



Transportation Department

2525 13th Street, Suite 203 • Boulder, Colorado 80304 • Tel: 303.441.3900 • Fax: 303.441.4594
Mailing Address: P.O. Box 471 • Boulder, Colorado 80306 • www.bouldercounty.org

**BOULDER COUNTY
BOARD OF COUNTY COMMISSIONERS**

January 15, 2013 – 9:00 A.M.

**Hearing Room, Third Floor
Boulder County Courthouse**

Public Hearing

STAFF PLANNER: Justin Gindlesperger, Development Review Planner/ Floodplain Manager

Docket DC-12-0006: Text Amendments to Articles 3-100, 7-903, 7-904 and 18 of the Boulder County Land Use Code (also to be adopted in part under CRS Section 30-15-401(11) as County Ordinance 2012-5)

Proposed Land Use Code text amendments to Article 3-100 ("Approvals and Permits Necessary Prior to Development"), Article 7-903 ("Erosion and Sediment Control"), Article 7-904 ("Stormwater Quality and Management in Urbanized Areas") and Article 18 ("Definitions") of the Boulder County Land Use Code. The proposed changes would clarify and expand the County's regulation of stormwater quality management and would bring these regulations into consistency with Colorado Department of Public Health and Environment regulations. The portions of the proposed amendments to Land Use Code Articles 7-904 and 18 that administer the County's Separate Storm Sewer System (MS4) General Permit issued by the Colorado Water Quality Control Division as part of the state's water quality discharge permit system, are also proposed to be adopted by the Board of County Commissioners as a County ordinance (Ordinance 2012-5) under the authority of C.R.S. Section 30-15-401(11).

SUMMARY

Staff has identified areas within the stormwater quality regulations of the Land Use Code that should be amended in order to clarify the County's regulation of stormwater quality management and bring these regulations into consistency with Colorado Department of Public Health and Environment regulations.

The proposed Land Use Code amendments will be processed both as amendments under Articles 3 and 16 of the Code, and in part (the proposed amendments to Land Use Code Articles 7-904 and 18 that administer the County's MS4 General Permit) as a County ordinance under C.R.S. Section 30-15-401(11). This statute allows expanded administrative enforcement authority, exercised through a County ordinance powers program, to implement the County's stormwater management obligations under its General Stormwater Permit (MS4 Permit) issued by the Water Quality Control Division of the Colorado Department of Public Health and Environment (i.e., affecting the County's regulation of discharges to the County's storm drain system within the unincorporated "Urbanized Area"). The Board of County Commissioners today is being asked to consider and act on the Land

Use Code amendments portion of this effort (DC-12-0006), which includes all of the amendatory text being proposed to expand and update the County’s construction-related stormwater regulations, and on proposed Ordinance 2012-5 to adopt the DC-12-0006 text related to the County’s administration of its MS4 stormwater permit, as a County ordinance, in order to gain enhanced administrative enforcement powers in this area.

PROPOSED AMENDMENTS

Stormwater Quality Management Permit Requirements – Article 7-904

Discussion: The County first adopted construction-related stormwater regulations into the Land Use Code, as Article 7-904 (with related definitions in Article 18), in Docket DC-05-004, effective August 18, 2005. These stormwater quality and management regulations were initiated to promote good engineering and pollution control for construction activity that equaled or exceeded 1 acre of disturbance within the Urbanized Area, as defined by the County’s state-issued Separate Storm Sewer System (MS4) permit.

The purpose and intent of stormwater management within Boulder County is essentially unchanged between the current (2005) regulations, and the proposed amendments. The goal of the regulations is to protect sediment-laden stormwater runoff from entering into downstream receiving waters, as regulated by the County’s MS4 permit. The changes to the regulations, as outlined below, are primarily to require the issuance of a stormwater permit from the County Engineer for construction activity disturbing one acre or more that may discharge to the County’s separate storm sewer system under its MS4 Permit (i.e., within the County’s unincorporated Urbanized Area); to extend this permit requirement throughout the unincorporated County when discharge may affect any waters of the state; to strengthen the ongoing obligation to maintain permanent best management practices (BMPs) for stormwater control within the Urbanized Area; and to establish enhanced procedures for monitoring, inspection and enforcement to ensure compliance.

	Existing Regulations	Proposed Regulations
Applicability	- Within the Urbanized Area (regulated under County’s state MS4 Permit)	- County-wide
Permitting	- State CDPS* - No County Permit	- State CDPS* - County Stormwater Permit issued by County Engineer
Inspections	- Permittee: CDPS obligations - County Stormwater inspections of private development within Urbanized Area	- Permittee: CDPS obligations unchanged - County Stormwater inspections of private development throughout County
Permanent BMPs (Best Management Practices)	- Required within Urbanized Area	- Required within Urbanized Area - Financial guarantee for permanent BMPs if not completed at final inspection - Permanent BMP maintenance obligations “travel” with the

		property (run with the land)
Penalties	- Stop Work for zoning violations	- Stop Work for permit violations - Judicial Enforcement - Fines and enhanced administrative enforcement procedures (per County Ordinance Powers)

*(CDPS stands for “Colorado Discharge Permit System” under the state Water Quality Control Act)

Due to the extent of the changes to the existing text, staff is proposing that that the existing Article 7-904 of the Boulder County Land Use Code be repealed and reenacted as the proposed text.

Proposed Text of amended and reenacted Article 7-904:

Proposed text is attached at the end of this document.

Erosion and Sediment Control – Article 7-903

Discussion: The erosion control regulations first appeared in the original, unified Land Use Code effective as first adopted in 1994. The erosion control regulations were intended to promote good engineering and pollution control for any construction activity with Boulder County. Following the adoption of Article 7-904, Boulder County recognized the potential for erosion, sedimentation and stormwater pollution outside the Urbanized Area and the erosion control regulations remained in place.

Whereas the above referenced amendments to Article 7-904 will apply to construction activity equaling or exceeding 1 acre County-wide, Article 7-903 is proposed to apply in situations not covered by Section 7-904. Therefore, Boulder County will continue to promote good engineering and pollution control for all construction activity within the County.

Proposed Text of amended Article 7-903:

Article 7-903 Erosion and Sediment Control (to apply in situations not covered by Section 7-904)

- A. ~~If the plans for development entail an erosion the potential to cause erosion, a soil erosion and sedimentation plan shall be prepared by a registered professional engineer or the US Soil Conservation Service. The County conservation standards or the soil and water conservation plan are to be used in preparing the soil erosion and sedimentation control plan submitted for the County’s review and acceptance.~~
- B. The plan shall include good engineering, hydrologic, soil restoration and revegetation and pollution control practices as outlined in the County’s Storm Drainage Criteria Manual, Urban Storm Drainage Criteria Manual, Volume 3 – Best Management Practices, or the Colorado Department of Transportation’s Water Quality Control standards. In addition to permanent provisions, temporary erosion and sediment control measures are also required during construction operations. Construction schedules are to be programmed to permit installation of required permanent sediment and erosion control structures as soon as possible.
- C. Installation of erosion and sediment control measures is required prior to beginning construction, and may be required to be maintained post-construction, as necessary. Inlets for drainage structures are to be protected from sedimentation.

- D. Financial guarantees may be required if deemed necessary to secure performance and may include provisions for enforcement of both the permanent and temporary erosion and sediment control facilities. Data available through the local Soil Conservation Service District shall be used as a supplemental guideline for soil and water conservation practices.
- ~~E. Finished slopes are to be protected with a vegetative cover, riprap or other means.~~
- ~~F. The performance guarantee shall include provisions for enforcement of both the permanent and temporary erosion and sediment control facilities.~~

Development Related Permits – Article 3-100

Discussion: As part of the proposed amendments to Article 7-904, a County-wide stormwater quality permit is proposed for all development activities that disturb 1 acre, or more. The County Engineer-issued permit will aid staff in tracking and ensure compliance to State and County stormwater regulations. Article 3-100 thus needs to be amended to add this new permit to the list of development-related permits that may be required in addition to actual Land Use Code approval processes:

Proposed Text of amended Article 3-100:

3-100 Approvals and Permits Necessary Prior to Development

- A. [Not proposed for amendment]
- B. Development Related Permits
 - 1. Dependent on the specific nature of the activity, one or more of these permits will be required prior to undertaking development in the unincorporated areas of Boulder County:
 - i. Stormwater Quality Permit: As required under Article 7-904 and administered by the County Engineer to control construction and post-construction stormwater discharges and to protect water quality.

Definitions – Article 18

Discussion: The proposed amendments to Article 7-904 have necessitated companion amendments to the definitions in Article 18, to clarify and expand the County’s definitions and provide consistency with the Colorado Department of Public Health and Environment regulations.

Proposed Text of amended Article 18:

(Amend existing definition) 18-115A Best Management Practices (BMPs, as used in Section 7-904)

BMPs may be structural or nonstructural or both, as well as temporary or permanent or both, and include Schedules schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to maintain or improve stormwater quality by preventing or reducing reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters or stormwater conveyance systems, or waters of the state. BMPs also include treatment practices, operating procedures, and waste control practices to control site runoff, spillage or leaks, sludge or water disposal, and drainage from raw materials storage.

Nonstructural BMPs (source controls) include practices that prevent pollution by reducing potential pollutants at their source before they come into contact with stormwater. Examples of nonstructural BMPs are site planning and project operations.

Structural BMPs (treatment controls) are engineered or constructed facilities designed to remove pollutants already in stormwater, with examples including detention and retention ponds, infiltration basins, sedimentation controls, and pollutant removal devices.

Temporary BMPs, such as silt fencing, are installed to control stormwater discharges and protect water quality while construction activity is taking place and until final inspection or approval of construction occurs. Temporary BMPs for a particular site are typically addressed as part of a Stormwater Management Plan accepted as part of an approved stormwater quality permit.

Permanent BMPs, such as detention facilities, are installed to control stormwater discharges and protect water quality after construction activity has been completed or final inspection has occurred, that must be maintained in good working order by the landowner, permittee, operator, or other responsible party on a perpetual basis or for so long as the County Engineer requires. Permanent BMPs are typically addressed as part of a final drainage plan, and depicted through submitted as-built plans, that are accepted as part of an approved stormwater quality permit.

Accepted and recommended sources of BMPs include but are not limited to: Urban Drainage and Flood Control District's Urban Storm Drainage Criteria Manual, Volume 3 – Best Management Practices; and the Colorado Department of Transportation's ("CDOT") "Erosion Control and Stormwater Quality Guide".

(Add new definition) 18-123A Colorado Discharge Permit System (CDPS)

CDPS, which the Colorado Department of Public Health and Environment ("CDPHE") through its Water Quality Control Division ("WQCD") is authorized to administer as part of the Clean Water Act's National Permit Discharge Elimination System ("NPDES") program in Colorado. The CDPS Stormwater Management Program is designed to reduce the discharge of pollutants from the Municipal Separate Storm Sewer System (MS4) to the maximum extent practicable to protect water quality, through the implementation of BMPs consistent with the provisions of the program.

(Amend existing definition) 18-128A Construction Activity (as used in Section 7-904)

Ground surface disturbing activities which include, ~~Any activity which disturbs the earth surface or is related to the erection or modification of structures including but are not limited to,~~ clearing, ~~and grubbing,~~ vegetation removal, grading, ~~excavation excavating,~~ removal or deposit of any rock, soil, or other materials, ~~construction demolition,~~ installation of new or improved haul roads and access roads, staging areas, stockpiling of soil, fill, or other materials, utilization of borrow areas, or other activities that expose soil. Construction activity does not include routine maintenance to maintain original line and grade, hydraulic capacity, or original purpose of a facility.

(Amend existing definition) 18-136A Disturbed Area (as used in Section 7-904)

That area of the land's surface disturbed or in any way changed ~~that is subject to or in any way changed~~ by construction activity.

(Amend existing definition) 18-147 Facility

A structure or place which is built, installed, or established to serve a particular purpose. For purposes of Section 7-904, a facility may also be any building, including a private home,

structure, installation, process, or activity from which there is or may be a discharge of a pollutant.

(Add new definition) 169A Hazardous Materials

Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or to the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

(Amend existing definition) 18-179A Municipal Separate Storm Sewer System (MS4, as used in Section 7-904)

Publicly-owned facilities by which stormwater is collected and/or conveyed, or which are designed for the collection or conveyance of stormwater, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, catch basins, inlets, ~~pipe~~ storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage ditches/channels, reservoirs, and other drainage structures.

(Add new definition) 179B National Pollutant Discharge Elimination System (NPDES) STORM Water Discharge Permit OR NPDES Permit

A permit issued by the U.S. Environmental Protection Agency (or by a state under authority delegated pursuant to 33 USC Section 1342(b), e.g., the Colorado Discharge Permit System (CDPS) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis..

(Add new definition) 18-181B Operator

The individual who has day to day supervision and control of activities. For purposes of Section 7-904, the operator may be considered the stormwater permittee or responsible agent of the permittee.

Re-number following definition: 18-181BC Outdoor Light Fixture

(Add new definition) 18-184C Pollutant (as used in Section 7-904)

Means anything which causes or contributes to pollution, this is, is harmful to humans, animals, public health, or the environment, or can degrade the quality of waters of the state or cause such waters to violate the stream standards established by the State of Colorado, or affect beneficial uses of water. The term includes, but is not limited to, sediment, dredged spoil, rock, sand, silt, incinerator residue, ash, solid waste, sewage, wastes from industrial, commercial, domestic, or agricultural sources, trash, litter, garbage or food waste, landscaping materials, lawn clippings, leaves, branches or other landscaping and yard debris, medical waste, wrecked or discarded equipment, radioactive materials, wastes that contain bacteria, viruses and other pathogens that pose a threat to human health, pet wastes, heat, surfactants, soaps, and cleaning products and wastes and residues from washing operations, including those that are biodegradable, oil and grease, petroleum hydrocarbons and antifreeze, metals, and toxic or hazardous wastes as defined by federal, state, or local laws and regulations, and including without limitation biocides and pesticides.

(Add new definition) 18-202A Storm Drainage System (as used in Section 9-704)

See definition of Municipal Separate Storm Sewer System (MS4).

(Renumber existing definition) 18-202AB Stormwater

Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

(Add new definition) 18-202C Stormwater Management Plan (SWMP, as used in Section 9-704)

A plan describing the temporary BMPs and other measures to be implemented prior to and during construction activity to identify pollutants generated and the actions to eliminate or reduce pollutant discharges to stormwater, the MS4, and waters of the state

(Amend existing definition) 18-209B Urbanized Area (as used in Section 7-904)

For Boulder County, the unincorporated territory shown on the Boulder County Urbanized Area Map that is maintained as an official record of the County Land Use Department. This map is based on the CDPS definition of "Urbanized Area" as contiguous, ~~A land area comprising one or more places—central place(s)—and the adjacent densely settled census block groups and census blocks surrounding area—urban fringe—~~ that meet minimum population density requirements, along with adjacent densely settled census blocks that together encompass ~~have~~ a residential population of at least 50,000 people and an overall population density of at least 1,000 people per square mile, with boundaries as determined by the latest Decennial Census by the U.S. Bureau of Census.

(Add new definition) 18-212A Wastewater (as used in Section 7-904)

Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

(Add new definition) 18-213A Watercourse

A channel, natural depression, slough, artificial channel, gulch, arroyo, stream, creek, pond, reservoir or lake, including major drainageways, in which stormwater runoff and floodwater flow, either regularly or infrequently.

(Add new definition) 18-213B Waters Of The State Of Colorado (Waters Of The State) (as used in Section 7-904)

Any and all surface waters that are contained in or flow in or through the state of Colorado, but not including waters in sewage systems, water in treatment works of disposal systems, waters in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed. This definition includes all watercourses, even if they are usually dry. For purposes of Section 7-904, waters of the state does not include subsurface waters.

TEXT AMENDMENT CRITERIA ANALYSIS

Article 16-100.B. contains the criteria for amending the text of the Land Use Code. Staff finds that these criteria are met in the context of this Docket, as follows:

The existing text is in need of amendment:

The proposed changes will improve the content and clarity of the Land Use Code, will establish procedures for monitoring, inspection and enforcement and will bring these regulations into consistency with Colorado Department of Public Health and Environment regulations and the County's state-issued MS4 Permit.

The amendment is not contrary to the intent and purpose of this Code:

None of the proposed amendments are contrary to the intent and purposes of the Code. The amendments enhance regulations already in the Land Use Code and ensure that those regulations conform to current state Water Quality Control Division expectations and requirements for construction-related stormwater control at the County level.

The amendment is in accordance with the Boulder County Comprehensive Plan:

The policies defined within section 3 of the Environmental Resources element, "Water, Air and Noise Pollution," are to minimize or prevent emissions and achieve a maximum degree of air and water purity. In addition, the intent is to comply with the air and water quality standards set forth by the State of Colorado and the EPA. Specifically, Policy 3.01 states, "It shall be county policy to evaluate planned activities within Boulder County relative to their cumulative impacts and compliance with air and water quality standards."

By bringing the County's stormwater regulations into consistency with Colorado Department of Public Health and Environment regulations, the proposed amendments facilitate compliance with water quality-related state and federal standards and permits; help regulate the contribution of stormwater-conveyed pollutants from construction and development to downstream receiving waters; provide reliable mechanisms to assure effective and ongoing maintenance of best management practices; and establish procedures for monitoring, inspection and enforcement to ensure compliance with these regulations.

REFERRALS AND PUBLIC INVOLVEMENT

These proposed changes were referred to the following Boulder County departments: Parks and Open Space, Public Health, Land Use Planning Division, Land Use Building Division, and the County Attorneys. While no formal referral responses have been submitted by these departments, Transportation staff worked closely with the Land Use Department, County Attorneys, and Public Health and these partners support the changes proposed.

Staff also worked closely with the Keep it Clean Partnership, a local community partnership that Boulder County participates in with surrounding communities. Janice Lopitz, Keep it Clean Partnership Coordinator, provided feedback on proposed language and offered guidance based on her work with adjacent municipalities and continued discussions with the staff at the Colorado Department of Public Health and Environment.

In addition, the staff report was emailed to the Land Use Code listserv on December 28, 2012. Any comments received as a result of this email notification will be provided to the Planning Commission prior to the beginning of the public hearing on January 15, 2013.

PLANNING COMMISSION ACTION

Staff presented the application to the Planning Commission on December 19, 2012. No members of the public spoke during the public hearing. During the Planning Commission hearing, staff presented a staff amendment that includes an exemption to the requirements of Article 7-904 for oil and gas operations that receive a Development Plan Review permit under newly enacted Article 12 of the Land Use Code ("Development Plan Review for Oil and Gas Operations" that BOCC approved at a public hearing on 12/4/12, subject to possible additions/changes based upon a follow-up BOCC public hearing to be held on 1/24/13). Commissioners Gerstle and Blaugrund raised concerns that this language would be too broad and would exempt oil and gas operators from all stormwater management.

While oil and gas operations may be exempt from Article 7-904 proposed here, they are not immune from County stormwater management requirements, and will have to meet the stormwater control provisions which have been approved as part of new Land Use Code Article 12. Because Article 12 is intended comprehensively to address the land use and environmental impacts of oil and gas operations, it is preferable from a Code standpoint to place oil and gas-related

stormwater regulations there, as opposed to in a separate Code section (i.e., Article 7-904 proposed here). Staff believes that Article 12 contains sufficient stormwater control requirements for oil and gas operations: all such operations must have a County-approved stormwater control plan that utilizes the “most effective performance techniques and practices [a defined term under Article 12] and best management practices to minimize impacts to surface water from erosion, sediment, and other sources of nonpoint pollution” (Article 12-800.R.) Moreover, the Colorado Oil and Gas Conservation Commission’s (COGCC) regulations require “[a]ll oil and gas locations” to incorporate the Best Management Practices specified in COGCC Rule 1002.f.(2). The Colorado Department of Public Health and Environment has its own stormwater control permitting requirements for oil and gas operations and has provided comment that the County’s proposal to manage oil and gas stormwater is in compliance with the MS4 permit. Finally, the COGCC’s regulations mandate implementation of post-construction stormwater measures (see Rule 1002.f.3.) upon termination of the CDPHE’s construction stormwater permit.

Following discussion, Commissioner Gerstle made a motion to approve the proposed amendments, including the staff amendment to the text placing County oil and gas stormwater requirements in Article 12, rather than proposed revised Article 7-904. The Planning Commission unanimously recommended approval of this motion and certified Docket DC-12-0006 for action to the Board of County Commissioners, by a vote of 6-0.

STAFF RECOMMENDATION

STAFF RECOMMENDS THAT THE BOULDER COUNTY BOARD OF COUNTY COMMISSIONERS TAKE THE FOLLOWING ACTION: (1) APPROVE DOCKET DC-12-0006, TEXT AMENDMENTS TO ARTICLE 3-100, ARTICLE 7-903, ARTICLE 7-904, and ARTICLE 18 OF THE LAND USE CODE, FOR INCORPORATION INTO THE LAND USE CODE, AND (2) APPROVE THE PORTIONS OF THE PROPOSED AMENDMENTS TO ARTICLES 7-904 AND 18 THAT IMPLEMENT THE COUNTY’S MS4 STORMWATER PERMIT WITH THE STATE WATER QUALITY CONTROL DIVISION/DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, AS ORDINANCE 2012-5 UNDER THE COUNTY’S STATUTORY ORDINANCE POWERS.

IN ORDER TO ALLOW THE COUNTY TRANSPORTATION STAFF ADEQUATE TIME TO DEVELOP THE ADMINISTRATIVE FORMS AND PROCEDURES TO IMPLEMENT THE PROPOSED AMENDMENTS/ORDINANCE, STAFF REQUESTS THAT THE BOCC DECLARE THE SUBJECT REGULATIONS TO BE EFFECTIVE ON AND AFTER MONDAY, May 15, 2013.

Attachments:

Proposed Text for Article 7-904

CDPHE Comment