



Land Use

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BOULDER COUNTY PLANNING COMMISSION

October 16, 2013, 4:30 pm

Hearing Room, 3rd Floor

Boulder County Courthouse

STAFF: Abigail Shannon, AICP, with the assistance of Barbara Andrews, Esq., and Ben Doyle, Esq.

DC-13-0003: FRONT RANGE FLOOD AND EXTREME RAIN TEXT AMENDMENTS TO ARTICLE 19 OF THE BOULDER COUNTY LAND USE CODE

Proposed text amendments to the Boulder County Land Use Code to amend Article 19-100.F. to extend the timeline to rebuild following the Fourmile Canyon Fire, to add a new Article 19-200 establishing an interim permitting procedure for restoring structures damaged or destroyed by the September 2013, Front Range Flood and associated weather impacts, and to amend other related provisions of the Land Use Code as needed.

SUMMARY

The Board of County Commissioners authorized staff on October 1, 2013 to draft Land Use Code amendments in response to the flood and extreme rain events that struck the Front Range in September 2013. As drafted, these regulations are interim in nature and will be effective for only six months (through April 30, 2014). The purpose of interim regulations is to allow for the rebuilding of destroyed or severely damaged structures without formal Site Plan Review, but in a safer manner through a proposed administrative Hazard Mitigation Review process intended to utilize the lessons learned from ongoing damage assessments following the September 2013 flooding event. The regulations would allow the flexibility for damaged structures to be rebuilt in different locations if significantly better from a risk hazard standpoint, and would retain applicability of the County's floodplain development regulations. At the end of the interim period, either this interim process will sunset or staff may recommend these regulations be extended or amended.

BACKGROUND AND PURPOSE

The rain storms that occurred in Boulder County (and throughout the Front Range) the week of September 9, 2013, were unprecedented and relentless. While we are still tallying the losses, the Land Use Department estimates approximately 500 homes were destroyed or significantly damaged by rising water, flash flooding, mudslides, debris flows, and land subsidence. Between 1,000 and 2,000 homes experienced non-structure damage as well. These numbers reflect damages incurred in the unincorporated areas only and do not include affected property owners in Jamestown, Lyons, Longmont, Boulder, or any of the other affected municipalities.

The Land Use Code currently contains provisions to allow for rebuilding of structures destroyed through no fault of the owner. Article 4-802.B.3. states:

Restoration of a structure that has been damaged or destroyed by causes outside the control of the property owner or their agent provided the restoration involves the original location, floor area, and height. Such restoration must comply with the current provisions of the Boulder County Land Use Code other than 4-800 (also see Nonconforming Structures & Uses, Article 4-1002(D) and 4-1003(F)).

- a. Such restoration must be commenced within six months after the date on which the structure was damaged or destroyed, or a latent defect discovered and completed within one year after the date on which the restoration commenced. This limitation may be extended in the case of extenuating circumstances as determined by the Director.*

The draft regulations propose an administrative Hazard Mitigation Review to replace structures or repair significant damages to existing structures impacted by the extreme rain, mudslides, and flooding. Due to the circumstances of the event, staff recommends adopting these interim regulations for a number of reasons. Boulder County supports property owners' ability, as under the current Code, to rebuild within the first six months without being subject to the formal Site Plan Review process; however, this allowance requires the property owner to replace the structure in the exact same location where it had been destroyed or severely damaged. The draft regulations allow owners to relocate the structure to a safer location on the parcel. The draft also allows owners to rebuild at a different height, provided the increase is made to accommodate floodproofing or related hazard mitigation requirements.

Overall, the Hazard Mitigation Review process is intended to provide an efficient yet meaningful administrative mechanism so that the Land Use Director, in coordination with the County Engineer and County Public Health, can guide property owners toward safe and responsible redevelopment in light of the impacts of September's extraordinary rain and flood event. Staff believes this interim review process can serve essentially the same goal as a moratorium on rebuilding (which is not being proposed here), by allowing the hazards of redevelopment to be assessed carefully, on a property-specific basis, without the downside to property owners of totally halting redevelopment for a period of time.

It is important to note that under the National Flood Insurance Program, in which Boulder County has participated for decades, the County has a responsibility to the Federal Emergency Management Agency (FEMA) to enforce the County's existing adopted floodplain development regulations (Article 4-400 of the Code). Not enforcing our floodplain development regulations could jeopardize Boulder County property owners' ability to purchase affordable flood insurance through the National Flood Insurance Program. For this reason, the proposed Hazard Mitigation Review does not take the place of Article 4-400's Floodplain Development Permit and review process. Structures in Article 4-400's Floodplain Overlay District that were damaged or destroyed must meet the County's requirements for floodproofing, meaning that in cases where over 50% of the value of the structure was damaged or destroyed, the entire structure must be rebuilt to current floodproofing mandates. As many structures damaged by the September storm event were outside of the County's mapped Floodplain Overlay District, however, the proposed Hazard Mitigation Review process provides an important way to assess the flood-related risks for those properties, whose redevelopment would not be guided by the County Engineer's Floodplain Development process under Article 4-400.

IDENTIFIED AMENDMENTS

This docket proposes two sections of amendments to Article 19 Special Approval Procedures for Redevelopment Following Natural Disasters (first adopted in October, 2010, following the Fourmile

Canyon Fire). The full text of the proposed amendments can be found in Exhibit A. This section will review and explain the proposed amendments section by section. *Blue italic font* is utilized to indicate the proposed Land Use Code text changes, and staff comments on the changes presented in regular (non-italicized) font.

Proposed Amendments to Article 19-100 (Fourmile Canyon Fire)

While the majority of the proposed changes in this docket relate to the extreme rain and flooding that occurred in September 2013, staff is proposing an extension to the timeline to rebuild structures destroyed in the Fourmile Canyon Fire in 2010. The strike-through and underlined format is utilized in the section to indicate proposed amendments.

19-100.F. Timeline to Rebuild/Repair Eligible Structures

- 1. Any eligible structure may be rebuilt or repaired pursuant to a building permit reviewed under the procedures specified in Sections G. or H., below, as applicable, provided a complete application for a building permit is submitted to the Land Use Department on or before September 30, 2012. The Director may extend this period for ~~up to one additional year~~ a reasonable period of time, but not beyond March 31, 2014, for good cause shown. The owner of any eligible structure located on a parcel where the Fire destroyed more than ~~15~~ 8 structures, may have up to September 30, 2018 to submit a complete building application for rebuilding/repair.*

(All other provisions of Article 19-100 remain the same)

The Fourmile Canyon Fire regulations allowed affected owners to submit for a building permit within two years (i.e., by September 30, 2012) and allowed for the Director to grant one, one-year extension (through September 30, 2013). There were some property owners in the process of applying for their building permits by the 2013 deadline when the extreme rain began just a few weeks prior. This proposed amendment will allow the Director to grant up to an additional six-month extension to Fourmile Fire owners that already have received an extension under the existing regulations. The proposed amendment will also provide additional time (until September 30, 2018) to redevelop any property with more than eight (8) destroyed structures, rather than 15 structures as currently provided (which to staff's knowledge benefitted just one major property severely affected by the Fire, the Colorado Mountain Ranch). Staff is aware of at least one property owner who will benefit from this proposed revised provision (the Snowbound Mine property, considered a historically significant property).

Staff believes reducing the number of structures damaged or destroyed in order to be able to rebuild under Article 19-100 for an additional five or so years, from 15 to 8 structures, serves the County's historic and rural/townsite preservation goals, as well as the original intent of the Fourmile Fire regulations to give significantly more time to rebuild to owners of more complex properties containing multiple structures.

Proposed Addition of Article 19-200 (2013 Extreme Rain and Flood Event)

This docket proposes adding a new section to Article 19: Section 19-200 Front Range Extreme Rain and Flood Event (September 2013). This new section begins with a detailed narrative which describes the extreme weather and widespread destruction that occurred with this disaster (Note: the strike-through and underline format is not being utilized here because all of the text proposed in 19-200 would be new text.), and articulates the purposes underlying the rebuilding regulations for this disaster, as follows:

19-200 Front Range Extreme Rain and Flood Event (September, 2013)

Boulder County experienced a rain event of historic proportions beginning on September 9, 2013, that dropped a record-breaking 17+ inches of precipitation over a widespread area in just a few days. The unrelenting rain triggered flash floods and landslides in the County's mountain drainages, resulted in massive flooding with associated slides and debris flows throughout the foothills and plains, so overloaded water channels that many substantially changed course, and excessively saturated soils on properties that were not overrun by floodwaters. This extraordinary weather event ("2013 Extreme Rain and Flood Event") led to President Barack Obama declaring the County a federal major disaster area, and prompted emergency disaster declarations at the state and local levels. The 2013 Extreme Rain and Flood Event caused loss of life, catastrophic property damage, and the substantial destruction of key infrastructure including major roads, sewer systems, and trails and park lands. Recovery in the months and years ahead will be challenging, time-consuming, and severely demanding on public and private resources.

In the immediate aftermath, as well as for the longer term, the County is resolved to take all reasonable measures to avoid the catastrophic impacts of another such disaster, help keep the public and their property safe from future extreme rain and flood events, and restore and preserve the community's critical infrastructure to the maximum extent practicable. As a starting point in this effort, Boulder County has reviewed its land use regulations and determined that immediate changes are needed to respond to the unique and widespread nature of the 2013 Extreme Rain and Flood Event, to help guide the recovery effort wisely so that future risks from such hazards can be substantially reduced. The County also recognizes that it must regulate development following this disaster in conformity with the Land Use Code's recently updated floodplain management program, which the Federal Emergency Management Agency has approved under the National Flood Insurance Program to protect the integrity of the floodplain, and provide reasonable flood insurance rates for eligible property owners.

The essential purpose of this Article 19-200, therefore, is to strike an appropriate balance between citizens being able to rebuild their homes and businesses and resume their post-disaster lives, while assuring that the ongoing recovery effort is well planned in anticipation of the possibility of history repeating or exceeding itself. Clearly the County and its affected citizens and communities can and should be in a better position to cope with the widespread manifestations and varied impacts of extreme rain and flood events, including too much water in all the wrong places, excessive soil saturation, and the attendant triggering of debris flows, mudslides, rock falls, channel realignments, uncontrolled terraforming, topographic instability, and other associated destructive forces of nature. Article 19-200 is one of many first steps that the County is taking in that direction. As ongoing studies of, and community response to, the 2013 Extreme Rain and Flood Event proceed, this Article, the Land Use Code overall, and the County's companion regulations affecting land use and post-disaster redevelopment almost certainly will require further adjustment as information is gathered and analyzed. This promises to be a major effort in which the County openly invites its citizens to participate, so that local land use regulations can be sensibly meshed with property owner needs, a possible increase in intensity in weather patterns, and the responsibility of county government to protect the public health, safety, and welfare.

As mentioned previously in this report, the proposed amendments create an interim “Hazard Mitigation Review” for the next six months (through April 30, 2014) in which structural repairs and restoration work is exempt from Site Plan Review:

A. Amendments to Land Use Code Subsections 4-802.B.3.a. and 4-802.B.3.c. (Six-Month Exemption from Site Plan Review To Restore Disaster-Damaged Structures, and Relationship with Art. 4-400, Floodplain Overlay District), To Require an Interim Hazard Mitigation Review (“HMR”) Process Prior to Building Permit Application To Restore Any Legal Structure Damaged or Destroyed by the 2013 Extreme Rain and Flood Event

Subsection 4-802.B.3.a. of this Code currently exempts from Site Plan Review (Article 4-800), the restoration of any structure damaged or destroyed by causes outside the control of the owner, provided the restoration is commenced within six months after the damage/destruction occurs, and provided the restoration is for the same location, floor area, and height as preexisted the damage or destruction. Subsection 4-802.B.3.c. provides that Subsection 4-802.B.3.a.’s exemption from site plan review does not apply to substantial improvements in the Floodplain Overlay District under Article 4-400.

Subsections 4-802.B.3.a. and 4-802.B.3.c. are hereby amended for purposes of rebuilding or restoring structures damaged or destroyed by the 2013 Extreme Rain and Flood Event (whether by flooding, debris flows, mudslides, topographic changes or instability, drainage channel shifts, area drainage system impairments or failures, soil saturation, or related hazardous events triggered by the disaster), for the interim period under this Article 19-200, as follows:

General Duration and Applicability of Article 19-200

- 1. Subsection 4-802.B.3.a.’s six-month exemption period from Site Plan Review shall be deemed to have commenced on Thursday, October 31, 2013, and shall extend through Wednesday, April 30, 2014 (“the Post-Event Six-Month Period”). The Director may not grant further extensions.*
- 2. During the Post-Event Six-Month Period, this Article 19-200 shall apply to any work for which a County building permit is required to rebuild or restore a legally existing structure damaged or destroyed by the 2013 Extreme Rain and Flood Event and its associated natural forces (unless the work is excluded from this Article 19-200 under Subsection 7, below), and which the owner wishes to be exempt from Site Plan Review. This Article 19-200 may apply instead of Site Plan Review so long as the proposal is to rebuild or restore the structure’s original, legally preexisting floor area. The structure’s location may be changed, provided the change in location significantly reduces the potential risks associated with future extreme rain and flood events or other known natural hazard areas or incidents (such as by moving the structure out of the mapped floodway or floodplain, or otherwise to a less hazardous location on the property). The structure’s height must remain the same, unless the Director (under Subsection 14 below) allows a reasonable height increase to accommodate a specific hazard mitigation requirement.*
- 3. All requirements in Article 4-400 of this Code governing the Floodplain Overlay District shall continue to apply under this Article 19-200, though Site Plan Review for a floodplain development permit (as otherwise required under Subsection 4-802.A.8. of this Code)*

shall not be necessary, so long as the proposed work falls within the specifications of Subsection 2, above.

The proposed regulations require (see quoted provisions below) that only legally existing structures may rebuild under Article 19-200. “Legally existing structures” means those that were constructed with a valid building permit or those that were built before building permits were required. Structures built without a permit and subsequently destroyed in this disaster may be replaced, but the property owner will be subject to the Site Plan Review process, and all other currently applicable land use review and associated code provisions (if the structure can be made legal under current provisions at all).

As previously described, these proposed regulations allow property owners to redevelop in a more resilient fashion through relocation of the structure outside hazard areas without the full Site Plan Review. The proposal also allows flexibility with respect to the height of redeveloped structures, if warranted, to improve structure safety such as through flood proofing measures that require structure elevation out of harm’s way. Increases in floor area are not allowed under this streamlined review.

4. *Legal structures proposed to be restored as provided in Subsection 2, above, are hereafter referred to as “Eligible Structures.” Structures proposed for rebuilding or restoration that are not Eligible Structures, shall be subject to the usual provisions of the Land Use Code; however, if the proposed work does not otherwise trigger Site Plan Review, and is not excluded work under Subsection 7, below, a Hazard Mitigation Review shall be performed under this Article 19-200.*
5. *After April 30, 2014, all repair, reconstruction, or redevelopment requests related to the 2013 Extreme Rain and Flood Event, whether or not related to an Eligible Structure, shall be subject to the usual provisions of the Land Use Code, unless the Board approves amendments to extend or amend this Article 19-200 or related regulations.*

The crux of the draft regulations is the proposal for a new, interim administrative review process called a Hazard Mitigation Review. The purpose of the HMR is to recognize the actual impacts of the disaster (which were beyond our mapped floodplain overlay zone) and allow redevelopment that is in a safer location. The HMR process will be required for reconstruction work subject to Site Plan Review, for which the owner wishes to take advantage of the six-month post-disaster exemption from Site Plan Review (provided, as noted above, no change in floor area is proposed, and any location change or height increase is necessary for hazard reduction purposes). In these cases, the HMR process substitutes for the otherwise required Site Plan Review, though it is a much more limited process focusing on hazard reduction and mitigation. There may be some proposed restoration work that does not trigger Site Plan Review (for example, it falls below the cumulative increase of 1,000 square feet that is one trigger for Site Plan review), but is not minor enough to be exempted under the proposed regulations: such work would also require a Hazard Mitigation Review.

Not all rehabilitation will be subject to the HMR. Building Safety and Inspection Services has been issuing permits for interior repairs and other minor disaster-response work called Flood Recovery, Restoration, and Repair Permits, and these are not subject to the HMR. A copy of the handout the Land Use Department has been providing to the public is attached as Exhibit B. Generally speaking, these are building permits for non-structural permits for work that can be completed while the residents continue to live in the structure. The recommended draft also allows the Chief Building

Official to issue permits in order to address a hazardous situation, including stabilizing structures, and to preserve significant historic structures.

Hazard Mitigation Review Process

6. *Before a building permit can be applied for to rebuild or restore any Eligible Structure within the Post-Event Six-Month Period, the Director must first conduct a Hazard Mitigation Review (“HMR”).*
7. *The following building permits are excluded from the HMR requirement:*
 - a. *“Flood Recovery, Restoration, and Repair Permits” issued by Building Safety and Inspection Services for disaster-related restoration or clean-up work in the aftermath of the 2013 Extreme Rain and Flood Event involving minor projects related to basement finishing, interior remodels, electrical repairs, reroofing, siding repairs, gas line repairs, plumbing repairs, and replacement of windows, doors, furnaces, boilers, and water heaters.*
 - b. *A building permit which the Chief Building Official determines is necessary to rectify a hazardous health or safety situation including but not limited to structure stabilization, or to comply with the public health or safety requirements of another governmental entity having lawful jurisdiction over the structure, or to allow for the preservation of a significant historic structure.*
 - c. *Any excluded building permit issued under Subsections a. and b., above, may be for a temporary period, may require further approval of permanent construction measures meeting other applicable code requirements, and may result in owners doing work on a temporary or emergency basis by their own choice and at their own financial risk.*

The fundamental purpose of the HMR is to foster redevelopment in a safe manner that results in a more resilient community better prepared to meet a future rain or flood-related disaster. The HMR process will be administrative in nature with a focus on educating landowners concerning hazards and helping owners identify redevelopment plans that better protect structures and property from future events. The Land Use Department will work with the County Engineer, Public Health staff, and property owners to find mutually beneficial solutions.

8. *The purposes of the HMR are for the Director (including the Chief Building Official), with the input of the County Engineer and County Public Health, to:*
 - a. *Assess the safety of the proposed restoration/construction in light of the actual damage caused by the 2013 Extreme Rain and Flood Event and related hazardous forces triggered by that disaster (such as flooding, debris flows, rockfalls, mudslides, topographic changes or instability, drainage channel shifts, area drainage system impairments or failures, and soil saturation), to the Eligible Structure, the subject property, surrounding properties, and public and private infrastructure serving the subject property; and*
 - b. *Assure that the proposal complies with the standards of this Article 19-200, so that any such future hazards can be reduced or avoided to the maximum extent practicable*
9. *The Director shall administer the HMR process, aided by the County Engineer and County Public Health, with a focus on educating landowners concerning the risks related to extreme rain and flood events, and assisting owners in evaluating reasonable land redevelopment plans and associated hazard mitigation measures, while adequately*

protecting the public health, safety, and welfare with respect to future storm/water-related hazards.

Similar to other planning review processes, a pre-application conference will be required. This is a good opportunity for the property owner to talk with staff, review development requirements, and discuss project ideas before spending too much time and effort developing detailed plan sets. Because the damage and destruction was not confined to areas of mapped hazards, the draft regulations offer the possibility of an on-site pre-application conference. The regulations also allow the Director to require additional information in order to analyze the hazards on the subject property. This may include technical studies or engineering reports including but not limited to a geology report, a soils report, a grading report, a drainage report, or other technical information.

- 10. Application for a HMR shall require a pre-application conference (which in the discretion of the Director may be an on-site meeting), and an application submittal, as set forth in Sections 4-803 and 4-804 of this Code. The HMR application shall include information demonstrating that the Eligible Structure to be rebuilt or restored is a legal structure that was damaged or destroyed by the 2013 Extreme Rain and Flood Event or its associated physical forces, and must set forth specific information regarding the extent of the damage which the Event caused to the Eligible Structure, to the subject property, to surrounding properties and drainages, and to infrastructure serving the subject property. The Director may waive application requirements deemed to be not relevant to evaluating the hazards related to any specific proposal, and also may request additional information considered necessary to enable a thorough evaluation of the application.*

As mentioned previously, the HMR process does not replace but rather supports the Floodplain Development Permit and review process in Article 4-400 of the Code (mapped zoning Floodplain Overlay District). These two administrative reviews are anticipated to occur concurrently.

- 11. Once a complete application for a HMR is received, the Director shall forward the application to the County Engineer and to County Public Health for an assessment of the Extreme Rain and Flood Event and related hazards associated with the proposal. For any application involving property within the Floodplain Overlay District (Article 4-400 of this Code), the HMR application may be coordinated with the County Engineer's review of any required application for a Floodplain Development Permit.*

The proposed regulations include three review standards. These standards are described fully below, but they can be distilled into three basic ideas: 1) new structures shall not pose or create safety hazards, when examined in the context of the damage caused by September's rain/flood event, on the subject property, surrounding property, or infrastructure; 2) the proposal must not alter historic drainage patterns without appropriate mitigating measures (note that this is an existing Site Plan Review standard); and 3) location changes, at the owner or Director's discretion, must result in reduced risk from future hazards, while not creating "unreasonable harm" to other resources or policy goals. It is the Director's responsibility to consider and weigh these standards, should there be conflicts – a balancing which the Director routinely implements in the Site Plan Review process, although in that context considering many more applicable review standards.

- 12. Once the Director receives the referral comments of the County Engineer and County Public Health, and considers any other relevant information of record (including any additional information which the Director discovers through the process is necessary and*

reasonable to request to complete the review), the Director shall make a decision on the HMR application. The Director shall base the decision on the following standards:

- a. The proposal shall not pose or create a significant potential safety hazard when evaluated against evidence gained from the 2013 Extreme Rain and Flood Event's impacts on the Eligible Structure being restored, on the subject property, on surrounding properties, and on affected infrastructure, considering such forces as flooding, debris flows, rockfalls, mudslides topographic changes or instability, drainage channel shifts, area drainage system impairments or failure, soil saturation, and similar hazardous forces or effects.*
- b. The proposal shall not alter historic drainage patterns and/or flow rates or shall include acceptable mitigation measures to compensate for anticipated drainage impacts.*
- c. If the Eligible Structure's location is proposed or required to be changed, the new location shall significantly reduce the potential risk associated with future extreme rain or flood events; shall not create an unreasonable risk with respect to other natural hazards such as wildfire, subsidence, or erosion; and shall not cause unreasonable harm to significant historic structures or sites, or to significant natural ecosystems and environmental resources including but not necessarily limited to natural areas and natural landmarks, prominent topographic features and excessively steep slopes, riparian corridors and wetland areas, and significant plant communities, wildlife habitat, and wildlife migration corridors, as identified on the Comprehensive Plan or through the HMR process.*
- d. If the Director finds that any of the foregoing standards conflict, the Director shall evaluate the applicability and importance of each of the conflicting standards under the facts of the specific HMR application, and make a reasonable attempt to balance the conflicting standards in reaching a decision, with appropriate priority being given to fulfilling the purposes of this Article 19-200.*

Following the review and after considering suggestions and requirements from the County Engineer and Public Health, the Director shall issue a determination on the HMR application.

- 13. If the Director determines that the HMR application complies with the foregoing standards, the Director in its discretion may approve the application without conditions. In the alternative, the Director may impose reasonable conditions allowing a determination that the application satisfies the standards.*
- 14. Reasonable conditions may include, but are not limited to, moving the Eligible Structure outside of a mapped floodway or floodplain or known flood-prone area; reorienting the structure or reducing its massing to minimize the effects of hazards on the structure, the subject property, or surrounding properties and infrastructure; installing or arranging appropriate features or improvements to reroute excess waters or protect the Eligible Structure or affected properties from natural hazards; implementing floodproofing or other hazard mitigation measures recommended or required by the Director, the County Engineer, or County Public Health; performing additional hydrologic or technical studies on hazards that may result in additional conditions being added at the building permit stage; requiring reasonable measures in cases where an Eligible Structure's location is changed to significantly reduce the potential risks associated with future natural hazards; and providing that the proposed development comply with any other applicable permitting requirements, including but not limited to those related to access and*

sanitation. In addition, the Director may allow a reasonable increase in structure height, not to exceed zoning limits, if necessary to accommodate any elevation of the Eligible Structure for floodproofing purposes or to satisfy any other specific hazard mitigation requirement, provided any associated adverse visual impacts of the height increase are appropriately mitigated.

The draft regulations give the Director the ability to deny the HMR if the proposal cannot meet the standards set forth in Article 19-200 or insufficient information has been presented to assess the relevant hazards and determine appropriate mitigation measures. The Director also has the ability to delay a decision if additional information is necessary, or if appropriate to allow coordination with the County Engineer's floodplain development permit process where required. There may be, for example, restudies of floodplains forthcoming where the creeks or rivers performed differently than was expected during the September 2013 event. Applicants will have the ability to appeal the Director's decision using the Site Plan Review appeal process. This appeals process allows the Board of County Commissioners to consider the application and the review criteria at a public hearing before they make a final decision.

- 15. If the Director finds that the HMR application cannot comply with the applicable standards, the Director shall deny the application. The Director also may deny an application, or in the Director's discretion delay a decision on the application for further information, if the Director finds that insufficient information has been presented to allow a reasonable evaluation of the hazards associated with the proposed development, or of effective hazard mitigation measures. For applications in the Floodplain Overlay District (Article 4-400 of the Code), the Director may delay a decision until the County Engineer processes any required Floodplain Development Permit.*
- 16. While the Director is not required to make a decision on a HMR application within a specified time, the Director shall make a good-faith effort to process requests as soon as practicable after a complete application has been submitted. For applications in the Floodplain Overlay District (Article 4-400 of the Code), the Director may delay a decision until the County Engineer processes any required Floodplain Development Permit.*
- 17. The applicant may appeal the Director's final decision on a HMR application using the same process as appeals for Site Plan Review decisions under Article 4-808.*

If a property owner does not apply for a building permit within one year of receiving the HMR approval, the approval will expire. The Land Use Director has the ability to grant one one-year extension at the request of the property owner.

- 18. Any final HMR approval shall expire one calendar year after its date of issuance, unless within that year the applicant presents the Director with a written request for an extension. If a timely extension request is received, the Director may allow the HMR approval to remain in effect for up to an additional calendar year, upon a showing of good cause, and provided the circumstances surrounding the approval's issuance under this Article 19-200 have not substantially changed.*

All other Land Use Code provisions, Public Health requirements, and Transportation standards remain in effect while Article 19-200 is being administered.

Applicability of Other Regulations; Enforcement

19. *Except as amended in this Article 19-200, all other applicable provisions of the Land Use Code and related County land development, access, Multimodal Transportation, and Public Health regulations shall be in full force and effect as stated therein. Of note, while this Article 19-200 amends Subsections a. and c. of Section 4-802.B.3., it does not amend Subsection 4-802.B.3.b. regarding the exemption from Site Plan Review for replacement of bridges, box culverts, low-water crossings to other structures spanning a creek or other drainage within a mapped floodplain during the Post-Event Six-Month Period, which remains in effect as provided therein. In the event of a conflict between this Article 19-200 and any other code provision, this Article shall control, unless the Director determines otherwise in order to better serve the purposes of this Article 19-200.*

The regulations also provide some discretion to the Land Use Director, County Engineer/Transportation Director, and other department heads to tailor permitting processes to meet the specific needs of this disaster. For example, expedited permitting to allow property access (road and bridge) restoration in the immediate aftermath of the disaster, has been ongoing and ratified in the BOCC's local disaster declarations (see, for example, the October 1, 2013 Declaration, attached to this memorandum as Exhibit C). Proposed Article 19-200 would not affect this authority, and would supplement it with respect to the rebuilding and restoration of structures otherwise subject to the Site Plan Review process.

20. *Where the BOCC has provided specific approval of emergency response actions by the Director, the County Engineer/Transportation Department Director, or other County department heads, related to the need for immediate permitting of repairs to structures, access, and property damaged or destroyed by the 2013 Extreme Rain and Flood Event (including without limitation BOCC Declaration of Local Disaster Emergency Extension #1, adopted September 19, 2013; Extension #2, adopted September 24, 2013, and Extension #3, adopted October 1, 2013), those department heads, in their sound discretion, may continue, modify, or terminate those permitting practices as reasonably necessary to administratively handle the ongoing effects of the disaster recovery effort. Adoption of this Article 19-200 shall, however, immediately terminate the temporary cessation on the issuance of County building permits and floodplain development permits authorized in Paragraph 1 of the BOCC's Declaration of Local Disaster Emergency Extension #3 (October 1, 2013).*

These regulations do not abdicate the Department's authority to conduct appropriate Code enforcement.

21. *The County may enforce this Article 19-200 through the provisions of Section 17-300 of this Code. Nothing in this Article shall limit the County's existing enforcement authority under Articles 14 or 17 of this Code, the Building Code, or other applicable law.*

Boulder County Land Use is not currently accepting building permit application or Site Plan Review applications for structures severely damaged or destroyed by the extreme rain, flooding, and mudslides. Development applications are under a temporary cessation as described and approved by the Board of County Commissioners in the Declaration of Local Disaster Emergency – Extension #3 (see Exhibit C) until interim regulations are approved or for six months, whichever occurs first. Staff is requesting these regulations become effective on Monday, November 4, 2013, following the BOCC's public hearing on the docket scheduled for October 23, 2013. The proposed effective date

will provide staff with the time to prepare application materials and coordinate with the involved departments in order to effectively administer the interim HMR process.

REFERRAL RESPONSES

Due to the short timeline staff has pursued to draft and process these Land Use Code amendments, we have opted for an alternative processing schedule. Rather than establishing a referral deadline, sending the draft to other departments for review and comment, then incorporating suggested changes into the draft, Land Use staff has been working directly and cooperatively with Transportation, Public Health, County Attorney, and the Building Safety and Inspection Services team to create this draft. While there are no formal referral responses to include from these partner agencies, their concerns and comments have been incorporated into the draft presented in this recommendation.

The draft regulations and this staff recommendation were emailed to the Land Use Code listserv on Wednesday, October 9, 2013. Comments will be gathered by staff and forwarded to the Planning Commission prior to the Planning Commission meeting on Wednesday, October 16, 2013.

CRITERIA REVIEW

Article 16 of the Land Use Code allows for amendments to the Code if the following circumstances are met:

16-100 Text Amendments

- A. *Text amendments may be initiated by the Planning Commission or the Board of County Commissioners through the Land Use Department. Text amendments shall be reviewed and acted upon in accordance with the procedural provisions contained in Article 3 of the Code.*
- B. *No text amendment shall be adopted by the Board of County Commissioners unless the Board has determined that:*
 1. *The existing text is in need of the amendment;*
 2. *The amendment is not contrary to the intent and purpose of the Code; and*
 3. *The amendment is in accordance with the Boulder County Comprehensive Plan.*

The Board of County Commissioners authorized staff to pursue these text amendments at a Business Meeting on October 1, 2013.

Regarding 16-100.B.1., staff believes that the existing Land Use Code text needs amendment for the reasons provided in this memorandum. With particular regard to the focus of this docket, which is the proposed new Article 19-200, amendments are needed to supplement Article 19 in order to allow a prudent and effective County land use response to the impacts of this extensive disaster, during the initial six-month period when Site Plan Review is not required. The proposed HMR process allows property owners to apply to rebuild, without being put off by an imposed moratorium, while implementing a thorough administrative hazard review in light of the lessons learned and hazards created by the September rain/flood event, to encourage, or, if necessary, require, restoration to proceed in a safe and responsible manner. The HMR process will permit flexibility to allow restored structures to be relocated if the associated risks will be significantly reduced, and to be somewhat increased in height if appropriate to accommodate flood elevation or other reasonable hazard mitigation measures. In these ways the regulations strive to strike a balance between landowner needs and the public health and safety.

Regarding 16-100.B.2., the proposed amendments are in accord with the intent and purposes of the Land Use Code, which generally are to rationally guide land development and protect the public health, safety, and welfare. The minor amendments to the Fourmile Fire rebuilding timeline in Article 19-100.F., are a reasonable response to the difficulty of issuing permits at the end of the September, 2013, extension deadline, at the same time when staff was overwhelmed with the massive workload generated by the recent flooding disaster. The ability for properties with at least eight (8) structures damaged or destroyed by the Fire (reduced from the current required 15 structures), allows a significant historic property additional time to rebuild, and does not undermine the essential purpose of according the benefit of the extended deadline to September 30, 2018, for those few properties that experienced damage to or destruction of a significant number of buildings.

Regarding proposed Article 19-200, these amendments also conform with the purposes and intent of the Code. The amendments retain all applicable land use review processes, except during the interim six-month period when Site Plan Review is not required, but substitute an administrative Hazard Mitigation Review process which is necessary to respond to the hazards created by or known from the September extreme rain/flood event. The integrity of the Floodplain Overlay District review and compliance requirements, which are a necessary part of the County's continued participation in the National Flood Insurance Program, are embraced and maintained.

Finally, with respect to 16-100.B.3., there is a great deal of support from the Boulder County Comprehensive Plan urging caution when developing in areas that may be prone to natural hazards. The Plan calls for the County to discourage "intensive uses" in areas of geologic hazard. "Intensive uses" are defined as, "any structures used for supporting or sheltering any human use or occupancy; and/or, facilities or improvements which tend to attract congregations of people" in the Geology Element. The Comprehensive Plan also calls for protection of floodplains and flood-prone areas in the Natural Hazards Element. Pertinent provisions include:

Natural Hazard Goals

- L.1 *Inappropriate development in natural hazard areas should be reduced as much as possible or eliminated in order to minimize potential harm to life, health, and property.*

- L.2 *Efforts to mitigate existing areas as risk to the impacts of natural hazards and disasters should be made to minimize the potential for harm to life, health, and property.*

Natural Hazard Policies

- NH 2.01 *Development in designated Geologic Hazard Areas (shown on the Geologic Hazard & Constraint Areas Map) should be discouraged. Development should only be allowed in these designated hazard areas when adequate mitigation or elimination of the potential hazards can be demonstrated.*

- NH 4.01 *The county should strongly discourage and strictly control land use development from locating in designated floodplains, as identified in the Boulder County Zoning Maps.*

- NH 4.03 Critical facilities (schools, churches, hospitals, and other facilities as defined by the Federal Emergency Management Agency, FEMA) should be sited outside the delineated floodplain areas.*
- NH 4.04 The county, either individually or in partnership with others, should examine alternatives for acquiring and/or relocating existing structures prone to flooding.*
- NH 4.06 The county will continue to participate and implement the Community Rating System program as part of the National Flood Insurance Program (NFIP).*
- NH. 5.03 Development/site plan reviews in areas identified to be at risk of wildfires should address site location, building construction and design, landscaping/defensible space/fuel management, access and water availability. These factors should be analyzed from the standpoint that wildfires may present a hazard to development and/or development may present an ignition hazard to the forest.*
- NH 8.01 Efforts should be made to keep apprised of new siting and building standards that are predicated on potential impacts from extreme weather conditions such as high winds, heavy snows/hail, lightning, and occasional and irregular temperature extremes.*

RECOMMENDATION

Staff recommends the Planning Commission approve and recommend to the Board of County Commissioners approval of Docket DC-13-0003: Front Range Flood and Extreme Rain Text Amendments to Article 19 of the Boulder County Land Use Code and certify the Docket for action to the Board, which certification includes the approved text of the Docket and the official record of the Docket before the Commission with its staff comments, public testimony, Commission discussion, and Commission action.

Attachments

- Exhibit A Proposed Land Use Code Amendments
- Exhibit B Flood Restoration and Repair Checklist (Handout)
- Exhibit C Declaration of Local Disaster Emergency – Extension #3

(Draft for Planning Commission Public Hearing Review on 10/16/13):
DOCKET DC-13-0003, PROPOSED TEXT AMENDMENTS TO ARTICLE 19 OF THE BOULDER COUNTY LAND USE CODE (“Special Approval Procedures for Redevelopment Following Natural Disasters”)

BOULDER COUNTY LAND USE CODE
Article 19 • Special Approval Procedures
for Redevelopment Following Natural Disasters

Purpose:

Boulder County’s Land Use Code contains provisions for rebuilding structures damaged or destroyed by means outside the control of the property owner. However, specific disaster events may warrant modified permitting and approval procedures to allow property owners to rebuild in a timely, safe, and responsible manner while also encouraging reasonable improvements in redevelopment consistent with current regulations and the Comprehensive Plan.

(No change proposed in this section)

19-100 Fourmile Canyon Fire (September, 2010)

F. Timeline to Rebuild/Repair Eligible Structures

1. Any eligible structure may be rebuilt or repaired pursuant to a building permit reviewed under the procedures specified in Sections G. or H., below, as applicable, provided a complete application for a building permit is submitted to the Land Use Department on or before September 30, 2012. The Director may extend this period ~~for up to one additional year for a reasonable period of time, but not beyond March 31, 2014,~~ for good cause shown. The owner of any eligible structure located on a parcel where the Fire destroyed more than ~~158~~ structures, may have up to September 30, 2018 to submit a complete building application for rebuilding/repair.

(All other provisions of Article 19-100 remain the same)

(ADD A NEW ARTICLE 19-200, as follows):

19-200 Front Range Extreme Rain and Flood Event (September, 2013)

Boulder County experienced a rain event of historic proportions beginning on September 9, 2013, that dropped a record-breaking 17+ inches of precipitation over a widespread area in just a few days. The unrelenting rain triggered flash floods and landslides in the County's mountain drainages, resulted in massive flooding with associated slides and debris flows throughout the foothills and plains, so overloaded water channels that many substantially changed course, and excessively saturated soils on properties that were not overrun by floodwaters. This extraordinary weather event ("2013 Extreme Rain and Flood Event") led to President Barack Obama declaring the County a federal major disaster area, and prompted emergency disaster declarations at the state and local levels. The 2013 Extreme Rain and Flood Event caused loss of life, catastrophic property damage, and the substantial destruction of key infrastructure including major roads, sewer systems, and trails and park lands. Recovery in the months and years ahead will be challenging, time-consuming, and severely demanding on public and private resources.

In the immediate aftermath, as well as for the longer term, the County is resolved to take all reasonable measures to avoid the catastrophic impacts of another such disaster, help keep the public and their property safe from future extreme rain and flood events, and restore and preserve the community's critical infrastructure to the maximum extent practicable. As a starting point in this effort, Boulder County has reviewed its land use regulations and determined that immediate changes are needed to respond to the unique and widespread nature of the 2013 Extreme Rain and Flood Event, to help guide the recovery effort wisely so that future risks from such hazards can be substantially reduced. The County also recognizes that it must regulate development following this disaster in conformity with the Land Use Code's recently updated floodplain management program, which the Federal Emergency Management Agency has approved under the National Flood Insurance Program to protect the integrity of the floodplain, and provide reasonable flood insurance rates for eligible property owners.

The essential purpose of this Article 19-200, therefore, is to strike an appropriate balance between citizens being able to rebuild their homes and businesses and resume their post-disaster lives, while assuring that the ongoing recovery effort is well planned in anticipation of the possibility of history repeating or exceeding itself. Clearly the County and its affected citizens and communities can and should be in a better position to cope with the widespread manifestations and varied impacts of extreme rain and flood events, including too much water in all the wrong places, excessive soil saturation, and the attendant triggering of debris flows, mudslides, rock falls, channel realignments, uncontrolled terraforming, topographic instability, and other associated destructive forces of nature. Article 19-200 is one of many first steps that the County is taking in that direction. As ongoing studies of, and community response to, the 2013 Extreme Rain and Flood Event proceed, this Article, the Land Use Code overall, and the County's companion regulations affecting land use and post-disaster redevelopment almost certainly will require further adjustment as information is gathered and analyzed. This promises to be a major effort in which the County openly invites its citizens to participate, so that local land use regulations can be sensibly meshed with property owner needs, a possible increased intensity in weather patterns, and the responsibility of county government to protect the public health, safety, and welfare.

A. Amendments to Land Use Code Subsections 4-802.B.3.a. and 4-802.B.3.c. (Six-Month Exemption from Site Plan Review To Restore Disaster-Damaged Structures, and Relationship with Art. 4-400, Floodplain Overlay District), To Require an Interim Hazard Mitigation Review (“HMR”) Process Prior to Building Permit Application To Restore Any Legal Structure Damaged or Destroyed by the 2013 Extreme Rain and Flood Event

Subsection 4-802.B.3.a. of this Code currently exempts from Site Plan Review (Article 4-800), the restoration of any structure damaged or destroyed by causes outside the control of the owner, provided the restoration is commenced within six months after the damage/destruction occurs, and provided the restoration is for the same location, floor area, and height as preexisted the damage or destruction. Subsection 4-802.B.3.c. provides that Subsection 4-802.B.3.a.’s exemption from site plan review does not apply to substantial improvements in the Floodplain Overlay District under Article 4-400.

Subsections 4-802.B.3.a. and 4-802.B.3.c. are hereby amended for purposes of rebuilding or restoring structures damaged or destroyed by the 2013 Extreme Rain and Flood Event (whether by flooding, debris flows, mudslides, topographic changes or instability, drainage channel shifts, area drainage system impairments or failures, soil saturation, or related hazardous events triggered by the disaster), for the interim period under this Article 19-200, as follows:

General Duration and Applicability of Article 19-200

1. Subsection 4-802.B.3.a.’s six-month exemption period from Site Plan Review shall be deemed to have commenced on Thursday, October 31, 2013, and shall extend through Wednesday, April 30, 2014 (“the Post-Event Six-Month Period”). The Director may not grant further extensions.
2. During the Post-Event Six-Month Period, this Article 19-200 shall apply to any work for which a County building permit is required to rebuild or restore a legally existing structure damaged or destroyed by the 2013 Extreme Rain and Flood Event and its associated natural forces (unless the work is excluded from this Article 19-200 under Subsection 7, below), and which the owner wishes to be exempt from Site Plan Review. This Article 19-200 may apply instead of Site Plan Review so long as the proposal is to rebuild or restore the structure’s original, legally preexisting floor area. The structure’s location may be changed, provided the change in location significantly reduces the potential risks associated with future extreme rain and flood events or other known natural hazard areas or incidents (such as by moving the structure out of the mapped floodway or floodplain, or otherwise to a less hazardous location on the property). The structure’s height must remain the same, unless the Director (under Subsection 14 below) allows a reasonable height increase to accommodate a specific hazard mitigation requirement.

3. All requirements in Article 4-400 of this Code governing the Floodplain Overlay District shall continue to apply under this Article 19-200, though Site Plan Review for a floodplain development permit (as otherwise required under Subsection 4-802.A.8. of this Code) shall not be necessary, so long as the proposed work falls within the specifications of Subsection 2, above.
4. Legal structures proposed to be restored as provided in Subsection 2, above, are hereafter referred to as “Eligible Structures.” Structures proposed for rebuilding or restoration that are not Eligible Structures, shall be subject to the usual provisions of the Land Use Code; however, if the proposed work does not otherwise trigger Site Plan Review, and is not excluded work under Subsection 7, below, a Hazard Mitigation Review shall be performed under this Article 19-200.
5. After April 30, 2014, all repair, reconstruction, or redevelopment requests related to the 2013 Extreme Rain and Flood Event, whether or not related to an Eligible Structure, shall be subject to the usual provisions of the Land Use Code, unless the Board approves amendments to extend or amend this Article 19-200 or related regulations.

Hazard Mitigation Review Process

6. Before a building permit can be applied for to rebuild or restore any Eligible Structure within the Post-Event Six-Month Period, the Director must first conduct a Hazard Mitigation Review (“HMR”).
7. The following building permits are excluded from the HMR requirement:
 - a. “Flood Recovery, Restoration, and Repair Permits” issued by Building Safety and Inspection Services for disaster-related restoration or clean-up work in the aftermath of the 2013 Extreme Rain and Flood Event involving minor projects related to basement finishing, interior remodels, electrical repairs, reroofing, siding repairs, gas line repairs, plumbing repairs, and replacement of windows, doors, furnaces, boilers, and water heaters.
 - b. A building permit which the Chief Building Official determines is necessary to rectify a hazardous health or safety situation including but not limited to structure stabilization, or to comply with the public health or safety requirements of another governmental entity having lawful jurisdiction over the structure, or to allow for the preservation of a significant historic structure.
 - c. Any excluded building permit under Subsections a. and b., above, may be issued for a temporary period, may require further approval of permanent construction measures meeting other applicable code

requirements, and may result in owners doing work on a temporary or emergency basis by their own choice and at their own financial risk.

8. The purposes of the HMR are for the Director (including the Chief Building Official), with the input of the County Engineer and County Public Health, to:
 - a. Assess the safety of the proposed restoration/construction in light of the actual damage caused by the 2013 Extreme Rain and Flood Event and related hazardous forces triggered by that disaster (such as flooding, debris flows, rockfalls, mudslides, topographic changes or instability, drainage channel shifts, area drainage system impairments or failures, and soil saturation), to the Eligible Structure, the subject property, surrounding properties, and public and private infrastructure serving the subject property; and
 - b. Assure that the proposal complies with the standards of this Article 19-200, so that any such future hazards can be reduced or avoided to the maximum extent practicable.
9. The Director shall administer the HMR process, aided by the County Engineer and County Public Health, with a focus on educating landowners concerning the risks related to extreme rain and flood events, and assisting owners in evaluating reasonable land redevelopment plans and associated hazard mitigation measures, while adequately protecting the public health, safety, and welfare with respect to future storm/water-related hazards.
10. Application for a HMR shall require a pre-application conference (which in the discretion of the Director may be an on-site meeting), and an application submittal, as set forth in Sections 4-803 and 4-804 of this Code. The HMR application shall include information demonstrating that the Eligible Structure to be rebuilt or restored is a legal structure that was damaged or destroyed by the 2013 Extreme Rain and Flood Event or its associated physical forces, and must set forth specific information regarding the extent of the damage which the Event caused to the Eligible Structure, to the subject property, to surrounding properties and drainages, and to infrastructure serving the subject property. The Director may waive application requirements deemed to be not relevant to evaluating the hazards related to any specific proposal, and also may request additional information considered necessary to enable a thorough evaluation of the application.
11. Once a complete application for a HMR is received, the Director shall forward the application to the County Engineer and to County Public Health for an assessment of the Extreme Rain and Flood Event and related hazards associated with the proposal. For any application involving property within the Floodplain Overlay District (Article 4-400 of this Code), the HMR application may be coordinated with the County Engineer's review of any required application for a Floodplain Development Permit.

12. Once the Director receives the referral comments of the County Engineer and County Public Health, and considers any other relevant information of record (including any additional information which the Director discovers through the process is necessary and reasonable to request to complete the review), the Director shall make a decision on the HMR application. The Director shall base the decision on the following standards:
- a. The proposal shall not pose or create a significant potential safety hazard when evaluated against evidence of actual damage caused by the 2013 Extreme Rain and Flood Event (including by the Event's related hazardous forces such as flooding, debris flows, rockfalls, mudslides, topographic changes or instability, drainage channel shifts, area drainage system impairments or failures, and soil saturation), on the Eligible Structure being restored, on the subject property, on surrounding properties, and on public and private infrastructure serving the subject property or other affected infrastructure.
 - b. The proposal shall not alter historic drainage patterns and/or flow rates or shall include acceptable mitigation measures to compensate for anticipated drainage impacts.
 - c. If the Eligible Structure's location is proposed or required to be changed, the new location shall significantly reduce the potential risk associated with future extreme rain or flood events or other known natural hazard areas or incidents; shall not create an unreasonable risk with respect to other natural hazards such as wildfire, subsidence, or erosion; and shall not cause unreasonable harm to significant historic structures or sites, or to significant natural ecosystems and environmental resources including but not necessarily limited to natural areas and natural landmarks, prominent topographic features and excessively steep slopes, riparian corridors and wetland areas, and significant plant communities, wildlife habitat, and wildlife migration corridors, as identified on the Comprehensive Plan or through the HMR process.
 - d. If the Director finds that any of the foregoing standards conflict, the Director shall evaluate the applicability and importance of each of the conflicting standards under the facts of the specific HMR application, and make a reasonable attempt to balance the conflicting standards in reaching a decision, with appropriate priority being given to fulfilling the purposes of this Article 19-200.
13. If the Director determines that the HMR application complies with the foregoing standards, the Director in its discretion may approve the application without conditions. In the alternative, the Director may impose reasonable conditions allowing a determination that the application satisfies the standards.

14. Reasonable conditions may include, but are not limited to, moving the Eligible Structure outside of a mapped floodway or floodplain or known flood-prone area; reorienting the structure or reducing its massing to minimize the effects of hazards on the structure, the subject property, or surrounding properties and infrastructure; installing or arranging appropriate features or improvements to reroute excess waters or protect the Eligible Structure or affected properties from natural hazards; implementing floodproofing or other hazard mitigation measures recommended or required by the Director, the County Engineer, or County Public Health; performing additional hydrologic or technical studies on hazards that may result in additional conditions being added at the building permit stage; requiring reasonable measures in cases where an Eligible Structure's location is changed to significantly reduce the potential risks associated with future natural hazards; and providing that the proposed development comply with any other applicable permitting requirements, including but not limited to those related to access and sanitation. In addition, the Director may allow a reasonable increase in structure height, not to exceed zoning limits, if necessary to accommodate any elevation of the Eligible Structure for floodproofing purposes or to satisfy any other specific hazard mitigation requirement, provided any associated adverse visual impacts of the height increase are appropriately mitigated.
15. If the Director finds that the HMR application cannot comply with the applicable standards, the Director shall deny the application. The Director also may deny an application, or in the Director's discretion delay a decision on the application for further information, if the Director finds that insufficient information has been presented to allow a reasonable evaluation of the hazards associated with the proposed development, or of effective hazard mitigation measures. For applications in the Floodplain Overlay District (Article 4-400 of the Code), the Director may delay a decision until the County Engineer processes any required Floodplain Development Permit.
16. While the Director is not required to make a decision on a HMR application within a specified time, and may delay a decision on a reasonable basis as provided herein, the Director shall make a good-faith effort to process requests as soon as practicable after a complete application has been submitted.
17. The applicant may appeal the Director's final decision on a HMR application using the same process as appeals for Site Plan Review decisions under Article 4-808.
18. Any final HMR approval shall expire one calendar year after its date of issuance, unless within that year the applicant presents the Director with a written request for an extension. If a timely extension request is received, the Director may allow the HMR approval to remain in effect for up to an additional calendar year, upon a showing of good cause, and provided the circumstances surrounding the approval's issuance under this Article 19-200 have not substantially changed.

Applicability of Other Regulations; Enforcement

19. Except as amended in this Article 19-200, all other applicable provisions of the Land Use Code and related County land development, access, Multimodal Transportation, and Public Health regulations shall be in full force and effect as stated therein. Of note, while this Article 19-200 amends Subsections a. and c. of Section 4-802.B.3., it does not amend Subsection 4-802.B.3.b. regarding the exemption from Site Plan Review for replacement of bridges, box culverts, low-water crossings to other structures spanning a creek or other drainage within a mapped floodplain during the Post-Event Six-Month Period, which remains in effect as provided therein. In the event of a conflict between this Article 19-200 and any other code provision, this Article shall control, unless the Director determines otherwise in order to better serve the purposes of this Article 19-200.
20. Where the BOCC has provided specific approval of emergency response actions by the Director, the County Engineer/Transportation Department Director, or other County department heads, related to the need for immediate permitting of repairs to structures, access, and property damaged or destroyed by the 2013 Extreme Rain and Flood Event (including without limitation BOCC Declaration of Local Disaster Emergency Extension #1, adopted September 19, 2013; Extension #2, adopted September 24, 2013, and Extension #3, adopted October 1, 2013), those department heads, in their sound discretion, may continue, modify, or terminate those permitting practices as reasonably necessary to administratively handle the ongoing effects of the disaster recovery effort. Adoption of this Article 19-200 shall, however, immediately terminate the temporary cessation on the issuance of County building permits and floodplain development permits authorized in Paragraph 1 of the BOCC's Declaration of Local Disaster Emergency Extension #3 (October 1, 2013).
21. The County may enforce this Article 19-200 through the provisions of Section 17-300 of this Code. Nothing in this Article shall limit the County's existing enforcement authority under Articles 14 or 17 of this Code, the Building Code, or other applicable law.



Boulder County

Boulder County
Land Use Department
Publications

Flood Restoration and Repair Checklist

Land Use Department
Courthouse Annex Building
2045 13th Street
PO Box 471
Boulder, CO 80302

Building Safety & Inspection Services:
t: 303-441-3925
f: 303-441-4856
e: building_official@bouldercounty.org
w: www.bouldercounty.org/lu

Office Hours:
Monday – Friday 8 a.m. to 4:30 p.m.
Closed Tuesdays 8 to 10 a.m.

Building Permits can be applied for and issued until 4 p.m.

Flood Restoration and Repair Checklist

These permits are for flood repairs such as basement finishing, interior remodel, window replacement due to flood damage, as well as replacement of furnace/boilers, water heaters, electrical repairs, reroof, siding, gas line repair and plumbing. The Flood Restoration and Repair permit fee is waived. Use and sales tax will still be collected based on original permit cost.

Permit #		
Owner Name		
Address		
City	State	Zip Code
Phone Number		
Email Address		

Check the following site conditions that apply:

- Flooding from ground or surface water
- Flooding from sewer or septic backup
- Furnace damaged
- Plumbing fixtures damaged (sinks, tub/shower)
- Septic system damaged by flood waters (See "Signs of Septic System Failure" on Page 2)
- Water heater damaged
- Water-damaged electrical (if wiring has been wet, it will need to be replaced)
- Windows damaged
- Water in crawlspace

Provide the following information:

Highest water level in the basement during the flood:

- More than 15 inches? If so, how deep? _____

Sanitation Service

- Septic Public Vault

Number of bedrooms on each level (if public sanitation- NA):

- Basement _____ When was the basement finished? _____
- 1st _____
- 2nd _____
- Other _____

Number of bedrooms within Accessory Structures:

- All levels _____

Project Description: _____

Please note the following:

- Structural repairs not be eligible for this permit. The structure will need to be evaluated by a Colorado licensed engineer and floor plans will be required for a building permit.
- If windows are to be replaced in a basement bedroom, at least one window in that bedroom must meet 2012 IRC emergency escape and rescue opening requirements. If no bedrooms are present, at least one emergency and rescue opening is required. Minimum U-factor .30.
- Smoke alarms, hard wired w/ battery backup, are required when alterations, repairs, or additions occur.
- Listed carbon monoxide alarms are required in a single-family dwellings containing fuel-fired appliances, fireplaces, or attached garages. The alarm must be installed within 15 feet of the entrance to each sleeping room.

Signs of Septic System Failure

If any of the following are checked, then a septic system repair permit is likely needed. Please call Boulder County Environmental Health at 303-441-1564 to talk to a Water Quality Specialist:

- There is a change in grading in the area of the septic system.
- An area of the septic system has collapsed.
- There is significant erosion in the area of the septic system.
- There are signs of exposed gravel or infiltrators in the absorption bed/trench.
- Parts of the septic system (absorption bed/trench, septic tank, pipes) are exposed.
- Electrical components or wiring in a lift/pump tank are inundated with water.
- There are sewage back-ups or very slow sewage drainage inside the home.
- There is pooling, flowing, or surfacing sewage from the septic system.

Visit www.SepticSmart.org and click on "Permit Process" for more information on septic systems.

EnergySmart is offering flood impacted residents advising on:

- Replacing or adding insulation in the basement, crawlspace or attic, and the repairing or replacement of furnaces, water heaters, ducts, washers and other appliances.
- Finding contractors and independent bid review assistance.
- Identifying incentives and low-interest loans for any energy efficiency replacements.
- Advisors can also connect you to other flood-related resources. Call **303-544-1000** or visit www.EnergySmartYES.com.

Visit www.BoulderCounty.org/flood for more information on flood recovery. For questions, call the Building Safety & Inspection Services Team at **303-441-3925**, or email building_official@bouldercounty.org.

DECLARATION OF LOCAL DISASTER EMERGENCY

EXTENSION #3

WHEREAS, pursuant to the authority granted by C.R.S. § 24-33.5-709, Boulder County declared a state of local disaster emergency on September 12, 2013 (the “Original Declaration”) in response to the Front Range Flood as that term was defined in the Original Declaration, which was ratified, amended, and extended by the full Board on September 19, 2013 (“Extension #1”), and further extended by the full Board on September 24, 2013 (“Extension #2”) to October 30, 2013; and

WHEREAS, Boulder County’s Land Use Code contains provisions for rebuilding structures damaged or destroyed by means outside the control of the property owner; however, specific disaster events may warrant modified permitting and approval procedures to allow property owners to rebuild in a timely, safe, and responsible manner while also encouraging reasonable improvements in redevelopment consistent with current regulations and the Comprehensive Plan; and

WHEREAS, at the duly noticed business meeting on October 1, 2013, the Board determined that text amendments to the Land Use Code are in fact necessary and appropriate to strike an appropriate balance between allowing flood-affected citizens to rebuild their homes, businesses, and lives, while assuring that future redevelopment is significantly better fortified against flooding, forces associated with flooding like mudslides, and the resulting uncontrolled, terraforming effects, and authorized staff to proceed to propose amendments to the Planning Commission and the Board as soon as possible (the “Front Range Flood Amendments”); and

WHEREAS, in accordance with the County’s authority to propose and consider meaningful zoning regulation amendments without risking the establishment of contrary structures or uses through the issuance of building permits during the limited period when regulations are considered, and as authorized by Land Use Code section 17-300(B), the Board finds it appropriate to order a temporary cessation on the issuance of building permits while the Front Range Flood Amendments are pending.

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Boulder County as follows:

1. The Building Official shall not issue any building permit for any structure destroyed or damaged by the Front Range Floods (whether through flooding, debris flows, rock slides, or other hazards), nor shall the County Engineer issue any floodplain development permit under Land Use Code section 4-400 for proposed development within the floodplain, while amendments to the Land Use Code are being considered. Exceptions to this temporary cessation on permit issuance may be made where the Land Use Director and County Engineer determine the proposed development does not pose significant geologic risk (whether through flooding, debris flows, rock slides, or other hazards). By way of example, not limitation, permits which may be issued include Flood Recovery, Restoration and Repair Permits designed to allow flood repairs such as basement finishing, interior remodels, electrical repairs, reroofing, siding repairs, gas line repairs, and plumbing repairs, and replacements due to flood damage of windows, furnaces,

boilers, and water heaters. The Board hereby ratifies the Land Use Director's decision to waive permit fees (but not sales and use taxes) for Flood Recovery, Restoration and Repair Permits. This temporary cessation shall remain in effect for six months from the date of this order, or until the date of final disposition of the proposed text amendments by the Commissioners, whichever occurs first. In addition, the Board reserves the right to adjust this temporary cessation of permits as further analysis on geologic hazards is conducted and draft code language is developed.

2. The Board hereby ratifies the decisions of the Transportation Director and the Land Use Director to issue certain permits to facilitate residents affected by the Front Range Flood regaining access to their properties as soon as practicable, as described below.

Residents who need to repair or rebuild private roads or driveways, including culvert replacement, should contact the Transportation Department to determine what permits are required. The Boulder County Multimodal Transportation Standards govern private access construction; see Section 5.5 and standard drawings in the back of the document.

Temporary Access/Stream Crossings: Residents/property owners who need to repair or rebuild private roads or driveways, including culvert replacement, for the purposes of recovery of personal possessions, protection of property, slope or structure stabilization, need to obtain a temporary access permit from the Transportation Department. The County is streamlining the process by waiving the access permit fee, not requiring a grading permit for access restored at the same location as existed before the flood provided no new cut and fill areas are created elsewhere on the property, and providing technical assistance to residents to help meet County requirements for culvert replacement. Any construction performed is done at the property owner's risk, as in many cases the final location, elevation and design of the reconstructed County road and/or the final stream alignment may vary from its current condition. The County cannot commit that a reconstructed road will connect to a temporary structure or that the temporary structure will meet County requirements for bridge replacement. After a temporary access is constructed as permitted by a temporary access permit, further permits may be required for permanent access and property owners may be subject to additional requirements or conditions. The County is not responsible for additional improvements or reconstruction costs of the private connections or structures that may be necessary for to safely connect to the realigned or reconstructed road. Similarly, residents who install temporary crossing structures without permits do so at their own risk.

Permanent Access: Residents who seek to restore permanent access to property over a waterway must obtain all applicable permits for the location and type of structure, including floodplain development permits and building permits.

Repair and Reconstruction of Private Driveways: Property owners who wish to repair and rebuild private driveways on private property need not obtain an access permit or a grading permit for access restored at the same location as existed before the flood, provided no new cut and fill areas are created elsewhere on the property. Property owners should be aware that new, or realigned driveways, may trigger the need for grading or other permits administered by the Land Use Department depending on the

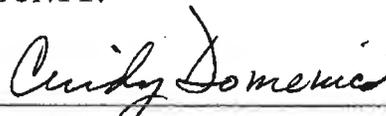
amount of cut and fill, whether the driveway will be rebuilt in a new location, and other factors.

3. To the extent this Extension #3 conflicts with previous declarations or extensions thereof, specifically the directive in Extension #1 to Land Use and Transportation Department staff to prioritize flood recovery efforts over non-flood-related work, this Extension #3 and its order of temporary cessation controls. All other declarations and directives in Extensions #1 and #2 not inconsistent with this Extension #3 remain in effect until further notice.
4. The Board hereby ratifies all actions reasonably necessary to cope with the emergency taken by individual commissioners, department heads, and emergency management personnel since Extension #2.
5. Copies of this proclamation shall be given prompt and general publicity and shall be filed promptly with the County Clerk and Recorder, the Office of Emergency Management, and the Colorado Division of Emergency Management.

A motion to this effect was made by Commissioner Gardner, seconded by Commissioner Jones, and passed by a 3-0 vote of the Board.

ADOPTED on this 1st day of October, 2013.

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



Cindy Domenico, Chair



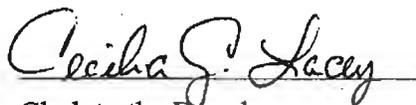
Deb Gardner, Vice Chair



Elise Jones, Commissioner



ATTEST:



Clerk to the Board