

# BUSINESS MEETING ITEM COVER SHEET

DEPARTMENT      Transportation

DIVISION

TITLE                      Resolution 2007-93 (Temporary moratorium on development  
in City of Boulder South Boulder Creek Flood Mapping Study)

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DOCUMENT TYPE Resolution

SUBTYPE              Emergency

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BUSINESS MEETING DATE      10/23/07

COMMISSIONERS' ACTION       Approved               Denied               Other

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ORIGINAL(S) RETURNED TO      Vault

AGENDA ITEM NUMBER

**5**

COMMENTS



# Transportation Department

2045 13th Street • Boulder, Colorado 80302 • (303) 441-3900 • Fax: (303) 441-4594

October 23, 2007

## MEMORANDUM

**To:** Board of County Commissioners

**From:** Dave Webster, P.E., CFM, Water Resources Engineer/Floodplain Manager *DW*  
George Gerstle, Director *GG*

**Subject:** Emergency Resolution Imposing a Temporary Moratorium on Land Development for Properties in Unincorporated Boulder County in the Revised 100-Year Floodplain of South Boulder Creek

On August 17, 2007, the City of Boulder submitted its South Boulder Creek Flood Mapping Study to the Federal Emergency Management Agency (FEMA) for its review. Prior to regulating floodplain development in accordance with new studies, Boulder County must wait for the Colorado Water Conservation Board to officially designate and approve these studies, which comes after FEMA's review. The estimated time for FEMA to review a new study is nine to twelve months. It could take an additional six months for state designation and county adoption processes.

As a result, given the existence of new technical data with significant changes and potential long-term impacts, for public health and safety reasons, the Transportation Department requests the Board's consideration and approval of the attached resolution that imposes a temporary moratorium on applications for land development on properties affected by the revised flood hazard boundaries of South Boulder Creek. The moratorium would take effect immediately and will remain effective until the County enacts zoning amendments in response to the flood mapping study.

Attached, for your reference, are informational maps that depict affected properties between the current and proposed floodplain boundaries.

## RECOMMENDATION

The Boulder County Transportation Department recommends that the Board approve the emergency resolution imposing a temporary moratorium on development in the South Boulder Creek Flood Mapping Study Area.

## Attachments

Cindy Domenico  
County Commissioner

Ben Pearlman  
County Commissioner

Will Toor  
County Commissioner

# South Boulder Creek

**130**

Parcels in the proposed South Boulder Creek floodplain and outside existing floodplain

Existing South Boulder Creek floodplain

Parcels in the existing South Boulder Creek floodplain

Existing South Boulder Creek Floodplain (1986)

Existing South Boulder Creek Floodplain (1986)

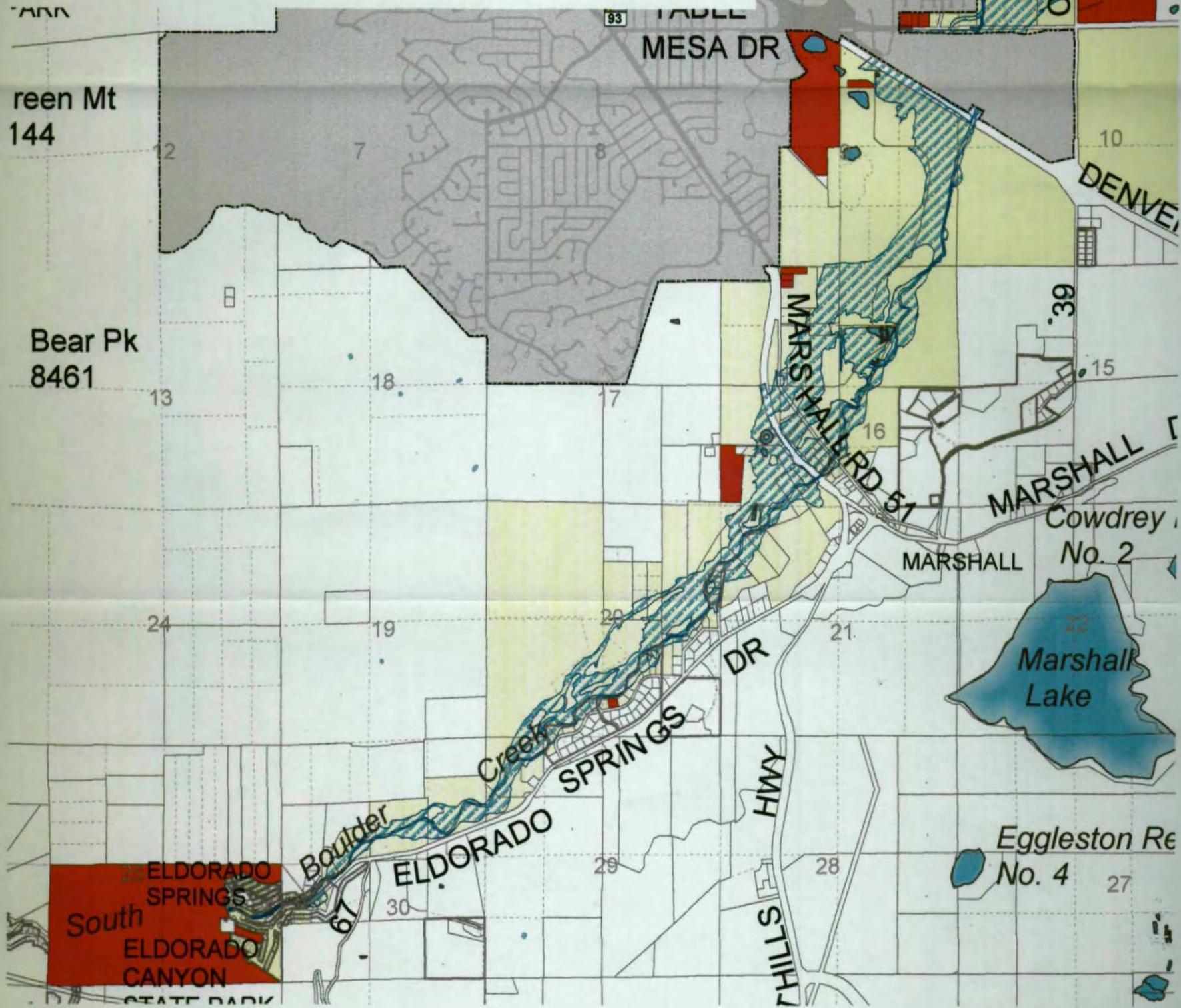
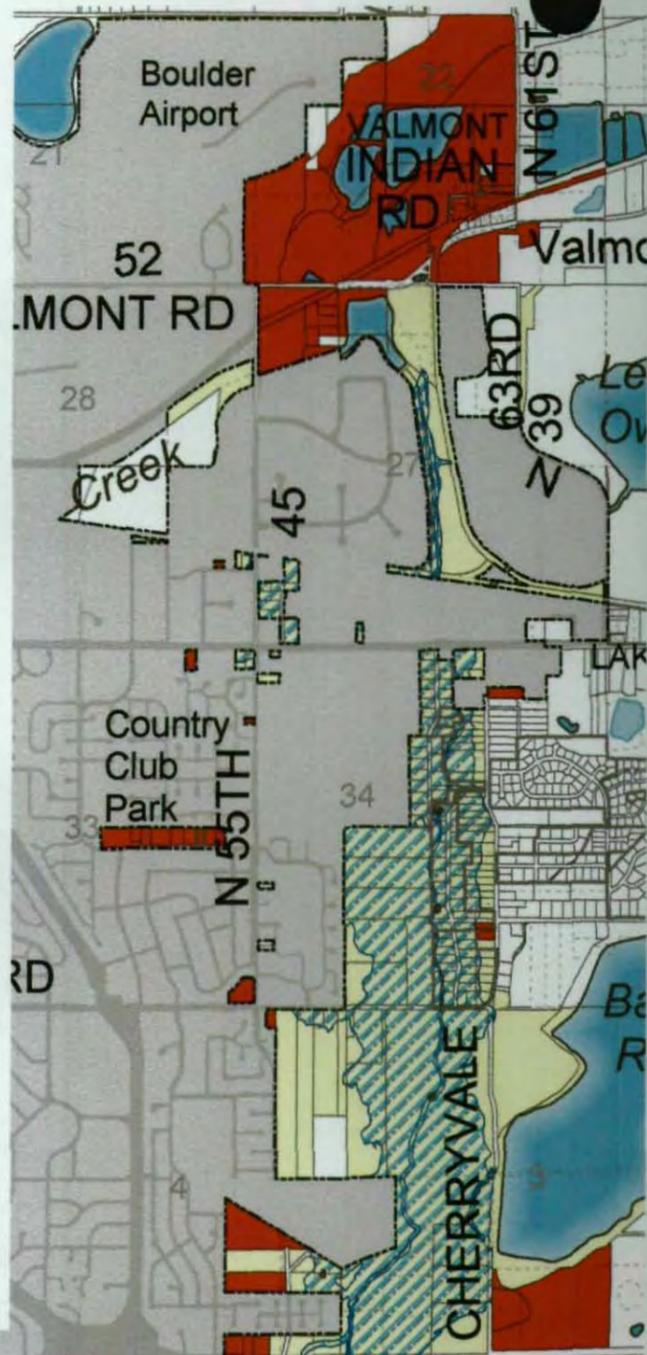


The areas depicted here are approximate. More site-specific studies may be required to draw accurate conclusions.

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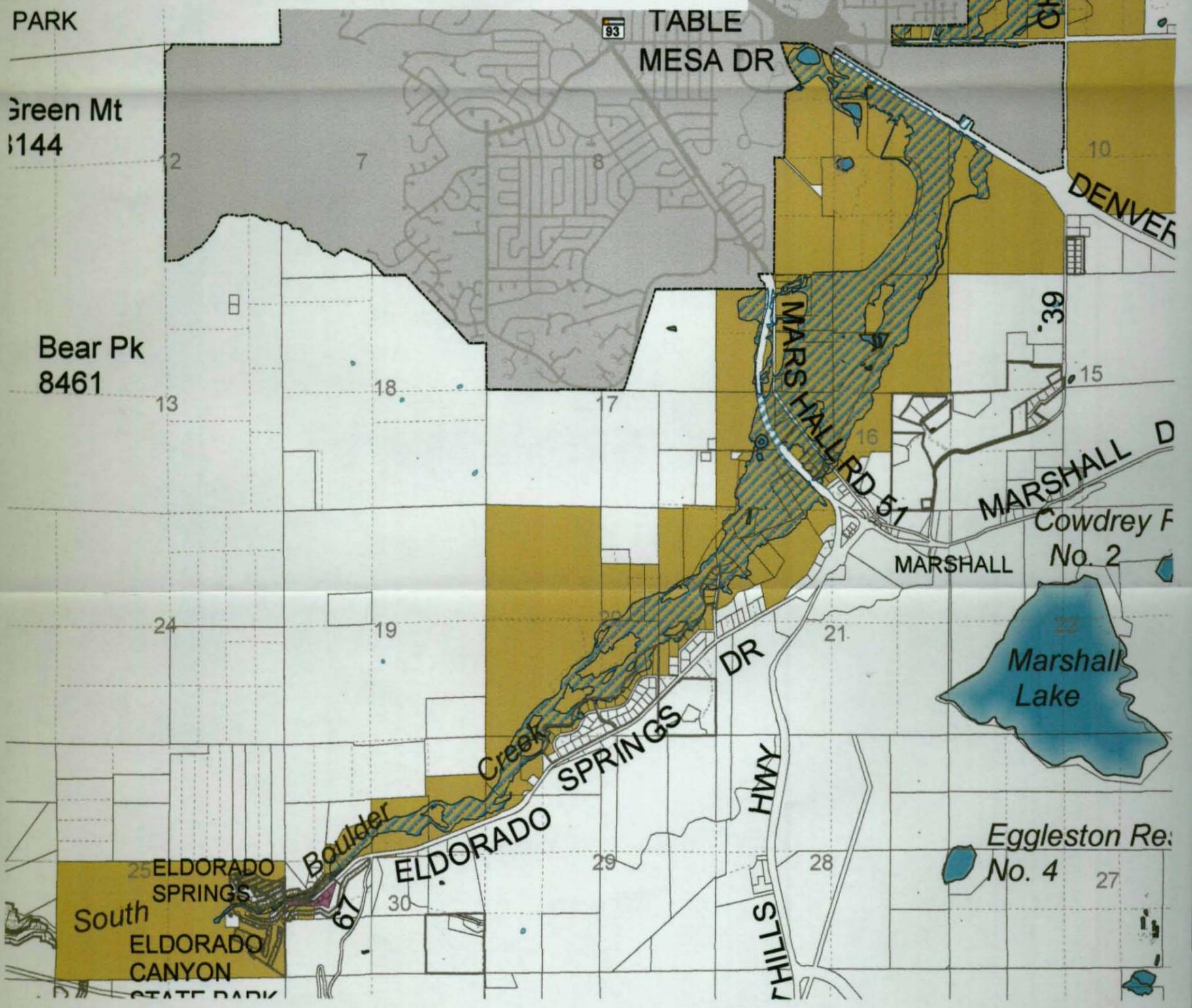
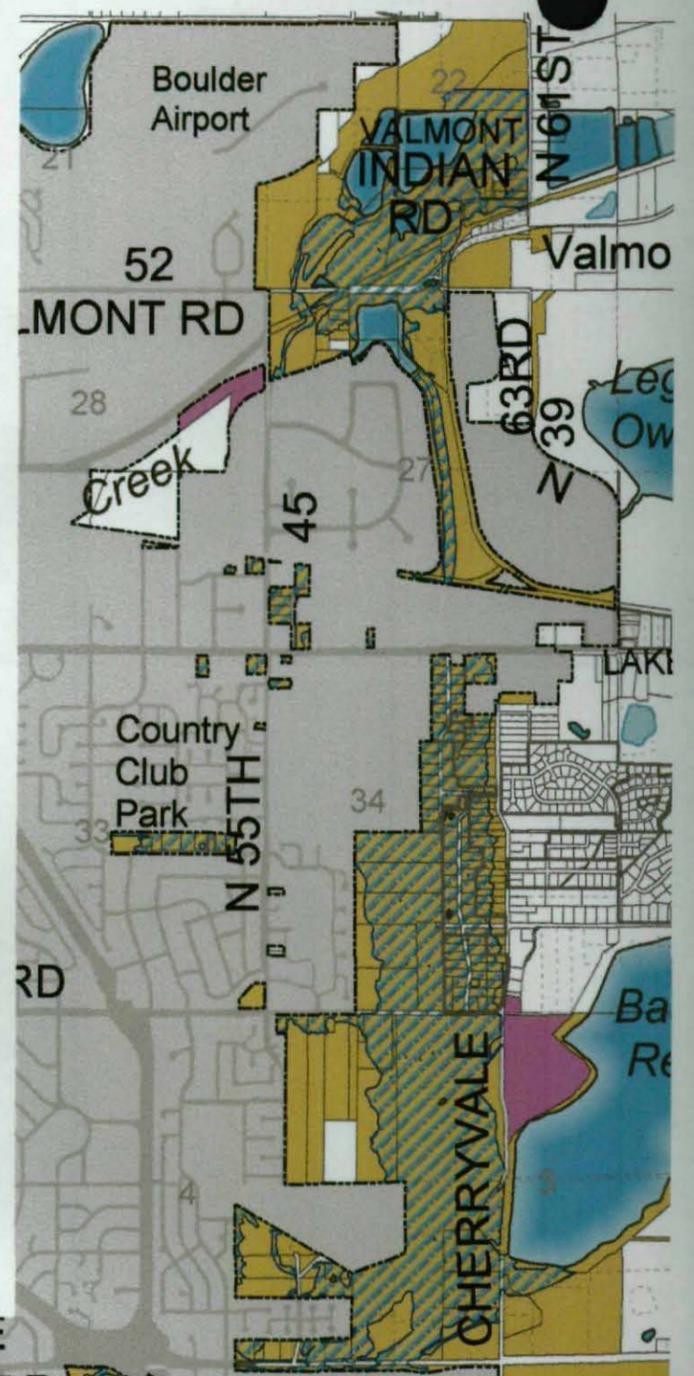
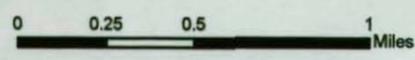
# South Boulder Creek

- 44  
Parcels in the existing South Boulder Creek floodplain and outside the proposed flood study
- Parcels in the proposed South Boulder Creek floodplain
- Proposed South Boulder Creek Floodplain (2007)



The areas depicted here are approximate. More site-specific studies may be required to draw accurate conclusions.

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RESOLUTION 2007-93

AN EMERGENCY RESOLUTION IMPOSING A TEMPORARY MORATORIUM OF REASONABLE DURATION ON BOULDER COUNTY'S PROCESSING OF APPLICATIONS FOR PROPOSED LAND DEVELOPMENT IN THE UNINCORPORATED AREA WHICH IS SHOWN ON THE REVISED 100-YEAR FLOODPLAIN IN THE CITY OF BOULDER'S SOUTH BOULDER CREEK FLOOD MAPPING STUDY AS SUBMITTED TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY ON AUGUST 17, 2007

WHEREAS, C.R.S. Section 29-20-104 provides the County of Boulder ("the County") with the authority to plan for and regulate the use of land by regulating development and activities in hazardous areas, and regulating the use of land on the basis of the impact thereof on the community or surrounding areas; and

WHEREAS, C.R.S. Section 30-28-106 gives the County the authority to process and adopt a master plan for the physical development of the unincorporated territory of the County, which plan considers, among other issues, the general location of flood control areas and the location of floodplains, floodways, and flood risk zones; and

WHEREAS, the Natural Hazards Element of the adopted Boulder County Comprehensive Plan has established the goal that "[i]nappropriate 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"; and

WHEREAS, with respect to the hazard of flooding, the Natural Hazards Element of the County's Comprehensive Plan states the policy that the County "should strongly discourage and strictly control land use development from locating in designated floodplains, as identified in the Boulder County Zoning Maps"; and

WHEREAS, C.R.S. Section 30-28-111 gives the County authority to zone the unincorporated territory of the County, including by making "provisions establishing, regulating, and limiting" land uses "on or along any storm or floodwater runoff channel or basin as such . . . channel or basin has been designated and approved by the Colorado water conservation board to lessen or avoid the hazards to persons and damage to property resulting from the accumulation of storm or floodwaters"; and

**WHEREAS**, in Article 4-400 of the duly adopted zoning regulations of the Boulder County Land Use Code ("the Land Use Code"), the County has established a Floodplain Overlay District whose boundaries have been set according to specific, adopted floodplain maps approved by the Colorado Water Conservation Board ("CWCB") and by the County's Board of County Commissioners ("the Board"), which maps are listed in Article 4-402 of the Land Use Code; and

**WHEREAS**, as part of Article 4-402 the County has adopted a map encompassing "the portion of the Floodplain study entitled 'South Boulder Creek Flood Hazard Delineation,' July, 1986, prepared for the Urban Drainage and Flood Control District and Boulder County in cooperation with the Colorado Water Conservation Board, which includes South Boulder Creek from Eldorado Springs to the Colorado and Southern Railroad crossing, approximately 1100' downstream from Arapahoe Road (S.H.7)"; and

**WHEREAS**, on February 15, 1999, the County, along with the Urban Drainage and Flood Control District, the City of Boulder ("the City"), and the University of Colorado, entered into an "Agreement Regarding Funding of Master Planning for South Boulder Creek," to undertake a study to evaluate and provide a "new hydrology for the South Boulder Creek watershed and a master plan for South Boulder Creek including hydrologic information; the locations, alignments and sizing of channels, [and] detention/retention ponds; and other facilities and appurtenances needed to provide mitigation of flood hazards" within the master planning area, defined as South Boulder Creek from Boulder Creek to upstream of Highway 93; and

**WHEREAS**, subsequent to the study produced under the 1999 funding agreement, the City has taken the lead to develop the current and ongoing South Boulder Creek Flood Mapping Study ("the Study"), whose purpose is to analyze the necessity of improved floodplain mapping using more sophisticated scientific methods and techniques than those used in previous studies; to provide a comprehensive overview and assessment of the flood hazard areas along the studied portion of South Boulder Creek; and to replace the above-referenced 1986 South Boulder Creek Flood Hazard Delineation map which currently defines the County's floodplain overlay zoning district in this area and is considered to be outdated; and

**WHEREAS**, the City recently has completed its portion of the Study, and, as part of the Study, has mapped what its engineering consultants consider to be the proper, revised 100-year floodplain (including flood conveyance zone (floodway) and high hazard zone (floodplain) of the studied portion of South Boulder Creek), which encompasses lands mostly within the City but also within the unincorporated territory of the County; and

**WHEREAS**, on August 17, 2007, the City submitted the Study to the Federal Emergency Management Agency (FEMA) for review and approval; and

**WHEREAS**, following FEMA review, it is anticipated that the Study will be submitted to the CWCB for state approval; and

**WHEREAS**, the South Boulder Creek floodplain maps which the City has submitted to FEMA as part of the Study, differ from the County's currently adopted floodplain overlay zoning district based on the outdated 1986 South Boulder Creek Flood Hazard Delineation map referenced above; and

**WHEREAS**, Article 4-402.F. of the Land Use Code provides that if the CWCB "officially designates and approves additional floodplain reports affecting any river or creek in the unincorporated area of Boulder County, and upon review by the Federal Emergency Management Agency, the County Engineer shall review such reports and make recommendations to the [County] Planning Commission regarding necessary amendments or additions to the boundaries of the FO [floodplain overlay] district," with any such map amendments to be processed as amendments to the zoning maps of the Land Use Code pursuant to Article 16 of the Land Use Code; and

**WHEREAS**, the Board expects that FEMA and the CWCB will approve, in whole or in part, the maps contained in the Study, as part of the ongoing master planning process for the South Boulder Creek floodplain, and that following those approvals, the County Engineer will recommend that the County Planning Commission and the Board consider and approve appropriate zoning map amendments to the floodplain overlay district boundaries for South Boulder Creek within the Study area; and

**WHEREAS**, potential flooding along South Boulder Creek is a significant concern to the Boulder community, including the affected portions of the unincorporated County, with studies conducted over the last several years identifying the potential for South Boulder Creek to flood an area containing over 1,000 buildings located west of the Creek and north of U.S. Highway 36; and

**WHEREAS**, because this significant flooding potential was not considered by earlier studies, ongoing land development in the Study area has reached substantial build-out without proper consideration for flood protection measures; and

**WHEREAS**, as a result, the County's adopted zoning map along the portion of South Boulder Creek included in the Study appears to be in error, and does not adequately address the danger that new development in the area may pose to its inhabitants as well as to lands downstream in a flood, and also may not provide for adequate floodproofing of development which the Study now shows to be in harm's way; and

**WHEREAS**, due to the threat to the public health and safety which this situation poses, it is both appropriate and necessary for the Board to impose an emergency temporary moratorium on development in the affected Study area, of reasonable duration, to allow the Study to be reviewed and approved through the ongoing flood master planning process, and, as an anticipated outcome of that process, to allow time for the County to adopt appropriate zoning map amendments; and

**WHEREAS**, in light of the foregoing recitals and findings, an emergency exists that warrants the immediate enactment of this Resolution and temporary moratorium, to protect the public health and safety, and to avoid ongoing development which, during the ongoing master planning phase and associated zoning map amendment process, may contravene the results of the Study and put the public at risk; and

**WHEREAS**, the Board is aware that development applications in the affected Study area have recently been submitted and are in the process of being reviewed, and reasonably anticipates that applications for additional development may be filed in the

coming months while the Study is being officially reviewed and before the County has had the opportunity to consider the outcome of the Study's master planning process and adopt appropriate zoning map changes; and

**WHEREAS**, the Board currently estimates that the ongoing official review of the Study, and the time needed for the County to adopt associated zoning map amendments, altogether will take approximately 18 months; and

**WHEREAS**, the Board has the legal authority to adopt this Resolution and temporary moratorium pursuant to C.R.S. Sections 29-20-101, et seq., and the Colorado Supreme Court's decision in *Droste v. Board of County Commissioners of the County of Pitkin*, 159 P.3d 601 (Colo. 2007); and

**WHEREAS**, considering the emergency public health and safety need found to exist, above, the Board has determined to adopt this Resolution, and make this temporary moratorium effective on an emergency basis, as of the Board's public business meeting held to consider the emergency adoption of this temporary moratorium on October 23, 2007; and

**WHEREAS**, the Board further determines that it will schedule and hold a public hearing on this temporary moratorium shortly after this Resolution's emergency adoption, to take public comment on the moratorium and consider whether the Board should extend, amend, or rescind the terms of the moratorium as set forth below.

**NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

1. Effective on and after October 23, 2007, the Land Use Department and County Engineer shall not accept or process any application, or issue any permit or approval, for development within the 100-year floodplain as mapped in the Study and as shown on Exhibit A that is attached to and incorporated into this Resolution. For purposes of this Resolution, "development" means the installation or alteration of any structure on land, the grading, movement, or recontouring of land, or any other use of land, that requires a permit from the County Land Use Department or County Transportation Department.

2. The following development is exempt from the temporary moratorium imposed in Paragraphs 1 and 2, above:

A. Development which the County Engineer determines can comply with the County's current Floodplain Overlay District regulations (Article 4-400 of the Land Use Code), as administered according to whichever maps (the Study's map or Article 4-400's currently adopted floodplain map) the County Engineer determines to be the more restrictive (i.e., the more protective with regard to flood hazard concerns), provided that the applicant/owner agrees to develop in accordance with the County Engineer's determination, and provided that the County Engineer confirms that the development will not adversely change the baseline conditions on which the Study as submitted to FEMA was based.

B. Development which does not propose (1) a new structure; (2) an addition to the footprint, size, or height of an existing structure; or (3) grading or other development which the County Engineer determines may raise the land surface, alter land contours, or otherwise change the land surface or result in physical obstructions in a way presenting a potential flood hazard.

C. Development which the Board has already reviewed at a public hearing and specifically approved with respect to its impacts on the South Boulder Creek floodplain as delineated in the Study.

D. Development specifically approved in a County building permit issued prior to the effective date of this Resolution and validly maintained thereafter.

E. Development which possesses either a statutory or common law vested right.

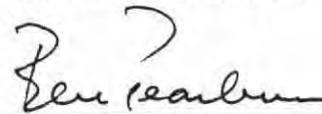
3. The emergency temporary moratorium imposed in this Resolution shall remain in effect for 45 days after the date of its adoption on October 23, 2007. The Board will provide advance notice of and hold a public hearing to take testimony on the merits of this temporary moratorium, to determine whether the temporary moratorium should be extended, amended, or rescinded.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Board shall hold a public hearing on the emergency temporary moratorium on development imposed in this Resolution on the following date and time: Tuesday, November 13, 2007, at 5:00 p.m., in the Board's public hearing room, third floor, Boulder County Courthouse, 1325 Pearl Street, Boulder, Colorado. The Board will publish notice of this public hearing in the *Boulder Daily Camera* at least one (1) calendar week prior to the hearing date. The Board also directs the Land Use Department staff to mail, as soon as possible, advance notices of the November 13 public hearing to the affected property owners of record.

A motion to approve the foregoing Resolution imposing an emergency temporary moratorium on development in the South Boulder Creek Flood Mapping Study area, as stated above, was made by Commissioner TOOR, seconded by Commissioner DOMENICO, and passed by a 3-0 vote of the Board.

ADOPTED and effective on this 23rd day of October, 2007.

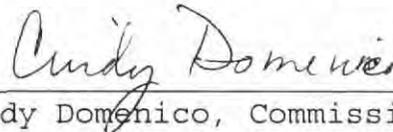
BOARD OF COUNTY COMMISSIONERS  
OF BOULDER COUNTY:



Ben Pearlman, Chair



Will Toor, Vice Chair



Cindy Domenico, Commissioner



ATTEST:



Clerk to the Board

# South Boulder Creek

## EXHIBIT A

### RESOLUTION 2007-93

 Proposed South Boulder Creek 100 Year Floodplain



The areas depicted here are approximate. More site-specific studies may be required to draw accurate conclusions.

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