

**DOCKET DC-04-04: Text Amendments**  
Mountain Parcel Merger Regulations

**18-121 BUILDING LOT** A parcel occupied by, or designated by the Director pursuant to this Code to be occupied by, a use which is required by the Zoning District provisions of this Code to comply with the minimum lot area requirements of the zoning district in which it is located. Except as provided in subsections (A) and (B) below, the parcel shall be of sufficient size and shape to conform to all requirements of the zoning district within which it is located.

- A. Except as otherwise provided in Subsection (B)(2), below, a substandard parcel shall be considered a building lot only if it meets one of the following criteria:
1. A parcel upon which a use, which is required to comply with the minimum lot area requirements of the zoning district in which it is located, lawfully exists or, if none exists, has lawfully existed prior to the effective date of this Code.
  2. A parcel which the Board of County Commissioners has exempted from the definition of 'subdivision' with the specific intent, as stated in the exemption Resolution, of allowing the parcel to be designated as a building lot; provided however that said parcel shall remain subject to any use and building requirements imposed pursuant to Article 9 as well as all other provisions and requirements of this Code.
  3. A lot, tract, undivided block, or other plot of land, other than an outlot or right-of-way, within an area of subdivided land, which met the lot area and lot frontage requirements of this Code in effect at the time of the approval of the subdivided land, such land shall be designated as a building lot in accordance with those area and/or frontage requirements in effect at the time of its approval, subject, however, to all other provisions and requirements of this Code, as amended.
  4. Any subdivided lot which does not contain a developed principal use will be considered to be combined into a single building lot with any contiguous subdivided lot (whether developed or undeveloped), when the following circumstances exist:
    - a. the subject lots are combined on a single deed; and
    - b. the subject lots are in a subdivision which was recorded prior to March 22, 1978 and has less than 25% of the lots developed as of May 15, 1996; and
    - c. any one of the following additional criteria are met:
      - i. The Land Use Director determines that the lots have been combined due to shared physical improvements other than roads, drives, and fences; or
      - ii. The subject lots have been combined on or after January 1, 1997 on the County Assessor's records for property tax purposes; or

- iii. the Land Use Director determines that the lots cannot be built upon without significant scarring or erosion, or without significant damage to environmental resources identified in the Boulder County Comprehensive Plan

Any subdivided lot combined under this subsection (4) may be considered to be a separate building lot only if the Board of County Commissioners in its discretion approves an exemption plat under Article 9 of this Code. (6/6/95 and 5/23/96 & 5/16/02)

- 5. A parcel which conformed to the lot area and lot frontage requirements of the zoning district in which it was located at the time it was created, and which has continued to be held as a separate parcel, shall be designated a building lot in accordance with those area and frontage requirements in effect at the time of its creation, and with all other provisions and requirements of this Code, as amended; provided, however, if such parcel was at any time owned by a governmental entity, it may be occupied only in accordance with the area and frontage requirements in effect at the time legal title was transferred from the governmental entity to a person, and with all other provisions and requirements of this Code, as amended.
- B. A substandard parcel located in the mountainous areas described in Section 18-178A of this code, shall be considered a building lot only if it meets one of the following criteria:
  - 1. The criteria set forth in Subsections (A)(2) or (A)(3), above.
  - 2. The criteria set forth in Subsections (A)(1) or (A)(5), above, with the following exceptions:
    - a. A substandard parcel which does not contain a lawfully existing use as of May 19, 1993, and which is contiguous to a parcels held in the same ownership as of May 19, 1993 or at any time thereafter, shall not be a legal building lot unless it is combined to form a single parcel with the contiguous parcels. Combination of more than two contiguous parcels held in the same ownership shall not be required once the current minimum lot size is met or exceeded, provided that no contiguous, substandard parcel which is in the same ownership and which does not contain a lawfully existing use as of May 19, 1993 is left uncombined.
    - b. In interpreting Subsection (B)(2), the following provisions shall apply:
      - i. A lawfully existing use shall be a legal use existing on a substandard parcel as of May 19, 1993, and shall also include a complete application for a building permit for a legal use which was filed with the Boulder County Land Use Department as of that same date, provided that the application is pursued and finalized in accordance with all applicable laws and regulations.

- ii. ‘Held in the same ownership’ shall refer to the fee owners of the parcels in question, and shall mean ownership by the same person. In making this determination the Zoning Administrator shall consider the fee owners of record as of May 19, 1993, or the prospective fee owners under a written contract for purchase of the parcel(s) which has been executed by all parties to the contract as of May 19, 1993 and which is notarized or otherwise attested to by a reliable uninterested third party as being fully executed by that date. The Zoning Administrator may also consider, based upon the available facts, whether any transfer of ownership or execution of contract was not bona fide, but was done for the purposes of evading the combination requirements of this Subsection.
  - 3. A patented mining claim which would be contiguous but for the intersection of one or more other patented claims, shall be considered contiguous under this Subsection.
  - 4. Parcels combined solely under Subsection 18-121-B.2, may be divided through an administrative parcel division process not requiring BOCC approval, as described in Article 9-103, unless the Director concludes the parcels meet any one of the following criteria.
    - a. The subject parcels have been combined due to shared physical improvements other than roads, drives, and fences; or
    - b. The subject parcels have been combined on or after May 19, 1993 on the County Assessor's records for property tax purposes; or
    - c. One or more of the parcels cannot be built upon without significant scarring or erosion, and without significant damage to environmental resources identified in the Boulder County Comprehensive Plan; or
    - d. One or more of the parcels do not have legal access as determined by the County Engineer; or
    - e. Due to parcel size, configuration, dimensions, or other physical constraints, one or more of the resulting building parcels cannot be practically built on separately.
  - 5. Parcels combined solely under Subsection 18-121. B. 2. that meet any one of the criteria in Subsection 18-121. B. 4. a-e above and therefore are not eligible for division through an administrative parcel division process may be divided, in the discretion of the BOCC, pursuant to the subdivision exemption process in Section 9-100 of this Code (see particularly Subsection 9-102.E.)
- C. For any merger of parcels of land or lots under the provisions of this Code, which merger is not requested in writing by each owner of an affected parcel, and which merger occurs for the first time on or after October 1, 2003 (the effective date of

**Deleted:** Nothing in this Subsection shall be construed to prohibit divisions which State law exempts from county subdivision regulation (see Article 5 Subdivision Regulations), provided that all applicable provisions of this Code are otherwise met.

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Senate Bill 03-067 as codified in C.R.S. Section 30-28- 139), the following provisions shall govern, as expressly required in C.R.S. Section 30-28-139:

1. Prior to the completion of the merger, the County shall send notice of the County's intent to complete the merger to each owner of the affected parcels by certified mail, at the address shown on the records of the County Assessor. The notice shall also specify that each such owner may request a hearing on the proposed merger pursuant to Subsection 2., immediately below, and shall specify action to be taken by such owner to request such hearing, including, without limitation, the requirement that said owner shall request the hearing no later than 120 days after the date on which the owner receives the notice. The date of the owner's receipt of the notice shall be the date on which the notice arrives at the owner's stated address, which date the County may presume to be three days after the date of the County's mailing of the notice, unless the circumstances known to the County clearly indicate a later receipt date.
2. Prior to the completion of the merger, where each owner of an affected parcel has timely requested a hearing on the proposed merger satisfying the requirements of Subsection 1., immediately above, a public hearing on said merger shall be held before the Board of County Commissioners. The hearing shall be conducted for the purpose of allowing the Board to discuss with the owner of each affected parcel the Board's reasons for proceeding with the merger, and to give each owner the opportunity to submit any basis provided under law for challenging the merger. In the case of a timely hearing request, the County shall provide notice of the time, place, and manner of the hearing to each owner of the affected parcels and shall also publish the notice in a newspaper of general circulation in the County in a manner sufficient to notify the public of the time, place, and nature of said hearing. In order to give each such owner of an affected parcel the opportunity to take whatever remedial action is allowed under the law prior to the hearing before the Board, the County shall not hold the hearing any sooner than 90 days after the date on which the owner received the County's initial mailed notice as provided in Subsection 1, above.
3. Where the owner of each affected parcel fails to timely request a hearing on the proposed merger satisfying the requirements of Subsection 1., above, no such hearing is required, and the affected parcels shall be merged in accordance with the requirements of this Subsection C.
4. No merger of parcels that is the subject of a hearing pursuant to Subsections 1. and 2., above, shall be effective unless:
  - a. The owner of the parcels has given his, her, or its consent to the merger of said parcels; and
  - b. The merger has been approved by a majority of the Board of County Commissioners.
5. Nothing in this Subsection C. shall be construed to abrogate or otherwise diminish or expand any rights a landowner may have under Article 68 of Title 24, C.R.S., pertaining to vested property rights.

### 9-100 Subdivision Exemptions

- A. The Board of County Commissioners may grant exemptions from the definition of the terms 'subdivision' and 'subdivided land' for any division of land or construction of apartments, condominiums or multifamily dwellings, if the Board determines that such a division is not within the purpose of Article 28, Title 30 of the Colorado Revised Statutes.
- B. This process requires public hearings before the Board of County Commissioners. Exemptions may be granted only on the basis of the exemption criteria enumerated in Section 9-102, below.
- C. The Board of County Commissioners may exempt from the definition of the term 'subdivision' any other divisions of land which they determine are not within the scope of Article 5.

### 9-101 Types of Subdivision Exemptions

- A. Boundary Line Adjustment
- B. Community Facility Lot Split for land not owned by the County
- C. Townsite Lot Recognition
- D. Other divisions not within the scope of Article 5

### 9-102 General Exemption Criteria

- A. Criteria for all Exemptions
  - 1. Any new parcel created shall not increase the degree of nonconformity of an existing structure.
  - 2. No exemption shall be approved if development will occur on a topographic or geologic hazard.
  - 3. No exemption shall be approved by the Board within a Floodplain Overlay District, unless it is determined by the County Engineer that all proposed uses are capable of receiving a floodplain development permit.
  - 4. All proposals for the development of parcels created should conform to the provisions of **Article 7** of this Code, including access.
  - 5. Proposed parcel boundaries and development shall be suitably located and sized with respect to the physical characteristics of the land, the character of the neighborhood, and the County's goals of preserving agricultural and forestry lands.
  - 6. Parcels within an approved subdivision shall go through an exemption plat process.
  - 7. The proposal shall be in accordance with the Comprehensive Plan, any applicable intergovernmental agreement affecting land use or development, and this Code.
- B. Additional Criteria for Boundary Line Adjustments
  - 1. Divisions which create any number of parcels equal to or less than the number of original undivided parcels are subject to the following conditions:

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- a. Where the original building lot is in conformance with the lot requirements of the zoning district in which the parcel is located, any parcels created shall also conform to those requirements.
- b. Where original building lots are nonconforming with respect to the lot requirements of the zoning district in which located, any parcels created should not increase the degree of nonconformity.
- c. A boundary line adjustment shall not be approved solely for convenience of construction.

C. Additional Criteria for Community Facility Lot Splits

- 1. Divisions which create parcels for use as community facilities, including utility land acquisition, are subject to the following conditions:
  - a. An exemption may be approved for the placement of a community facility where the size and location of the lot and available services are reasonable, appropriate, and customary for the proposed use.
  - b. Community facilities are public parking areas, public or private educational facilities, public parks and open spaces purchased by a public entity, and utility substations without any dwelling units.
  - c. No exemption is necessary in those cases where the community facility lot split involves land which is, or through the split will be, owned by the County;

D. Additional Criteria for Divisions within Townsites and Formerly Incorporated Towns

- 1. Such exemptions shall contain lands situated within an area of Boulder County which was mapped and recorded in the Office of the County Clerk and Recorder in full compliance with all provisions of Chapter 84, Article 11 of the Colorado Revised Statutes of 1868 or any succeeding Colorado statute providing for the mapping or incorporation of townsites, townplats, towns or settlements; or which has discontinued its former incorporation as a city or town pursuant to C.R.S. 31-3-101.
- 2. Such exemptions shall be limited to divisions of land effected by deed(s)executed and recorded in the Office of the County Clerk and Recorder prior to December 13, 1983.
- 3. The applicant shall submit adequate evidence that the division was made in substantial reliance upon the map or plat of the townsite area, and that within such townsite area:
  - a. Buildings have been constructed, lawful at the time, based upon the townsite map or plat, buildings have been continuously occupied, and buildings have been maintained in reasonable reliance on the continued utilization of such structures; and
  - b. Roadways providing access into and travel within the townsite have been constructed prior to December 13, 1983, and maintained.
- 4. The applicant shall submit adequate evidence that the division was made in substantial reliance upon representations made, or other actions taken, by officials acting in behalf of Boulder County.

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E. Additional Criteria for Parcel Recognition Combined Under 18-121-B.2

1. The combined parcels must have been legal building lots at the time of combination.
2. Where parcels have shared improvements, no division shall be approved unless the parcels are configured to eliminate the need for those improvements to continue to be shared.
3. Where the parcels have been combined solely for the purpose of reducing property taxes, no division shall be granted.
4. Where the parcels are combined due to the potential for significant scarring or erosion, or significant damage to environmental resources identified in the Boulder County Comprehensive Plan, the parcels may be divided only if they are configured to reduce the impacts from what the original configuration would have created.
5. Only parcels with legal access demonstrated to the satisfaction of the County Engineer may be recognized.
6. Where the size, configuration, dimensions, or other physical features of the parcels create difficulty for construction, parcels may only be divided if they are configured to reduce the anticipated adverse land use impacts associated with development of the parcels as currently configured.

F. The Board of County Commissioners may exempt from the definition of the term 'subdivision' other divisions of land if the Board determines that such division is not within the purposes of these Subdivision Regulations.

9-103 Administrative Parcel Division Process for Parcels Combined under 18-121-B.2

A. The Director may divide Parcels combined solely under Section 18-121 B.2 unless the parcels meet any one of the following criteria:

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1. The subject parcels have been combined due to shared physical improvements other than roads, drives, and fences; or
2. The subject parcels have been combined on or after May 19, 1993 on the County Assessor's records for property tax purposes; or
3. One or more of the parcels cannot be built upon without significant scarring or erosion, and without significant damage to environmental resources identified in the Boulder County Comprehensive Plan; or
4. One or more of the parcels do not have legal access as determined by the County Engineer; or
5. Due to parcel size, configuration, dimensions, or other physical constraints, one or more of the resulting building parcels cannot be practically built on separately.

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B. Additional Application Submittal Requirements

The following materials shall be submitted with any application for administrative division of eligible parcels combined under Subsection 18-121.B.2.

1. Complete application with the required fee.

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2. Maps showing the subject parcels and surrounding properties.

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3. Deeds for the subject parcels:

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a. For parcels 5 acres or greater, deeds back to the beginning of 1972.

b. For parcels 1-4.9 acres, deeds back to 1965.

c. For parcels less than one acre, deeds back to 1944.

4. Deeds for all adjacent parcels (including those across roads) back to May 19, 1993. Note on the deeds which parcels they correspond to (use either tax ID number or map notation).

#### C. Administrative Review

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1. The Director shall notify immediately adjacent property owners.

2. The Director shall issue the determination within ten days following such notification and shall consider any timely comments received by the public.

3. In approving the division under this section 9-103, the Director finds the parcels were legal building lots when combined under Subsection 18-121.B.2.

#### D. Process Falls Outside Subdivision Regulations

The BOCC finds that this administrative parcel division process, for the limited purpose of allowing certain parcels combined under Subsection 18-121. B.2. to be divided, does not fall within the purposes of the Subdivision Regulations and is appropriate for exemption from the Subdivision Regulations under C.R.S. Section 30-28-101 (10)(d).and from BOCC approval under Articles 5 and 9 of this Code.