

EXHIBIT A TO RESOLUTION 2013-103 APPROVING DOCKET #DC-13-0003: TEXT AMENDMENTS TO ARTICLE 19 OF THE BOULDER COUNTY LAND USE CODE, TO AMEND ARTICLE 19-100.F. RELATED TO THE TIMELINE FOR REBUILDING FOLLOWING THE FOURMILE CANYON FIRE, AND TO ADD ARTICLE 19-200 ESTABLISHING AN INTERIM PERMITTING PROCEDURE (HAZARD MITIGATION REVIEW) FOR RESTORING STRUCTURES DAMAGED OR DESTROYED BY THE SEPTEMBER, 2013 FRONT RANGE FLOOD AND EXTREME RAIN AND ASSOCIATED WEATHER IMPACTS (TEXT AMENDMENTS AS ADOPTED BY BOARD OF COUNTY COMMISSIONERS TO BE EFFECTIVE BEGINNING ON NOVEMBER 4, 2013)

**AMEND ARTICLE 19-100.F (Fourmile Canyon Fire (September, 2010))
as follows:**

F. Timeline to Rebuild/Repair Eligible Structures

1. Any eligible structure may be rebuilt or repaired pursuant to a building permit reviewed under the procedures specified in Sections G. or H., below, as applicable, provided a complete application for a building permit is submitted to the Land Use Department on or before September 30, 2012. The Director may extend this period

for up to one additional year for a reasonable period of time, but not beyond March 31, 2014, for good cause shown. The owner of any eligible structure located on a parcel where the Fire destroyed more than 158 structures, may have up to September 30, 2018 to submit a complete building application for rebuilding/repair.

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

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

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

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

In the immediate aftermath, as well as for the longer term, the County is resolved to take all reasonable measures to avoid the catastrophic impacts of another such disaster, help keep the public and their property safe from future extreme rain and flood events, and restore and preserve the community's critical infrastructure to the maximum extent practicable. As a starting point in this effort, Boulder County has reviewed its land use regulations and determined that immediate changes are needed to respond to the unique and widespread nature of the 2013 Extreme Rain and Flood Event, to help guide the recovery effort wisely so that future risks from such hazards can be substantially reduced.

The County also recognizes that it must regulate development following this disaster in conformity with the Land Use Code's recently updated floodplain management program, which the Federal Emergency Management Agency has approved under the National Flood Insurance Program to protect the integrity of the floodplain, and provide reasonable flood insurance rates for eligible property owners.

The essential purpose of this Article 19-200, therefore, is to strike an appropriate balance between citizens being able to rebuild their homes and businesses and resume their post-disaster lives, while assuring that the ongoing recovery effort is well planned in anticipation of the possibility of history repeating or exceeding itself. Clearly the County and its affected

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

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

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

Subsections 4-802.B.3.a. and 4-802.B.3.c. are hereby amended for purposes of rebuilding or restoring structures damaged or destroyed by the 2013 Extreme Rain and Flood Event (whether by flooding, debris flows, mudslides, topographic changes or instability, drainage channel shifts, area drainage system impairments or failures, soil saturation, or

related hazardous events triggered by the disaster), for the interim period under this Article 19-200, as follows:

General Duration and Applicability of Article 19-200

1. Subsection 4-802.B.3.a.'s six-month exemption period from Site Plan Review shall be deemed to have commenced on the effective date of these regulations (November 4, 2013), and shall continue until the Board determines the exemption period should be amended or terminated in light of ongoing response to the Extreme Rain and Flood Event ("the Post-Event Rebuilding Period").
2. During the Post-Event Rebuilding Period, this Article 19-200 shall apply to any work for which a County building permit is required to rebuild or restore a legally existing structure damaged or destroyed by the 2013 Extreme Rain and Flood Event and its associated natural forces (unless the work is excluded from this Article 19-200 under Subsection 6, below), and which the owner wishes to be exempt from Site Plan Review. This Article 19-200 may apply instead of Site Plan Review so long as the proposal is to rebuild or restore no more than the structure's original, legally preexisting floor area. The structure's location may be changed, provided the change in location significantly reduces the potential risks associated with future extreme rain and flood events or other known natural hazard areas or incidents (such as by moving the structure out of the mapped floodway or floodplain, or otherwise to a less hazardous location on the property). The structure's height must remain the same, unless the Director (under Subsection 13 below) allows a reasonable height increase to accommodate a specific hazard mitigation requirement.
3. All requirements in Article 4-400 of this Code governing the Floodplain Overlay District shall continue to apply under this Article 19-200, though Site Plan Review for a floodplain development permit (as otherwise required under Subsection 4-802.A.8. of this Code) shall not be necessary, so long as the proposed work falls within the specifications of Subsection 2, above.
4. Legal structures proposed to be restored as provided in Subsection 2, above, are hereafter referred to as "Eligible Structures." Structures proposed for rebuilding or restoration that are not Eligible Structures, shall be subject to the usual provisions of

the Land Use Code; however, if the proposed work does not otherwise trigger Site Plan Review, and is not excluded work under Subsection 6, below, a Hazard Mitigation Review shall be performed under this Article 19-200.

Hazard Mitigation Review Process

5. Before a building permit can be applied for to rebuild or restore any Eligible Structure within the Post-Event Rebuilding Period, the Director must first conduct a Hazard Mitigation Review ("HMR").
6. The following building permits are excluded from the HMR requirement:
 - a. "Flood Recovery, Restoration, and Repair Permits" issued by the Building Division for disaster-related restoration or clean-up work in the aftermath of the 2013 Extreme Rain and Flood Event, involving minor projects related to basement finishing, interior remodels, electrical repairs, reroofing, siding repairs, gas line repairs, plumbing repairs, and replacement of windows, doors, furnaces, boilers, and water heaters.
 - b. A building permit which the Chief Building Official determines is necessary to rectify a hazardous health or safety situation including but not limited to structure stabilization, or to comply with the public health or safety requirements of another governmental entity having lawful jurisdiction over the structure, or to allow for the preservation of a significant historic structure.
 - c. Building permits for structures related to the restoration of utilities or infrastructure, or for small agricultural accessory structures such as loafing sheds or ditch head gates, which the Director determines have no potential to pose a hazard under this Article 19-200.
 - d. Any excluded building permit under Subsections a. through c. above, may be issued for a temporary period, may require further approval of permanent construction measures meeting other applicable code requirements, and may result in owners doing work on a temporary or emergency basis by their own choice and at their own financial risk.

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

information considered necessary to enable a thorough evaluation of the application.

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

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

- a. The proposal shall not pose or create a significant potential safety hazard when evaluated against evidence of actual damage caused by the 2013 Extreme Rain and Flood Event (including by the Event's related hazardous forces such as flooding, debris flows, rockfalls, mudslides, topographic changes or instability, drainage channel shifts, area drainage system impairments or failures, and soil saturation), on the Eligible Structure being restored, on the subject property, on surrounding properties, and on public and private infrastructure serving the subject property or other affected infrastructure.
- b. The proposal shall not alter historic drainage patterns and/or flow rates or shall include acceptable mitigation measures to compensate for anticipated drainage impacts.
- c. If the Eligible Structure's location is proposed or required to be changed, the new location shall significantly reduce the potential risks associated with future extreme rain or flood events or other known natural hazard areas or incidents; shall not create an

unreasonable risk with respect to other natural hazards such as wildfire, subsidence, or erosion; and shall not cause unreasonable harm to significant historic structures or sites, or to significant natural ecosystems and environmental resources including but not necessarily limited to natural areas and natural landmarks, prominent topographic features and excessively steep slopes, riparian corridors and wetland areas, and significant plant communities, wildlife habitat, and wildlife migration corridors, as identified on the Comprehensive Plan or through the HMR process.

- d. If the Director finds that any of the foregoing standards conflict, the Director shall evaluate the applicability and importance of each of the conflicting standards under the facts of the specific HMR application, and make a reasonable attempt to balance the conflicting standards in reaching a decision, with appropriate priority being given to fulfilling the purposes of this Article 19-200.

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

Structure's location is changed to significantly reduce the potential risks associated with future natural hazards; and providing that the proposed development comply with any other applicable permitting requirements, including but not limited to those related to access and sanitation. In addition, the Director may allow a reasonable increase in structure height, not to exceed zoning limits, if necessary to accommodate any elevation of the Eligible Structure for floodproofing purposes or to satisfy any other specific hazard mitigation requirement, provided any associated adverse visual impacts of the height increase are appropriately mitigated.

14. If the Director finds that the HMR application cannot comply with the applicable standards, the Director shall deny the application. The Director also may deny an application, or in the Director's discretion delay a decision on the application for further information, if the Director finds that insufficient information has been presented to allow a reasonable evaluation of the hazards associated with the proposed development, or of effective hazard mitigation measures. For applications in the Floodplain Overlay District (Article 4-400 of the Code), the Director may delay a decision until the County Engineer processes any required Floodplain Development Permit.
15. While the Director is not required to make a decision on a HMR application within a specified time, and may delay a decision on a reasonable basis as provided herein, the Director shall make a good-faith effort to process requests as soon as practicable after a complete application has been submitted.
16. The applicant may appeal the Director's final decision on a HMR application using the same process as appeals for Site Plan Review decisions under Article 4-808.
17. Any final HMR approval shall expire one calendar year after its date of issuance, unless within that year the applicant presents the Director with a written request for an extension. If a timely extension request is received, the Director may allow the HMR approval to remain in effect for up to an additional calendar year, upon a showing of good cause, and provided the circumstances surrounding the approval's issuance under this Article 19-200 have not substantially changed.

Applicability of Other Regulations; Enforcement

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

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

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