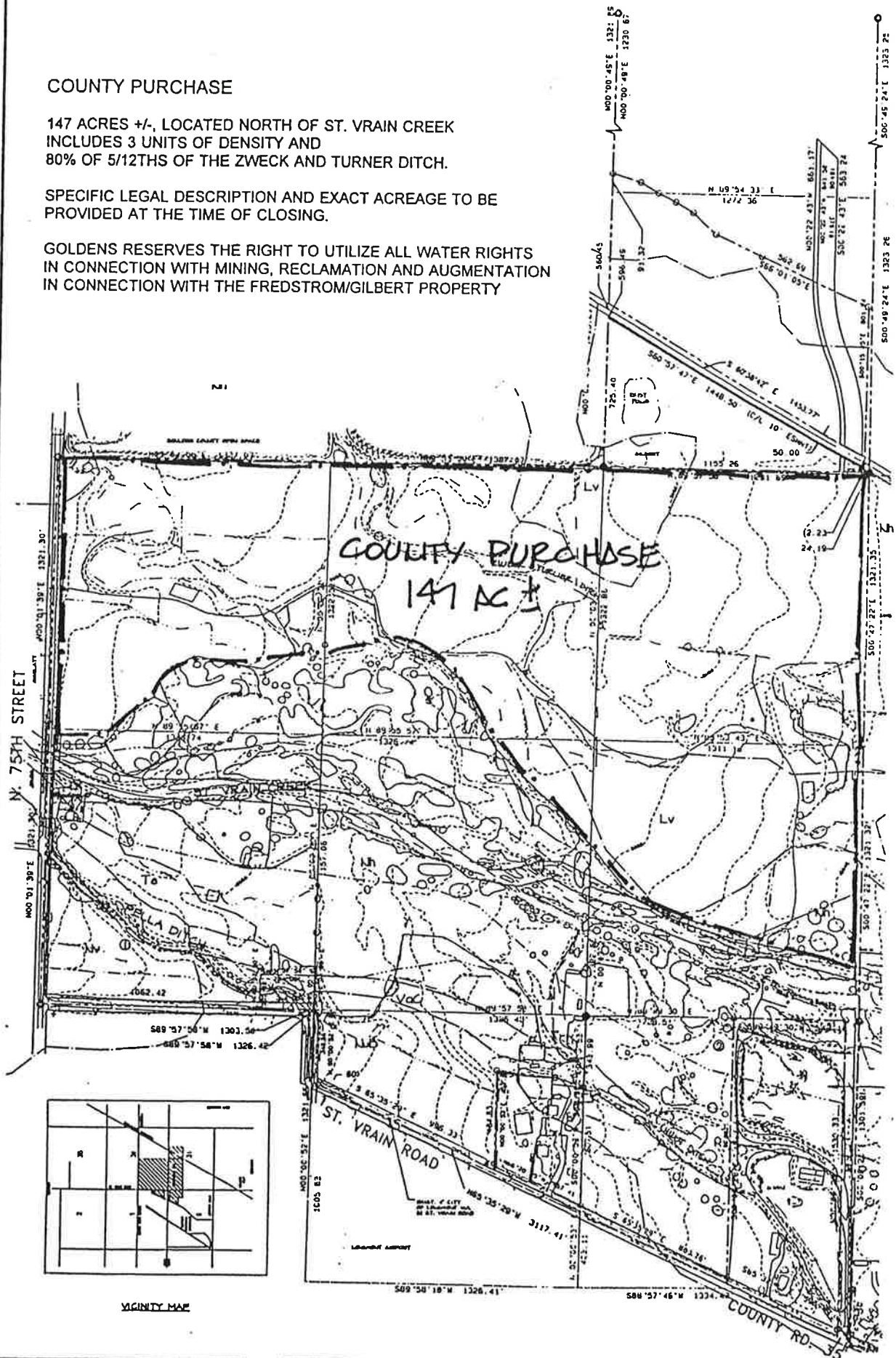


My commission expires: 7-25-98

*Linda A. Clark*  
 Notary Public

goldco\county.opt  
 6/22/95

GOLDENS RESERVES THE RIGHT TO UTILIZE ALL WATER RIGHTS  
IN CONNECTION WITH MINING, RECLAMATION AND AUGMENTATION  
IN CONNECTION WITH THE FREDSTROM/GILBERT PROPERTY





1714843  
Page: 44 of 45  
07/17/1997 10:38A

R 226.00 D 0.00

EXHIBIT B

TRANSFER REQUEST FORM

WATER STOCK TRANSFER REQUEST

Boulder, Colorado, \_\_\_\_\_, 1995

SALE

TO THE SECRETARY, [name of ditch company]

FOR VALUE RECEIVED, there is hereby assigned, transferred and set over to (and you are directed to transfer on the books of said company to)

County of Boulder, a body corporate and politic  
P.O. Box 471, Boulder, CO 80306

ABSOLUTELY, XX SHARES of the capital stock of said company.

[TRANSFEROR/SELLER SIGNATURE]

BY: \_\_\_\_\_

STATE OF COLORADO            )  
                                  ) ss.  
COUNTY OF BOULDER         )

The foregoing instrument was acknowledged before me this \_\_\_\_\_  
day of \_\_\_\_\_, 1995, by \_\_\_\_\_.

Witness my hand and official seal.

(S E A L)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_.



PRIVATE PROPERTY

4 RESIDENTIAL LOTS AND 2 OUTLOTS,  
LOCATED SOUTH OF ST VRAIN CREEK

84% OF THE GRANTOR'S INTEREST IN HAGERS MEADOW,  
59.65 SHARES OF PELLA,  
100% OF GRANTORS INTEREST IN DAVIS & DOWNING

55 ACRES TOTAL

N. 75TH STREET

231 ACRES

55 ACRES

VICINITY MAP

FREDSTROM EXEMPTION