

## RESOLUTION 2014-81

**A Resolution approving Boulder County Land Use Docket #DC-14-0004: Proposed text amendments to Article 19, Special Approval Procedures For Redevelopment And Hazard Mitigation Following Natural Disasters and companion changes to Articles 4-400, 4-600, 4-800, 4-1000, the Boulder County Multimodal Transportation Standards, and other related sections of the Boulder County Land Use Code**

### Recitals

A. The Board of County Commissioners of Boulder County (“the Board”) is authorized to amend the text of County’s Zoning Regulations according to the procedures in the regulations and C.R.S. § 30-28-112, -116 and -133.

B. The Board is empowered to adopt regulations related to the control of land use under Article 65.1 of Title 24 (Areas and Activities of State Interest); Articles 67 and 68 of Title 24 (Planned Unit Developments and Vested Rights); Article 20 of Title 29 (Local Land Use Enabling Act); Articles 11 and 15 of Title 30 (County Powers and Police Power); Article 1 of Title 32 (Special District Control); and Article 2 of Title 43 (County Highways), C.R.S.

C. By Resolution 94-185, adopted October 18, 1994, the Board approved a unified Boulder County Land Use Code (“the Land Use Code”), which the Board has amended on subsequent occasions; and

D. In Docket #DC-10-0006, at a public meeting on September 21, 2010, the Board adopted regulations adding a new Article 19 and 19-100 to facilitate rebuilding following the Fourmile Canyon Fire. These regulations are codified in Resolution 2010-132.

E. In Docket #DC-13-003, at a public meeting on October 1, 2013, the Board adopted regulations in Article 19-200 of the Code to govern and guide the reconstruction of destroyed or damaged structures in response to the Front Range Extreme Rain and Flood Event (September, 2013). These regulations are codified in Resolution 2013-103.

F. In Docket (#DC-14-0004) (“the Docket”), the Boulder County Land Use Department staff proposed additional text amendments to amend Article 19 of the Code, Procedures Following Disasters, as well as sections of Article 4 of the Code (namely 4-407 Floodplain Development Permit notice requirements during a declared disaster, 4-601 Review Criteria related to hazards for Special Uses and Limited Impact Special Uses, and 4-806 Site Plan Review Standards related to hazards) (“the Proposed Amendments”), as stated in the memorandum and recommendation of the County Land Use Department dated October 7, 2014, with its attachments (“the Staff Recommendation”).

G. The Boulder County Planning Commission (“the Planning Commission”) held a duly noticed public hearing on the Proposed Amendments on September 17, 2014, recommended approval of the Proposed Amendments, and certified the Docket for action to the Board.

H. On October 7, 2014, the Board held a duly noticed public hearing on the Docket and considered the documents and testimony presented by the County Land Use Department staff and the testimony of three members of the public,

I. Based on the Public Hearing, the Board finds that the Proposed Amendments included in Exhibit A meet the criteria for text amendments contained in Article 16 of the Land Use Code, in that the existing text is in need of amendment; the Proposed Amendments are not contrary to the intent and purpose of the Land Use Code; and the Proposed Amendments are in accordance with the Boulder County Comprehensive Plan..

J. The Board further determines that the Proposed Amendments in Exhibit A do not constitute any substantial departure from the Planning Commission’s Docket and do not warrant re-referral to the Planning Commission.

Therefore, the Board Resolves:

1. The Proposed Amendments in Exhibit A are approved for incorporation into the Land Use Code, effective October 14, 2014.

2. Under §30-28-125, C.R.S., the Board authorizes the Clerk to the Board to transmit this Resolution, with its Exhibit A, to the County Clerk and Recorder for filing and appropriate indexing. This transmittal should state recording Reference **No. 2735571**, the recording of the Boulder County Land Use Code on November 4, 2005, which this transmittal amends.

[Signature Page to Follow]

A motion to approve the Proposed Amendments, was made at the Public Hearing by Commissioner Jones, seconded by Commissioner Gardner, and passed by a 3-0 vote.

**ADOPTED** on this 14<sup>th</sup> day of October, 2014, effective on the 14<sup>th</sup> day of October, 2014.

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



Cindy Domenico  
Cindy Domenico, Chair

Deb Gardner  
Deb Gardner, Vice Chair

Elise Jones  
Elise Jones, Commissioner

ATTEST:

Cecilia J. Lacey  
Clerk to the Board

1  
2 **DOCKET DC-14-0004: PROPOSED TEXT AMENDMENTS TO**  
3 **ARTICLE 19, SPECIAL APPROVAL PROCEDURES FOR**  
4 **REDEVELOPMENT AND HAZARD MITIGATION FOLLOWING**  
5 **NATURAL DISASTERS, AND COMPANION CHANGES TO**  
6 **ARTICLES 4-400, 4-600, 4-800, 4-1000, THE BOULDER COUNTY**  
7 **MULTIMODAL TRANSPORTATION STANDARDS, AND OTHER**  
8 **RELATED SECTIONS OF THE CODE AS APPROPRIATE**

9 \_\_\_\_\_  
10  
11 **Article 19 • Special Approval Procedures for Redevelopment**  
12 **Following Natural Disasters**

13  
14 **Purpose:**

15 *(Amend PURPOSE statement, as follows):*

16 Boulder County is vulnerable to natural and human caused disasters that can damage property and  
17 cause injury or death, including wildfires, flood, hail storms, rock slides, blizzards, high winds, and  
18 tornadoes. Boulder County's Land Use Code contains provisions for rebuilding structures damaged or  
19 destroyed by means outside the control of the property owner; however, specific disaster events may  
20 warrant modified permitting and approval procedures to allow property owners to rebuild in a timely, safe,  
21 and responsible manner while also encouraging reasonable improvements in redevelopment consistent  
22 with current regulations and the Comprehensive Plan.

23 In addition, to respond appropriately in a disaster emergency, extraordinary actions must be taken quickly  
24 and efficiently. Some actions must occur faster than previously established permit processing timelines  
25 allow. Some actions require uses not normally allowed in certain zones, or not allowed without  
26 discretionary review, or not allowed without certain public process.

27 This Article addresses disaster emergency response in two ways. First, Section 19-100 grants temporary  
28 authority to certain county staff, upon the declaration of a local, state, or federal disaster emergency  
29 affecting Boulder County. Second, sections 19-200 and 19-300 include regulations tied to specific  
30 disasters, namely the Fourmile Canyon Fire of September 2010 and the Front Range Extreme Flood and  
31 Rain Event of September 2013.

1 (Add a NEW ARTICLE 19-100 related to EMERGENCY PROCEDURES, as follows):

## 2 19-100 Emergency Procedures and Permitting

3 A. Duration – Upon the formal declaration of a local, state, or federal disaster emergency affecting  
4 Boulder County, the authority granted certain county staff by this section 19-100 is activated for  
5 six months, unless and until such authority is terminated, extended, or otherwise amended by the  
6 Board of County Commissioners.

### 7 B. Damage Assessment

- 8 1. If necessary, the County will conduct Damage Assessment pursuant to the Damage  
9 Assessment Annex to the Boulder County All Hazards Plan, as reflected by placards placed  
10 on structures classifying the nature of the damage to that structure.
- 11 2. Once a placard has been attached to a building, it shall not be removed, altered, or covered  
12 by anyone other than an authorized representative of the County or, in the alternative, without  
13 written consent by the County. Failure to comply with this prohibition may be considered a  
14 violation under the Boulder County Building Code or Articles 14 or 17 of the Land Use Code.

### 15 C. Development Suspension

- 16 1. The Land Use Director, County Engineer, or Chief Building Official shall have the authority to  
17 establish a moratorium on the issuance of permits they administer including but not limited to  
18 building permits, access permits, and acceptance of land use permit applications or other  
19 permit applications related to the use, development, and occupancy of private property  
20 authorized under the Land Use Code, adopted building codes, and related ordinances,  
21 provided that such action is reasonably justifiable to protect life and property and to conduct  
22 recovery activities in a prioritized and orderly fashion.
- 23 2. Any temporary cessation of land use permit applications will include applications currently  
24 under review governed by codified timeframes for that review (such as Site Plan Review).  
25 The review timeframe will be suspended from the date of the declared disaster and resume  
26 as soon as possible, but no later than the lifting of the Development Suspension.
- 27 3. Any Development Suspension is subject to the following:
- 28 a. Notice of the moratorium shall be posted in the usual place for posting Boulder County  
29 public notices and shall clearly identify the boundaries of the area in which the  
30 moratorium is in effect as well as the exact nature of the development permits temporarily  
31 held in abeyance.
- 32 b. Any moratorium imposed shall be subject to review by the Board of County  
33 Commissioners at the earliest possible time, but no later than 90 days after it begins, at  
34 which time the Board shall take action to terminate, extend, or otherwise modify such  
35 moratorium.

### 36 D. Special Authorization for Temporary Emergency Use

- 37 1. Notwithstanding the uses normally allowed within a particular zoning district, the Director,  
38 County Engineer, or Chief Building Official may authorize in any zoning district the temporary  
39 emergency use of property to aid in the immediate restoration of an area adversely impacted  
40 by a disaster, including without limitation:
- 41 a. Critical response facilities. Any police, fire, medical, or communications facility that will  
42 aid in the emergency recovery.
- 43 b. Critical infrastructure facilities. Any road, bridge, or other transportation facility, any water  
44 or sewer facility, or any natural gas or electric power or other public utility facility that will  
45 aid in emergency recovery.
- 46 c. Temporary housing. Any temporary lodging set up for emergency personnel or shelters  
47 for disaster victims.

1 d. Debris collection and sort yards.

- 2 2. Any such special authorization must be made in writing and include findings that the  
3 proposed temporary use will not be detrimental to the immediate neighborhood, will not  
4 adversely affect the Comprehensive Plan, and will aid in the successful recovery of areas  
5 adversely impacted by the disaster. In making the determination, the Land Use Director,  
6 County Engineer, or Chief Building Official may require such information as they find  
7 necessary to determine the impacts of the proposed use, including without limitation the  
8 information listed in Land Use Code Section 3-100.D.1. Where necessary, conditions may be  
9 imposed on special authorizations to mitigate impacts.

10 E. Temporary Emergency Repair Permits

- 11 1. Immediately following a disaster, temporary emergency repairs to secure structures and  
12 protect property damaged in the disaster against further damage or to protect neighboring  
13 property may be made without permits. Work which constitutes "temporary emergency  
14 repairs" includes, without limitation, temporary roof repairs to prevent further water damage,  
15 temporary stabilization to shore up structures, temporary stabilization involving earthwork to  
16 avoid imminent collapse of structures or property, and temporary restoration of public  
17 recreational facilities such as trails and trailhead parking areas.
- 18 2. The Land Use Director must be notified of all such temporary emergency repairs within 10  
19 working days of the commencement of the repair work.
- 20 3. Permits may be required for permanent work. In particular, nothing in this section shall be  
21 construed to exempt property owners from complying with county floodplain regulations and  
22 any state or federal regulatory requirements such as U.S. Army Corps of Engineers permits.

23 F. Deconstruction/Demolition of Damaged Structures

- 24 1. Deconstruction permits are required for disaster recovery work, including  
25 deconstruction/demolition of damaged structures and certain debris removal work. The Chief  
26 Building Official may waive portions of the permitting requirements for such work, where  
27 appropriate in light of the nature of the disaster and the particular circumstances.
- 28 2. Where the need to address an immediate health and safety concern makes it unfeasible to  
29 obtain a deconstruction permit or a permit related to debris removal, property owners must  
30 contact the Chief Building Official to get verbal consent before commencing work. In  
31 addition, property owners must apply for the appropriate deconstruction and other permits  
32 within 72 hours of the commencement of the deconstruction or demolition.

33  
34 **19-400200 Fourmile Canyon Fire (September, 2010)**

35 *(Renumber this section and references to it throughout)*

1 **19-200300 Front Range Extreme Rain and Flood Event (September,**  
2 **2013)**

3 *(Renumber this section and references to it throughout)*

4 *(No change to Subsection A)*

5  
6 **B. General Duration and Applicability of Article 19-200300**

7 1. Subsection 4-802.B.3.a.'s six-month exemption period from Site Plan Review shall be deemed to have  
8 commenced on the effective date of these regulations (November 4, 2013), and shall continue until the  
9 Board determines the exemption period should be amended or terminated in light of ongoing response to  
10 the Extreme Rain and Flood Event ("the Post-Event Rebuilding Period").

11 2. During the Post-Event Rebuilding Period, this Article 19-200300 shall apply to any work for which a  
12 County building permit is required to rebuild or restore a legally existing structure damaged or destroyed  
13 by the 2013 Extreme Rain and Flood Event and its associated natural forces (unless the work is excluded  
14 from this Article 19-200300 under Subsection 6-C.2, below), and which the owner wishes to be exempt  
15 from Site Plan Review.

16 *(Add NEW #3)*

17 3. During the Post-Event Rebuilding Period, this Article 19-200300 shall apply to any work for which a  
18 County grading permit for earthwork between 50-500 cubic yards, and/or a floodplain development  
19 permit, is required to repair or restore property damaged by the 2013 Extreme Rain and Flood Event and  
20 its associated natural forces (unless the work is excluded from this Article 19-200300 under Subsection 6  
21 C.2, below), and which the owner wishes to be exempt from Site Plan Review.]

22  
23 *(Reformat and add NEW provisions a.i and d.):*

24 a. This Article 19-200300 may apply instead of Site Plan Review so long as the proposal is to  
25 rebuild or restore no more than the structure's original, legally preexisting floor area.

26 i. The applicability of Article 4-1002.D, which allows rebuilding of Nonconforming  
27 Structures, shall be extended through September 30, 2016.

28 b. The structure's location may be changed, provided the change in location significantly reduces  
29 the potential risks associated with future extreme rain and flood events or other known natural  
30 hazard areas or incidents (such as by moving the structure out of the mapped floodway or  
31 floodplain, or otherwise to a less hazardous location on the property). The relocation is subject to  
32 other provisions of this Code including but not limited to setback and floodplain requirements.

33 c. The structure's height must remain the same, unless the Director (under Subsection 13-9  
34 below) allows a reasonable height increase to accommodate a specific hazard mitigation  
35 requirement.

36 d. The Director must confirm that the subject property is a legal building lot. If the property is not a  
37 legal building lot due to a lot creation or boundary line adjustment that did not increase allowable  
38 zoning density, the Director may approve the lot subject to the applicable criteria of Section 9-102  
39 of this Code, without a subdivision exemption approval under Article 9-100. The Director may  
40 impose reasonable conditions in any such approval to allow the applicable criteria to be met. If  
41 the property is not a legal building lot due to a lot creation or boundary line adjustment that did  
42 increase allowable zoning density, then a subdivision exemption to recognize the lot under Article  
43 9-100 of this Code is required.

44 **34.** All requirements in Article 4-400 of this Code governing the Floodplain Overlay District shall continue  
45 to apply under this Article 19-200300, though Site Plan Review for a floodplain development permit (as

1 otherwise required under Subsection 4-802.A.8. of this Code) shall not be necessary, so long as the  
2 proposed work falls within the specifications of Subsection 2 and 3, above.

3 45. Legal structures proposed to be restored as provided in Subsection 2, above, are hereafter referred  
4 to as "Eligible Structures." Structures proposed for rebuilding or restoration that are not Eligible  
5 Structures, shall be subject to the usual provisions of the Land Use Code, including the Nonconforming  
6 regulations in Article 4-1000, which allow a damaged structure containing a nonconforming use to be  
7 restored, and the nonconforming use to be reestablished within six months after the date on which the  
8 nonconforming structure was damaged, unless that deadline is extended by the Board of County  
9 Commissioners at a public hearing upon a showing of extraordinary circumstances by the property owner  
10 or their agent; however, if the proposed work does not otherwise trigger Site Plan Review, and is not  
11 excluded work under Subsection 6C.2, below, a Hazard Mitigation Review shall be performed under this  
12 Article 19-200300.

### 13 C. Hazard Mitigation Review Process

14 *(Only the following provisions of Subsection C. are proposed to change:)*

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

25 7. Once the Director receives the referral comments of the County Engineer and County Public Health,  
26 and considers any other relevant information of record (including any additional information which the  
27 Director discovers through the process is necessary and reasonable to request to complete the review),  
28 the Director shall make a decision on the HMR application. The Director shall base the decision on the  
29 following standards:

30 a. The proposal shall not pose or create a significant potential safety hazard when evaluated  
31 against evidence of actual damage caused by the 2013 Extreme Rain and Flood Event (including  
32 by the Event's related hazardous forces such as flooding, debris flows, rockfalls, mudslides,  
33 topographic changes or instability, drainage channel shifts, area drainage system impairments or  
34 failures, and soil saturation) and best available information (including but not limited to hydrologic  
35 evaluations to determine peak flows, floodplain mapping studies, Colorado Geologic Survey  
36 landslide or earth/debris flow data, updated topographic data, and creek planning studies).  
37 Potential safety hazards to on the Eligible Structure being restored, on the subject property, on  
38 surrounding properties, and on public and private infrastructure serving the subject property or  
39 other affected infrastructure must be identified and avoided or satisfactorily mitigated. In  
40 particular, development shall avoid natural hazards, including those on the subject property and  
41 those originating off-site with a reasonable likelihood of affecting the subject property. Natural  
42 hazards include, without limitation, expansive soils or claystone, subsiding soils, soil creep areas,  
43 or questionable soils where the safe-sustaining power of the soils is in doubt; landslides,  
44 mudslides, mudfalls, debris fans, unstable slopes, and rockfalls; flash flooding corridors, alluvial  
45 fans, floodways, floodplains, and flood-prone areas; and avalanche corridors; all as identified in  
46 the Comprehensive Plan Geologic Hazard and Constraint Areas Map or through the HMR  
47 process using the best available information.

48 b. The proposal shall not alter historic drainage patterns and/or flow rates or shall include  
49 acceptable mitigation measures to compensate for anticipated drainage impacts.

50 c. If the Eligible Structure's location is proposed or required to be changed, the new location shall  
51 significantly reduce the potential risks associated with future extreme rain or flood events as

1 identified by the best available information (including but not limited to hydrologic evaluations to  
2 determine peak flows, floodplain mapping studies, Colorado Geologic Survey landslide or  
3 earth/debris flow data, updated topographic data, and creek planning studies), or other known  
4 natural hazard areas or incidents; shall not create an unreasonable risk with respect to other  
5 natural hazards such as wildfire, subsidence, or erosion; and shall not cause unreasonable harm  
6 to significant historic structures or sites, or to significant natural ecosystems and environmental  
7 resources including but not necessarily limited to natural areas and natural landmarks, prominent  
8 topographic features and excessively steep slopes, riparian corridors and wetland areas, and  
9 significant plant communities, wildlife habitat, and wildlife migration corridors, as identified on the  
10 Comprehensive Plan or through the HMR process.

11 d. If the Director finds that any of the foregoing standards conflict, the Director shall evaluate the  
12 applicability and importance of each of the conflicting standards under the facts of the specific  
13 HMR application, and make a reasonable attempt to balance the conflicting standards in reaching  
14 a decision, with appropriate priority being given to fulfilling the purposes of this Article 19-200300.

15 13. Any final HMR approval shall expire one calendar year after its date of issuance, unless within that  
16 year the applicant presents the Director with a written request for an extension. If a timely extension  
17 request is received, the Director may allow the HMR approval to ~~remain in effect for up to an additional~~  
18 ~~calendar year be extended~~, upon a showing of good cause, and provided the circumstances surrounding  
19 the approval's issuance under this Article 19-200300 have not substantially changed.

20  
21 *(Add a NEW Subsection 19-300.D for FLOOD RECOVERY ACCESS PERMITS):*

## 22 19-300.D Flood Recovery Access Permit (FRAP)

### 23 1. Purpose, Application, and Duration

- 24 a. This Subsection 19-300.D. applies to the repair and restoration of accesses to private  
25 property that existed prior to the September 2013 flood in Boulder County and that  
26 were damaged as a result of that flood. The intent is to allow property owners to  
27 construct a temporary but safe access from public roads to private property as quickly  
28 as possible in locations where re-construction of a permanent access is not possible due  
29 to damaged waterways or public rights-of way. There may be circumstances where it is  
30 not possible to issue a FRAP.
- 31 b. The FRAP addresses access from maintained and unmaintained public roads, including  
32 access across regulated and unregulated waterways. Access from a private road or  
33 across a non-public easement is not addressed here, with the exception of crossing a  
34 regulated floodplain or major drainage.
- 35 c. The issuance of a FRAP is intended to recognize and accommodate the time needed to  
36 repair public infrastructure and regulated waterways following the September 2013  
37 flood while enabling property owners to regain access to their property. FRAPs are  
38 temporary permits for accesses which are unable to meet the requirements of  
39 subsections 3-100.B.1.a, 4-400, and 19-200.D.1 and Multi-Modal Transportation  
40 Standards subsections 2.3.3.2, 5.5, and 5.10 due to the unrepaired damage to adjacent  
41 waterways and public rights-of-way. All FRAPs shall have an expiration date of six  
42 months from issuance, which may be extended at the discretion of the County Engineer  
43 if the adjacent public infrastructure has not been repaired such that a permanent access  
44 may be constructed.

- 1 d. FRAPs shall not be issued beyond September 30, 2016.
- 2 2. Eligibility for a New or Extended FRAP
- 3 a. An assessment of the access condition shall be performed by the Transportation
- 4 Department within 10 business days of a new FRAP or FRAP extension request.
- 5 b. At least one of the following criteria must be met to apply for a FRAP:
- 6 i. the connecting public road is in need of major repair and reconstruction such
- 7 that if a permanent private access were constructed, it would not be possible
- 8 for the County to guarantee that it would physically connect with the final
- 9 repaired or reconstructed public road; or
- 10 ii. there is an adopted public plan to adjust the course, size, or creek bed elevation
- 11 for the adjacent waterway with funding available to implement that plan.
- 12 c. An expiring FRAP for a temporary structure, built and installed per the issued FRAP, may
- 13 be extended consistent with 5(g) below, if:
- 14 (i) At least one of the conditions in 2(b) above are met, or
- 15 (ii) if the County Engineer determines both that the access does not or will not
- 16 create an immediate hazard and that a temporary solution is preferable because
- 17 there are unresolved issues such as waterway restoration and location,
- 18 availability of funding assistance, or other outstanding issues which may impact
- 19 the design and construction of a permanent solution.
- 20 3. Submittal Requirements for FRAP application
- 21 a. For an access that does not cross a waterway, the applicant must submit:
- 22 i. Description of damage to access;
- 23 ii. Verification of legal access; and
- 24 iii. Description of work and material to be used to repair or restore the access.
- 25 b. For a culvert installation, the applicant must submit:
- 26 i. Description of damage to culvert crossing;
- 27 ii. Verification of legal access;
- 28 iii. Culvert size, number and type;
- 29 iv. Storm size that installed culvert(s) shall accommodate;
- 30 v. Quantity and type of fill material; and
- 31 vi. Cross-section of location where culvert(s) shall be installed.
- 32 c. For the construction or repair of a bridge, the applicant must submit:
- 33 i. Description of damage to structure;
- 34 ii. Description of the size and materials of the pre-flood bridge;
- 35 iii. Verification of legal access;
- 36 iv. Hydraulic and hydrologic analysis provided by a licensed engineer;
- 37 v. Structure design provided by a licensed engineer; and
- 38 vi. Cross-section of location where bridge shall be installed.
- 39 4. FRAP Review Criteria
- 40 a. The County Engineer will review and evaluate FRAP applications for compliance with the
- 41 following criteria and approve, conditionally approve, or deny the FRAP application as
- 42 appropriate.

- 1 i. Location. Accesses shall be located to align as close as possible with pre-flood  
2 positions. Any change to an access location shall be based on the  
3 recommendation by the inspector as determined during the initial assessment.  
4 Location changes that reduce potential hazards or negative environmental  
5 impacts may be permitted.
- 6 ii. Culvert and Structure Design.
- 7 1. An 18" (minimum) diameter culvert shall generally be required for  
8 accesses that do not cross a regulated waterway for the purpose of  
9 conveying storm drainage in the roadway consistent with the Boulder  
10 County Multimodal Transportation Standards.
- 11 2. Where an access crosses a waterway, the crossing shall meet the  
12 following criteria:
- 13 a. Where creek geometry allows, the capacity of a temporary  
14 crossing structure or culvert may not be less than that of the  
15 pre-flood structure;
- 16 b. Where a damaged or destroyed structure across a regulated  
17 stream is replaced by a culvert, the culvert must be sized by the  
18 County Engineer.
- 19 3. Based on data gathered by the inspector, the county shall perform the  
20 calculations and provide culvert or structure design information to the  
21 Applicant. The Applicant may retain a qualified, registered engineer to  
22 design and size structures to access property, if desired, at his/her own  
23 expense.
- 24 b. Risk to public health and safety. To the greatest extent possible, in the professional  
25 judgment of the County Engineer, the temporary culvert or structure must:
- 26 i. Not be severely undersized;
- 27 ii. Be constructed so as to minimize the risk of dislodging or breaking apart and  
28 entering the waterway during another high water event;
- 29 iii. Be constructed so as to minimize adverse effects on the efficiency of the  
30 floodway, changes in the direction of flow, and increases in the base flood  
31 elevations;
- 32 iv. Not threaten the integrity of adjacent or nearby public infrastructure during a  
33 high water event;
- 34 v. Not increase the flood hazard risk on an insurable structure; and
- 35 vi. Not pose significant risks to nearby accesses serving multiple residences or  
36 properties.
- 37 5. Conditions on FRAP Approvals
- 38 a. Any project to restore an access onto county rights-of-way must obtain all applicable  
39 local, state, and federal permits. Dependent upon the location and the specific nature  
40 of the activity or structure to be installed, building, grading, and floodplain development  
41 permits may be required in addition to a FRAP.

- 1           b. As applicable, the County Engineer may condition FRAP approval on compliance with  
2 design requirements, including without limitation:  
3           i. Site specific findings of the County inspector based on his or her assessment;  
4           ii. Structure design requirements determined by the County or by a licensed civil  
5 or structural engineer in the State of Colorado; and  
6           iii. Other access design conditions such as drainage, sight distance, and geometric  
7 needs.  
8           c. The County Engineer will inspect completed temporary accesses upon notification by  
9 the Applicant or upon determination that an inspection is needed. This inspection shall  
10 ensure compliance with county requirements. Any work or material which does not  
11 conform to the conditions made as part of the issued permits shall be brought to the  
12 attention of the Applicant for immediate correction.  
13           d. Once construction is complete and approved, the County Engineer will provide a final  
14 signed FRAP as proof of approval.  
15           e. The Applicant shall be responsible for maintaining temporary accesses. Where  
16 applicable, the County Engineer may condition FRAP approval on restoration of the  
17 right-of-way once the FRAP has expired.  
18           f. In the event the County realigns or widens the road in a manner that necessitates the  
19 removal or relocation of a temporary access or temporary work done by the property  
20 owner in the public right-of-way, the removal or relocation shall be at the Applicant's  
21 expense upon written notification by the County. The relocation or removal must be  
22 completed within 60 days after notification, unless the County Engineer in his sole  
23 discretion grants additional time. (As a separate matter, where the County requires  
24 new property rights to relocate a right-of-way or other transportation facility, the  
25 County will acquire such rights using standard procedures for determining  
26 compensation.)  
27           g. Prior to the date of expiration noted on the FRAP approval, the County Engineer will  
28 review the condition of the adjacent waterway, applicable state and federal regulatory  
29 requirements, and public rights-of-way to determine if a permanent access may be  
30 permitted. Upon application to and recommendation by the County Engineer, and  
31 based upon best available information at the time, the FRAP may be extended for up to  
32 six months at a time, for a combined total of no more than three years.  
33           6. Permanent Access  
34           a. Prior to the expiration of a FRAP or notification by the County that a permanent access  
35 may be permitted, whichever occurs first, FRAP recipients shall either (i) submit the  
36 appropriate applications to verify that the temporary access meets the criteria for a  
37 permanent access, or (ii) commence design and construction of a permanent access.  
38           b. Prior to approval of a permanent access application, applicants with a substantially  
39 damaged dwelling in the floodplain must demonstrate that (i) the repaired or  
40 reconstructed building can comply with all county regulations, including those governing  
41 the floodplain, and (ii) a compliant onsite wastewater system is in place or is in the  
42 process of being repaired or replaced.

- 1 c. All permanent accesses must comply with Boulder County regulations including without  
2 limitation the Boulder County Land Use Code (including the floodplain regulations), the  
3 Boulder County Multimodal Transportation Standards, the Boulder County Building  
4 Code, and the Boulder County Storm Drainage Criteria Manual, as applicable.
- 5 d. Construction of a permanent access shall be completed within 6 months of whichever of  
6 the following occurs first: (i) the date the FRAP expires, (ii) the date the County notifies  
7 the property owner that a permanent access may be permitted, or (iii) the date of the  
8 sale of the property, per property transfer regulations adopted by the Board of County  
9 Commissioners under separate cover.
- 10 e. The County Engineer may provide an extension to the deadline to construct a  
11 permanent access upon finding in writing that there are design or other physical,  
12 regulatory, or programmatic constraints or opportunities beyond the Applicant's control  
13 which prevent completion of the construction of an approved permanent access and the  
14 Applicant has been working in good faith to design and construct a permanent access  
15 within the required timeframes set out in these regulations.
- 16 7. Removal of Unsafe Culverts and Structures
- 17 a. Where the Extreme Rain and Flood Event damaged a property access point, the  
18 property owner must undertake one of the following actions:
- 19 i. Make permanent repairs to the access by obtaining all required permits  
20 ii. Make temporary repairs to the access by obtaining a FRAP and, as soon as  
21 possible thereafter, make permanent repairs by obtaining all required permits  
22 iii. Safely deconstruct the access point and remove all materials and debris from  
23 the floodplain, creek channel, and public right-of-way, as applicable.
- 24 b. Temporary culverts and structures must be removed at the property owner's expense  
25 within 14 days after written notification by the County that the culvert or structure  
26 poses a risk to public health and safety. Removal or replacement shall be required if, in  
27 the judgment of the County Engineer, the culvert or structure:
- 28 i. Does not comply with the Culvert and Structure Design requirements identified  
29 in the FRAP Review Criteria above;
- 30 ii. Is currently an obstruction in the waterway as determined by the County  
31 Engineer or the Office of Emergency Management;
- 32 iii. Is constructed so as to be at risk of dislodging or breaking apart and entering the  
33 waterway during another high water event;
- 34 iv. Is severely undersized;
- 35 v. Threatens the integrity of adjacent or nearby public infrastructure during a high  
36 water event;
- 37 vi. Increases the flood hazard risk on an insurable structure;
- 38 vii. Creates a risk to nearby accesses serving multiple residences or properties; or  
39 viii. Presents additional risks or hazards not specified here in the professional  
40 judgment of the County Engineer, including situations where the County has  
41 previously issued a FRAP, and the County Engineer has received new  
42 information indicating the structure is a risk to public health and safety.

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- c. Any culvert or structure damaged in Extreme Rain and Flood Event and subsequently deemed a risk to public health and safety by the County Engineer and not timely abated by the property owner is subject to enforcement under the Multimodal Transportation Standards or the Land Use Code, as appropriate.

**D-E. Applicability of Other Regulations; Enforcement**

*(Renumber this Subsection)*

1 **4-400 Floodplain Overlay District**

2 **4-407 Floodplain Development Permit**

3 *(Add NEW provisions 4-407.D. 2 and 3, as follows):*

4 **D. Board of Commissioners Review**

5 1. In the event that the County Engineer determines that a floodplain development permit application for  
6 any development in the floodway meets the applicable standards for approval, the permit will not be  
7 effective until 14 days after the date of permit issuance.

8 a. At the time of permit approval, the County Engineer shall do the following:

9 (i) within seven days, publish a public notice of the proposed use and the permit issuance in a newspaper  
10 of general circulation in Boulder County;

11 (ii) shall transmit a copy of the notice to property owners adjacent to the property in question; and

12 (iii) forward to the Board of County Commissioners a written statement which shall include (1) the location  
13 and a description of the proposed use under the permit; (2) the reasons for approval of the permit; and (3)  
14 any conditions the County Engineer placed on the issuance of the permit.

15 b. Upon receiving the Director's statement, and before the effective date of the permit, the Board may call  
16 the permit up for review at a public hearing.

17 (i) This hearing shall constitute a revocation of the permit.

18 (ii) At the public hearing, the Board shall consider evidence related to the permit which may be presented  
19 by the County Engineer, the applicant, or interested members of the public.

20 (iii) The Board shall determine whether the application meets the requirements of this article, and if it so  
21 finds, shall issue the permit, with such conditions as the deemed appropriate.

22  
23 2. During a declared local disaster emergency, for development in the floodway:

24 a. At the time of floodplain development permit application submittal, the County Engineer  
25 shall transmit a notice of the proposed use to, at a minimum, property owners adjacent to the  
26 property in question.

27 b. The permit will be effective on the date of permit issuance.

28 3. The County Engineer may waive any or all requirements listed in 4.407.D.1. and 4.407.D.2 for the  
29 following floodway development:

30 a. Emergency activities required for the immediate protection of life, safety, or property, or  
31 to restore essential public services.

32 b. Minor disaster recovery repair work that does not cause a rise in predicted 100-year  
33 water surface elevation as determined by a licensed engineer, and

34 c. Any development activities that take place entirely inside an existing building.

35

1 4-600 Uses Permitted by Special Review and Limited Impact Special  
2 Review

3 4-601 Review Criteria

4 A. A use will be permitted by Special Review or Limited Impact Special Review only if the Board finds that  
5 the proposed use meets the following criteria as applicable:

6 *(ADD a NEW criterion 12):*

7 12. The use will not result in unreasonable risk of harm to people or property – both onsite and in the  
8 surrounding area – from natural hazards. Development or activity associated with the use must avoid  
9 natural hazards, including those on the subject property and those originating off-site with a reasonable  
10 likelihood of affecting the subject property. Natural hazards include, without limitation, expansive soils or  
11 claystone, subsiding soils, soil creep areas, or questionable soils where the safe-sustaining power of the  
12 soils is in doubt; landslides, mudslides, mudfalls, debris fans, unstable slopes, and rockfalls; flash flooding  
13 corridors, alluvial fans, floodways, floodplains, and flood-prone areas; and avalanche corridors; all as  
14 identified in the Comprehensive Plan Geologic Hazard and Constraint Areas Map or through the Special  
15 Review or Limited Impact Special Review process using the best available information. Best available  
16 information includes, without limitation, updated topographic or geologic data, Colorado Geologic Survey  
17 landslide or earth/debris flow data, interim floodplain mapping data, and creek planning studies.

18 *(AMEND 4-601.B as follows):*

19 B. If the proposed use is approved or conditionally approved, the Board may impose such conditions and  
20 safeguards to insure compliance with the requirements, standards, and conditions of this Section 4-600.  
21 Where development or activity associated with the proposed use cannot completely avoid one or more  
22 natural hazard, whether because no other site on the subject property can be reasonably designated or  
23 developed for the use or because the proposed site is the best location due to the need to avoid or  
24 minimize significant adverse impacts under other applicable review criteria, the use may be  
25 conditionally approved only if one or more measures will satisfactorily mitigate all significant natural  
26 hazard risk posed by the proposed use to the subject property and to the surrounding area. The  
27 violation of any condition, safeguard, or commitment of record shall be sufficient grounds for revocation of  
28 the Special Review approval by the Board, after a public hearing held in accordance with provisions of  
29 Paragraph 3-205(C).

30

1 4-800 Site Plan Review

2 4-806 Site Plan Review Standards

3 A. All Site Plan Review applications shall be reviewed in accordance with the following standards which  
4 the Director has determined to be applicable based on the nature and extent of the proposed  
5 development. When two or more of the standards listed below conflict, the Director shall evaluate the  
6 applicability and importance of each of the conflicting standards under the facts of the specific application  
7 and make a reasonable attempt to balance the conflicting standards in reaching a site plan decision.

8 *(Only the following standards of Subsection 4-806.A. are proposed to change:)*

9 *(Consolidate Stds. 4 and 8.)*

10 ~~4. Plans for the proposed development have satisfactorily mitigated any geologic hazards, such as~~  
11 ~~expansive soils, subsiding soils, questionable soils where the safe-sustaining power of the soils is in~~  
12 ~~doubt, or contaminated soils, landslides, unstable slopes, rockfalls, and avalanche corridors, as identified~~  
13 ~~in the Comprehensive Plan, or through the Site Plan Review process. The proposed development shall~~  
14 ~~avoid natural hazards, including those on the subject property and those originating off-site with a~~  
15 ~~reasonable likelihood of affecting the subject property. Natural hazards include, without limitation,~~  
16 ~~expansive soils or claystone, subsiding soils, soil creep areas, or questionable soils where the safe-~~  
17 ~~sustaining power of the soils is in doubt; landslides, mudslides, mudfalls, debris fans, unstable slopes,~~  
18 ~~and rockfalls; flash flooding corridors, alluvial fans, floodways, floodplains, and flood-prone areas; and~~  
19 ~~avalanche corridors. Natural hazards may be identified in the Comprehensive Plan Geologic Hazard and~~  
20 ~~Constraint Areas Map or through the Site Plan Review process using the best available information. Best~~  
21 ~~available information includes, without limitation, updated topographic or geologic data, Colorado~~  
22 ~~Geologic Survey landslide or earth/debris flow data, interim floodplain mapping data, and creek planning~~  
23 ~~studies. Development within or affecting such natural hazards may be approved, subject to acceptable~~  
24 ~~measures that will satisfactorily mitigate all significant hazard risk posed by the proposed development to~~  
25 ~~the subject property and surrounding area, only if there is no way to avoid one or more hazards, no other~~  
26 ~~sites on the subject property can be reasonably developed, or if reasonably necessary to avoid significant~~  
27 ~~adverse impacts based upon other applicable Site Plan Review criteria.~~

28  
29 6. The proposed development shall not alter historic drainage patterns and/or flow rates or shall include  
30 acceptable mitigation measures to compensate for anticipated drainage impacts. The best available  
31 information should be used to evaluate these impacts, including but not limited to hydrologic evaluations  
32 to determine peak flows, floodplain mapping studies, updated topographic data, Colorado Geologic  
33 Survey landslide, earth/debris flow data, and creek planning studies.

34  
35 ~~8. The development shall avoid flash flood corridors, alluvial fans, floodplains, and unique geologic,~~  
36 ~~geomorphic, paleontological, or pedologic features, as identified in the Comprehensive Plan or through~~  
37 ~~the Site Plan Review process. Development within or affecting such hazards may be approved, subject to~~  
38 ~~acceptable mitigation measures and in the discretion of the Director, only if no other sites on the subject~~  
39 ~~property can be reasonably developed, or only if reasonable necessary to avoid significant adverse~~  
40 ~~impacts based upon other applicable Site Plan Review criteria.~~

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1 *(Amend BOULDER COUNTY MULTIMODAL TRANSPORTATION STANDARDS, as follows):*

2 **2.3.3.2 Access Permits**

3 The County regulates access to the right-of-way through the access permit process to maintain  
4 safe traffic flow; to maintain road drainage facilities; and to protect the functional level of the  
5 County's roads. Pursuant to state statute no person shall construct any driveway providing  
6 vehicular access to or from any County right-of-way without an Access Permit. Requirements for  
7 access permits are found in Boulder County Access Permit Requirements as adopted under  
8 separate cover. Note: Special access permits may be available for a limited period following a  
9 local disaster emergency. Refer to Article 19 of the Land Use Code. For access design standards,  
10 refer to Sections 5.4 and 5.5. Pursuant to the provisions of Section 4-1200 of the Land Use Code,  
11 any person aggrieved by an inability to obtain an Access Permit may appeal to the Boulder  
12 County Board of Adjustment.

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