



Transportation Department

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BOULDER COUNTY PLANNING COMMISSION AGENDA ITEM #3

December 19, 2012 – 1:30 P.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 administering 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).

Action Requested: Recommendation of approval and certification of the docket by the Planning Commission to the Board of County Commissioners, following staff presentation and public hearing.

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 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"). Planning Commission 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. Following PC action/recommendation on the Docket, the Board of County Commissioners will hold a public hearing on the Docket in January, including a hearing (second reading) 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 SW Permit issued by County Engineer
Inspections	- Permittee: CDPS obligations - County SW inspections of private development within Urbanized Area	- Permittee: CDPS obligations unchanged - County SW inspections of private development throughout County
Permanent BMPs (Best Management)	- Required within Urbanized Area	- Required within Urbanized Area - Financial guarantee for

Practices)		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 6, 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 December 19, 2012.

STAFF RECOMMENDATION

STAFF RECOMMENDS THAT THE PLANNING COMMISSION APPROVE AND RECOMMEND TO THE BOARD OF COUNTY COMMISSIONERS APPROVAL OF DOCKET DC-12-0006, TEXT AMENDMENTS TO ARTICLE 3-100, Article 7-903, Article 7-904 and ARTICLE 18 OF THE LAND USE CODE, and certify the Docket for action to the Board of County Commissioners, which certification includes the approved text of the Docket, and the official record of the Docket before the Planning Commission including staff comments and materials, public testimony, and Planning Commission action/discussion.

Attachments:

Proposed Text for Article 7-904

TEXT FOR DOCKET #DC-12-0006: PROPOSED LAND USE CODE TEXT AMENDMENTS TO ARTICLES 7-904, 18, 13-100, AND 7-903 OF THE BOULDER COUNTY LAND USE CODE RELATED TO STORMWATER QUALITY AND MANAGEMENT AND EROSION AND SEDIMENT CONTROL, INCLUDING PROPOSED ADOPTION OF THE AMENDMENTS TO ARTICLES 7-904 AND 18 AS A COUNTY ORDINANCE UNDER C.R.S. SECTION 30-15-401(11) (PROPOSED COUNTY ORDINANCE NO. 2012-5)

Article 7-904 of the Boulder County Land Use Code is proposed to be repealed and reenacted as follows:

7-904 Stormwater Quality Management Permit Requirements (also adopted, with related amendments and additions to Article 18 definitions, as County Ordinance No. 2012-5 under C.R.S. Section 30-15-401(11))

A. Purpose/Intent The intent of this section is to protect and enhance the water quality of Boulder County's watercourses and waters of the state; comply with and implement the Clean Water Act, the Colorado Water Quality Control Act including the state Water Quality Control Division's ("WQCD") Colorado Discharge Permit System ("CDPS") Stormwater Management Program, and related County water quality and land use authority; and provide for the health, safety, and welfare of Boulder County citizens by controlling the discharge of construction activity-generated stormwater to the municipal/county separate storm sewer system (MS4) from within the County's unincorporated Urbanized Area (or such other permit area as may be as authorized under the County's CDPS General Permit issued by the state WQCD), and to state waters located within or flowing from the unincorporated County generally. The objectives of this section are therefore to:

1. Regulate the contribution of stormwater-conveyed pollutants to the MS4 (under the County's CDPS General permit), and more broadly to state waters located within or flowing from the unincorporated County, generated from construction activity and development;
2. Reduce pollutants in stormwater discharges from construction activity by guiding, regulating, and controlling the design, construction, use, and maintenance of any development or other activity that disturbs or breaks the topsoil or results in the movement of earth or land;
3. Require the installation of temporary and permanent stormwater runoff controls and best management practices ("BMPs") to prevent the deterioration of water quality related to stormwater discharges from construction activities and sites;
4. Provide reliable mechanisms to assure the effective, ongoing maintenance of required permanent BMPs;
5. Maintain structural stormwater control facilities and nonstructural stormwater management practices so that they continue to function as designed and do not threaten public safety;
6. Establish procedures for monitoring, inspection, and enforcement as necessary to ensure compliance with County stormwater regulations; and
7. Facilitate compliance with water quality-related state and federal standards and permits.

B. Applicability

1. This section applies to all stormwater entering the County's MS4 storm drainage system, and other waters of the state located within or flowing from unincorporated Boulder

County, generated from construction activity on any developed or undeveloped lands within the unincorporated County, as provided by this section, unless exempted.

C. Responsibility for Administration

1. The County Engineer shall administer, implement, and enforce the provisions of this section.

D. Requirements for Stormwater Quality Permit; Limited Permit Exemptions

1. A stormwater quality permit from the County Engineer is required for construction activity resulting in the following total disturbed area:
 - a. One acre or more; or
 - b. Less than one acre if construction activity is part of a larger common plan of development, even if multiple, separate and distinct land development activities may take place at different times on different schedules, so long as the common plan will ultimately disturb one acre or more.
2. The County Engineer may require a stormwater quality permit regardless of the size of the total disturbed area, in conjunction with approval of a final subdivision plat, special use permit, or other site specific development plan under this Code, or if the construction activity is adjacent to a watercourse or wetlands.
3. Agricultural land management activities, except point source discharges subject to National Pollutant Discharge Elimination System ("NPDES") or CDPS stormwater permitting requirements, are exempt from this section.

E. Application Requirements

1. Applications for stormwater quality permits shall be filed on a form prescribed by the County Engineer. A complete application shall include:
 - a. Signature by the landowner or the owner's authorized representative, and identification of the operator and other persons responsible for compliance with the permit. The County Engineer shall have the discretion to require that persons identified as operators, or other persons who are known at the time of application as being responsible for implementation of any approved permit, sign the application as applicants.
 - b. Documentation of an application for a Colorado Department of Public Health and Environment ("CDPHE") stormwater general permit for construction.
 - c. A Stormwater Management Plan ("SWMP") including but not limited to the following:
 - i. Best Management Practices ("BMPs") to be installed on a temporary basis as necessary to control stormwater discharges from the construction site both prior to and during construction;
 - ii. A site plan or plans depicting the affected site in sufficient detail to show significant site features (natural and manmade), areas proposed to be disturbed and developed, existing easement areas and restricted development areas, and locations of proposed temporary BMPs; and
 - iii. Identification of any affected MS4 or waters of the state anticipated to receive stormwater discharge from the site.
 - d. For construction activity within the Urbanized Area, a final drainage plan including a narrative describing proposed permanent BMPs and methods for their perpetual maintenance, identification of the parties responsible for

perpetual maintenance of proposed permanent BMPs, a site plan showing locations of the proposed permanent BMPs, and, as required by the County Engineer, engineered drawings or design schematics for proposed permanent BMPs.

- e. All BMPs designed to meet the requirements of this section shall generally comply with the Urban Drainage and Flood Control District's Urban Storm Drainage Criteria Manual, Volume 3 – Best Management Practices; the Colorado Department of Transportation's ("CDOT") "Erosion Control and Stormwater Quality Guide", or any other alternative methodology, which is demonstrated to be effective and approved by the County.
- f. All other information deemed necessary for the adequate processing of the application, as required in the discretion of the County Engineer.
- g. Payment of a permit fee in an amount determined by the County Engineer as reasonably necessary to defray the costs of administering the County's stormwater quality program under this section.

F. Application Approval and Permit Requirements

1. Within thirty (30) working days after receipt of a complete stormwater quality permit application, the County Engineer shall make a decision on the submitted application. The County Engineer may extend the 30 days for a reasonable period of time if, during the review process of the complete application, the County Engineer discovers problems or deficiencies requiring additional information to be provided or a response from the applicant or related agencies or interested parties. The County Engineer shall notify the applicant in writing of any such extension and the problems or deficiencies involved, and shall attempt to make a decision as soon as reasonably possible after the initial 30 days. Failure of the County Engineer to issue a decision within the specified time period shall not result in the application being automatically approved as submitted, and the County Engineer shall retain jurisdiction to make a decision on the application at the soonest possible time.
2. If the County Engineer determines that insufficient information has been provided to make a decision on the application, or that the application as submitted cannot adequately reduce the discharge of pollutants to the maximum extent practicable and protect water quality, the County Engineer shall deny the application. If a permit is denied, the County Engineer shall notify the applicant in writing of the grounds for denial, and if appropriate shall suggest corrective actions that may be taken to obtain a permit.
3. If the County Engineer determines that the application is adequate to reduce the discharge of pollutants to the maximum extent practicable and protect water quality, the County Engineer shall approve the application, and issue the stormwater quality permit, including any reasonable conditions to mitigate conditions specific to the site, provide for the adequate installation and maintenance of temporary and permanent BMPs, and allow for reasonable adjustments in required BMPs in response to changing or unanticipated conditions in the field. Any approved permit shall also contain the following standard operating requirements:
 - a. The permittee must keep the accepted SWMP on site at all times and shall make the SWMP available for County Engineer inspection upon request.
 - b. The permittee shall provide timely installation and maintenance of all required temporary BMPs required in the SWMP. Nonfunctioning, damaged, or destroyed BMPs shall be repaired or restored immediately. All BMP

- maintenance, repair, and restoration work shall be documented on the accepted SWMP required to be kept on site and available for County Engineer inspection.
- c. The responsibility to maintain and reconstruct or repair all BMPs, both temporary and permanent, shall run with the land and be binding on subsequent owners. Permanent BMPs, which shall be required for construction activity in the Urbanized Area, shall be maintained in perpetuity.
 - d. The permittee shall inspect all temporary BMPs at least every 14 days and within 24 hours after any precipitation or snowmelt event that causes surface runoff. An erosion control supervisor (“ECS”) must conduct all BMP inspections and keep a detailed record of same, as part of the SWMP required to be kept on site and available for County Engineer inspection.
 - e. When the County Engineer deems it necessary for the reasonable implementation of this section, the County Engineer may require the provision of a financial guarantee to assure required performance under the permit.
 - i. The financial guarantee shall be in the form of an acceptable letter of credit with a banking institution in the State of Colorado, or a cash deposit.
 - ii. The amount of the financial guarantee may include warranty collateral to assure the performance of the required improvement for an appropriate period after completion or acceptance.
 - iii. The amount and term of the guarantee and provisions for its release shall be in the reasonable discretion of the County Engineer.
 - f. By accepting the issued permit, the permittee consents, both for itself and its successors in interest, to allow the County Engineer and associated County agents access to the property which is the subject of the permit, for purposes of inspecting compliance with the permit including its approved SWMP, approved final drainage plan, and all required BMPs, both temporary and permanent. County access may occur at any time for this purpose and without prior notice to the permittee, including the landowner, operator or any responsible party under the approved permit, so long as the permit is active or BMPs or other requirements under the permit are required to be met or maintained.
 - g. In instances where the County Engineer has reason to believe that an unannounced inspection is not necessary to assessing compliance, the County Engineer may provide prior notice of a forthcoming inspection to the permittee.
 - h. The County Engineer shall record any approved permit in the real property records of Boulder County, to provide notice to subsequent owners or persons in interest of the requirements of the permit, of the ongoing obligation to maintain permanent BMPs, and of the County Engineer’s right of entry for inspection and enforcement purposes under the permit without prior consent of the permittee (including the landowner, operator, or other responsible party under the approved permit). Recordation of a permit cover sheet or of the permit itself, without all approved plans or attachments, shall be considered adequate notice of the full contents of the

permit, so long as the material recorded indicates that the full permit file can be located in the official records of the County Engineer.

G. Changes to Issued Permit; Required Permit Amendments

1. Upon receipt of a stormwater quality permit, the permittee may make minor modifications to the SWMP and its approved temporary BMPs. To qualify as a minor change, the permittee must document that the change is necessary to provide equivalent water quality protection while still fulfilling the purposes of this section and not increasing adverse water quality impacts. The permittee shall promptly record all minor modifications on the SWMP required to be kept on site and available for County Engineer inspection.
2. Whenever there is a change to the accepted SWMP or any other aspect of an approved permit involving design, construction, operation, or maintenance which has the potential to cause a reduction in water quality protection or have a significant effect on hydrology or stormwater discharge from the project or site, this shall be considered a substantial modification to the approved permit, and may not proceed unless the County Engineer first approves an amendment to the permit filed and processed in accordance with the permit application procedures specified in this section, above. In the alternative, the permittee may request that the County Engineer determine whether a proposed change is minor or substantial in accordance with the considerations specified in this section. The County Engineer may impose reasonable terms and conditions on any approval of the proposed change as minor, to assure that the change is not substantial and otherwise complies with the issued permit and this section, which terms and conditions shall become part of the issued permit.

H. County Confirmation of Compliance with Issued Permits; Ongoing Requirements To Maintain Permanent BMPS

1. Upon completion of the construction or development covered by a stormwater quality permit, the permittee shall request that the County Engineer perform a final inspection to confirm compliance with the accepted SWMP and all other requirements of the permit related to controlling stormwater and other construction site discharges prior to and during construction.
2. If the approved permit requires the construction and maintenance of permanent BMPs, those BMPs must be installed at the time of final inspection, or an additional financial guarantee meeting the terms of subsection 7-904.F.3.e, above, must be provided, as required by the County Engineer, to assure such performance. The permittee must provide "as built" plans, certified by a Colorado licensed Professional Engineer, for any required permanent BMP within 30 days after BMP construction is completed or such other time period specified in the permit by the County Engineer.
 - a. As a condition of approval of the permit and its required permanent BMPs, the permittee shall agree to maintain the BMPs to their design capacity in perpetuity, unless the BMP facility is dedicated to and accepted by the County for ownership and maintenance.
 - b. The obligation to maintain permanent BMPs shall be memorialized on the subdivision plat, annexation plat, development agreement, or other binding agreement or instrument in a form acceptable to the County Engineer, that shall be binding on all subsequent owners of the permanent BMPS and recorded in the office of the County Clerk and Recorder. Permanent BMPs

included in a final drainage plan and as depicted in the submitted as-built plans must undergo ongoing inspections to document maintenance and repair needs and to ensure compliance with the requirements of the ongoing BMP maintenance agreement. Continuing permittee and owner (or other responsible party) consent for the County Engineer to enter the property or site to inspect permanent BMPs for required operation and maintenance, shall be considered to be provided as part of the stormwater quality permit issuance, as provided in subsection F.3., above.

- c. Any person who transfers ownership of land on which BMPs are located or will be located, or who otherwise transfers ownership of BMPs or responsibility for the maintenance of BMPs to another person or entity, shall provide written notice to the County Engineer within 30 days after such transfer and shall also provide clear written notice of the maintenance obligations associated with the BMPs to the new or additional owner prior to that transfer. Failure to provide proper notice will not absolve any person from meeting the requirements of this section.

I. Enforcement and Penalties

1. Violation: It is unlawful for any person to violate any provision of a stormwater quality permit or fail to comply with any of the requirements of this section. Any person who violates any of the provisions of this section may be subject to one or more of the enforcement actions outlined below.
2. Enforcement: All personnel authorized by the County Engineer shall have the power to conduct inspections, give verbal direction, issue notices of violations, perform abatement actions, seek judicial permission and relief, and implement other enforcement actions under this section or as otherwise authorized by law.
3. Right of Entry To Investigate Suspected or Known Violations: Whenever the County Engineer has reason to believe that there exists or is likely to exist any condition which constitutes a violation of this section, the County Engineer shall have the right to enter the subject property at any reasonable time to inspect and determine whether a violation exists.
 - a. Consent for Entry, or Administrative Search Warrant, Required: Before entering any property, the County Engineer shall make a reasonable effort to locate the owner and obtain consent to enter. If such consent cannot be obtained, the County Engineer may seek entry by submitting a sworn affidavit to the proper court of jurisdiction, setting forth facts sufficient to support a reasonable belief that a violation exists or is likely to exist and that further investigation of the property is thus warranted. Such request for entry may include the right for the County Engineer or its designees to set up devices on the property, conduct sampling, take photographs, or perform other investigations deemed reasonably necessary to investigate the alleged violation or assess the effect of any unauthorized erosion or discharges.
 - b. Consent for Entry, or Administrative Search Warrant, Not Required: Consent to enter or an administrative search (inspection) warrant shall not be required if entry is authorized under an existing stormwater quality permit or other prior authorization of the owner or permittee; to make observations from public property, other private property, or portions of the subject property that are open or accessible to the public or in which the owner

otherwise lacks a reasonable expectation of privacy; or where the County Engineer deems an emergency situation to exist which imminently threatens the public health or safety.

4. Notice of Violation: If the County Engineer determines that a violation of this section exists and exercises discretion to pursue enforcement, the County Engineer shall provide written notice, in letter or electronic form, to the property owner of record, and to any known permittee or operator if different from the owner. The notice shall describe the alleged violation, the steps required to abate the violation, and a reasonable timetable for compliance.
5. Stop Work Order: The County Engineer may also, in writing sent to or served on the property owner and/or permittee or operator, order that the activity constituting a violation be stopped until further notice from the County Engineer. If the owner and/or operator or permittee cannot be located, the notice to stop shall be posted in a conspicuous place upon the area where the activity is occurring and shall state the nature of the violation. It shall be unlawful for any owner and/or operator or permittee to fail to comply with a stop work order.
6. Judicial Enforcement Remedies Generally: If compliance is not timely achieved, the County Engineer or County Sheriff, as applicable, may enforce this section in any court of competent jurisdiction, seeking civil or criminal remedies, as appropriate, and relying on any applicable legal enforcement authority, including but not necessarily limited to county zoning regulatory enforcement under C.R.S. Sections 30-28-124 and 30-28-124.5; county building code enforcement under C.R.S. Section 30-28-209; and county ordinance enforcement under Part 4 of Article 15 of Title 30, C.R.S. In addition, any condition caused or permitted to exist in violation of this section is a threat to public health, safety, and welfare, and is declared and deemed a public nuisance, with any court of competent jurisdiction empowered to enjoin such violations upon proof thereof. In any such action the County may recover its costs and attorneys' fees, and collect applicable penalty assessments, as authorized by law.
7. Judicial and Penalty Assessment Enforcement Remedies under County Ordinance Powers (C.R.S. Sections 30-15-402-410, including the simplified county court procedures of Part 1 of Article 2 of Title 16, C.R.S., and the penalty assessment provisions of C.R.S. Sections 16-2-201 and 18-1.3-503): Any person who violates a county ordinance adopted pursuant to Part 4 of Article 15 of Title 30, C.R.S., commits a class 2 petty offense under state law which shall be punished by a fine of not more than one thousand dollars for each separate violation. Each day that a violation is proven to exist may be considered a separate offense. Under this authority, the Board of County Commissioners adopts the following graduated fine schedule: \$500 for the first violation, and \$1,000 for the second or repeat violations. Pursuant to C.R.S. Section 16-2-201, the arresting officer may give the violator a penalty assessment notice, or a summons and complaint may be issued pursuant to the simplified county court procedures of Part 1 of Article 2 of Title 16, C.R.S. The County Engineer and official designees are hereby designated to enforce the ordinance provisions of this section as authorized in C.R.S. Section 30-15-402.5, and the County Sheriff is empowered to enforce county ordinance provisions under C.R.S. Section 30-15-410.
8. Administrative Remedy of Abatement of County Ordinance Violation under C.R.S. Section 30-15-401(11): Any violation that the County Engineer determines is part of the County's stormwater quality management program required by the County's Municipal Separate Storm Sewer System (MS4) CDPS General Permit issued by the state WQCD, and

that the owner, operator or permittee fails to abate following notice of violation provided as required under this section, may be administratively abated by the County in accordance with C.R.S. Section 30-15-401(11), as incorporated herein. The following provisions shall govern such proceeding:

- a. The County Engineer shall seek an administrative entry and abatement (seizure) warrant from the county or district court having jurisdiction over the property from which the violation is to be abated, which the court shall issue upon the County Engineer's presentation of this section (which has been adopted as a C.R.S. Section 30-15-401(11) ordinance); a sworn or affirmed affidavit stating the factual basis for the warrant; evidence that the property owner has received notice of the alleged violation and has failed to abate the condition within the reasonable prescribed period; a general description of the location of the subject property; and a general list of corrective action needed.
 - b. Within ten (10) days after the date of issuance of the administrative entry and abatement (seizure) warrant, the County Engineer shall execute the warrant in accordance with the directions by the issuing court; provide or mail a copy of the warrant to the property owner; and submit proof to the court of execution of the warrant, including a written inventory of any property impounded by the County Engineer.
 - c. Upon completion of these requirements, the County Engineer may assess the reasonable cost of the abatement, including five percent for inspection and other incidental costs in connection with the abatement, upon the subject property, by recording a notice of such assessment with the County Clerk and Recorder. The notice shall specify the basis for and amount of the assessment, and a reasonable time within which the assessment must be paid to the County, which generally shall be within thirty (30) days unless the County Engineer determines a longer or shorter payment period is reasonable.
 - d. Once recorded, the assessment notice shall be a lien against the subject property until paid, and shall have priority based upon the date of recording. If the assessment is not paid within the time specified in the notice, the County Clerk and Recorder, upon request of the County Engineer or other responsible County official, may certify that fact to the County Treasurer, who shall collect the assessment, together with a ten (10) percent penalty for the cost of collection, in the same manner as taxes are collected. State law for assessment and collection of general taxes, including the laws for the sale and redemption of property for taxes, shall apply to the collection of the assessment authorized in this section.
9. Remedies Not Exclusive: The remedies listed in this chapter are not exclusive of any other remedies available under any applicable federal, state or local law, and the exercise of any remedy specified herein shall not necessarily prejudice the pursuit of other listed remedies. It is within the discretion of the County Engineer to seek cumulative remedies.

J. Administrative Appeals

1. Any person aggrieved by the inability to obtain a stormwater quality permit under this section, or by the County Engineer's final decision on an issued permit or interpretation

of the provisions of this section, may file an administrative appeal with the Board of County Commissioners. An appeal must be filed in writing with and received by the County Engineer no later than thirty (30) days after the final action or decision being appealed. Upon receipt of an appeal authorized in this section, the County Engineer shall schedule a public hearing before the Board of County Commissioners on the appeal at the soonest time practicable, considering the Board's schedule, staff time needed to prepare a presentation on the appeal, the issues presented in the appeal, and timing concerns of the appellant.

2. Notice of a Board of County Commissioners' hearing on the appeal shall be published in a newspaper of general circulation within the County, and provided to the appellant, no later than fourteen (14) days prior to the hearing.
3. At the hearing, the Board shall consider the documents and testimony presented by the appellant and its representatives, the County Engineer, any other involved County staff, and any interested members of the public. The Board shall make a decision based on the entire record before it, either affirming in whole or in part, or overturning, the decision of the County Engineer. The Board's decision shall be considered final upon the Board's adoption of a written resolution memorializing its decision at the public hearing.

K. Related Provisions

1. In addition to requirements in this section, stormwater quality and discharge of pollutants into the municipal separate storm sewer system (MS4, or County storm drain system) are subject to regulation under Boulder County Public Health's Ordinance 2012-4, "An Ordinance Concerning Illicit Discharge and Stormwater Quality".
2. Other permits or approvals under this Code, and related regulations of the County, such as those of the Transportation Department and County Public Health, may be necessary before construction or development can commence.