



# Land Use

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## BOULDER COUNTY PLANNING COMMISSION

**Wednesday January 16, 2019, at 1:30 p.m.**

**Commissioners' Hearing Room, Third Floor  
Boulder County Courthouse, 1325 Pearl Street, Boulder, CO**

### PUBLIC HEARING

#### **Docket DC-18-0005: Text Amendments to the Site Plan Review Provisions in Article 4-800 of the Boulder County Land Use Code Related to Floodplain Development Permits**

Staff:

*Land Use Department*

Christy Wiseman, Long Range Planner I

*Transportation Department*

Harry Katz, Floodplain Permitting Specialist

### AGENDA

1. Staff presentation and Planning Commission clarifying questions
2. Public Hearing
3. Planning Commission deliberation and decision

### INTRODUCTION

The purpose of the proposed Land Use Code (“the Code”) amendments presented in DC-18-0005 is to clarify and streamline existing Land Use review processes for projects requiring an Individual Floodplain Development Permit (FDP). The proposed Code amendments will exempt a project requiring an Individual FDP from Site Plan Review (SPR) if the project has no conflicts with the SPR standards listed in Article 4-806 and if no other criteria listed in Article 4-802 separately trigger SPR.

The proposed Code amendments would still provide an appropriate level of review of flood risk and land use impacts for development proposals, as called for in the goals and policies of the Boulder County Comprehensive Plan’s (BCCP) Natural Hazards Element. The resulting Code provisions will better match projects requiring an Individual FDP with the appropriate Land Use review process. The proposed amendments were drafted as a collaborative effort between Land Use staff and Floodplain staff in the Transportation Department.

## ACTION REQUESTED

Recommend that the BOCC approve the Land Use Code text amendments proposed in Attachment A of this staff report as part of Docket DC-18-0005.

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## I. OBJECTIVES AND SCOPE OF LAND USE CODE UPDATE

The purpose of the proposed Code amendments is to better match projects requiring an Individual FDP with the appropriate Land Use review process, based on potential land use impacts.

### Proposed changes:

- Provide an option to exempt a project that requires an Individual FDP from triggering SPR, so long as the Land Use Director finds that the project has no conflicts with the standards listed in Article 4-806.
- Clarify the language in Article 4-802.B.3 related to restoration of structures that have been damaged or destroyed by causes outside the control of the property owner or their agent.

All proposed text amendments are contained within Article 4-802, Applicability and Scope of the Site Plan Review Process for Development.

## II. BACKGROUND

On October 4, 2018, the Board of County Commissioners (BOCC) authorized Land Use staff to pursue text amendments to the Site Plan Review (SPR) provisions in Article 4-800 of the Boulder County Land Use Code related to Floodplain Development Permits (FDPs).

Currently, any development in the Floodplain Overlay (FO) District that is not covered under the county's General FDP requires an Individual FDP. This, in turn, triggers the SPR process. The SPR process is for addressing land use, environmental, and public safety-related impacts of a project as outlined in Article 4-806, Site Plan Review Standards. SPR allows the Land Use Department to conduct a thorough analysis of land use impacts and apply mitigating conditions that must be met

before Building Permits (BP) are issued. However, for some types of projects that require an Individual FDP<sup>1</sup>, neither the county nor the applicant benefit from going through an SPR process as there are few land use impacts associated with the project beyond those already reviewed as part of the Individual FDP.

In 2016, [DC-15-0004](#) introduced the General FDP. The General FDP is for development and uses in the FO District that have been determined by the County Engineer to have minimal or no impact on flood hazards. Projects permitted under the General FDP are exempt from needing SPR in Article 4-802.B.6.

Examples of projects covered under the General FDP include:

- New underground utilities that do not permanently alter topography.
- New driveways, trails, sidewalks, roads and streets constructed completing at-or-below existing grade.
- Private storm drainage infrastructure maintenance.
- New fences that comply with County fence requirements as well as maintenance and/or repair of existing legal fences. Fences that are to be oriented perpendicular to flood flows may require an Individual FDP.
- Gardening and landscaping activities.

Examples of projects that may require an Individual FDP but that do not generally conflict with the SPR standards (listed in Article 4-806) include:

- Interior remodels.
- Sump pump installation.
- New windows and door installation.
- Re-roofing.
- Deconstruction and removal of structures.

The goals and policies of the [Boulder County Comprehensive Plan's \(BCCP\)](#) Natural Hazards Element call for the county to avoid the placement of people and structures where natural hazards and disasters are likely to occur, and to mitigate existing areas at risk in order to minimize the future loss of life, property, and resources. The proposed Code amendments align with these goals. The proposed amendments would not change the need for projects to obtain required Individual FDPs and therefore comply with any conditions or regulations required by the Transportation Department. The County Engineer has the ability to apply conditions, such as revegetation, on to an Individual FDP in a similar way as conditions are applied in the SPR process.

The proposed amendments would better tailor the level of Land Use review to the type of project in question. This will make more efficient use of both the county's and applicants' resources by avoiding SPR processing time and fees for cases that would not benefit from such a process.

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<sup>1</sup> FEMA requirements often cause a development project to require an Individual FDP, due to use of specific building materials or percentage improvement of a building based on cost.

### **III. SUMMARY OF PROPOSED CODE CHANGES**

First, the proposed amendments clarify existing provisions in Article 4-802.B.3 related to restoration of structures that have been damaged or destroyed by causes outside the control of the property owner or their agent. The existing language is somewhat confusing in that requirements related to “original location, floor area, and height” are not always applicable to hydraulic structures and accesses. It is also unclear whether certain requirements were specific to bridges and other hydraulic structures or universally applied to all structures.

The proposed amendments improve clarity by:

- Reorganizing the sub-provisions for ease of understanding
- Clarifying siting requirements for restored structures
- Removing repetitive language
- Referencing the Boulder County Multimodal Transportation Standards

Second, the proposed amendments provide an option to exempt a project that requires an Individual FDP from triggering SPR by adding a new provision in 4-802.B:

“Any development or earthwork requiring an Individual Floodplain Development Permit, so long as the Land Use Director finds no conflicts with the standards listed in Article 4-806 of this Code.”

### **IV. SUMMARY OF REFERRAL FEEDBACK AND RESPONSES**

Staff circulated a referral packet to solicit public feedback on draft Code changes on December 21, 2018. Staff received seven comments from external referral agencies, as well as comments from staff in other Boulder County departments.

#### *Referral Comments*

- The following agencies submitted either “no comment” or “no conflict” responses:
  - Greater Allenspark Alliance
  - City of Lafayette
  - City of Longmont
  - Left Hand Water District
  - Goose Haven HOA
  - Xcel Energy
- City of Boulder Open Space and Mountain Parks (OSMP) was the only external referral agency to submit detailed comments on the draft Code language. OSMP comments are summarized here, and a copy of the agency’s complete comments is in Attachment B of this staff report.
  - a) There is an existing provision in 4-802.B.3 that requires restoration to be commenced within one year after the date on which the structure was damaged or destroyed, or a latent defect discovered. OSMP requested that exceptions be made for projects requiring federal, state, and local permits.
  - b) OSMP requested that the circumstances in which a project can go through Site Plan Review Waiver (SPRW) instead of SPR be expanded under 4-802.C.8 to accommodate organizations with “project standards and best management practices that meet or exceed Boulder County’s Land Use and/or Building regulations.”

## *Response to Referral Feedback*

- After the referral packet was sent, staff added the word “additionally” to the proposed text in 4-802.B.3.c in response to a request from staff in the Transportation Department.
- Staff does not propose to change the draft text in response to OSMP’s comments as described here.
  - a) With regard to comment “a” above, the existing language in 4-802.B.3 gives the Land Use Director the ability to extend the one-year timeframe for restoration commencement in the case of “extenuating circumstances,” such as complex projects involving multiple agencies and differing government permitting scales.
  - b) With regard to comment “b” above, the SPR and SPRW processes utilize the same set of standards (listed in Article 4-806) as criteria when analyzing development projects. Projects are evaluated against these criteria as opposed to the applicant or applicant organization’s internal project standards. Site Plan Review Waiver may be appropriate if the Land Use Director determines that there is no potential for any significant conflict with the criteria listed in Article 4-806; whether a project can be reviewed through the SPRW process depends on the specific land use impacts of the proposed project.

## **V. RECOMMENDATION**

The proposed Code amendments better tailor the level of review of flood risk and land use impacts for development proposals to the type of project in question. This will reduce unnecessary burden on both county staff and property owners while still providing an appropriate level of review, as called for in the goals and policies of the Boulder County Comprehensive Plan’s Natural Hazards Element.

Amendments to the Land Use Code require approval by the Board of County Commissioners, upon recommendation of the Planning Commission. Staff requests that Planning Commission recommend approval of the proposed text amendments to the Board of County Commissioners.

### ***Text Amendment Criteria***

Article 16-100.B. contains the criteria for amending the text of the Land Use Code. Staff finds that the proposed amendments in this Docket can the following criteria:

1. the existing text is in need of the amendment;
2. the amendment is not contrary to the intent and purpose of this Code; and
3. the amendment is in accordance with the Boulder County Comprehensive Plan

### ***Action Requested***

Staff requests that Planning Commission recommend that the Board of County Commissioners approve the proposed Land Use Code text amendments in Docket DC-18-0005 as presented in Attachment A of this staff report.

## **IV. LIST OF HYPERLINKS**

- BOCC Authorization October 4, 2018: <https://assets.bouldercounty.org/wp-content/uploads/2018/12/dc-18-0005-bocc-authorization-20181004.pdf>
- Site Plan Review: <https://www.bouldercounty.org/property-and-land/land-use/planning/review/site-plan-review-spr/>

- Floodplain Development Permits: <https://www.bouldercounty.org/transportation/permits/flood-control/>
- General FDP: <https://assets.bouldercounty.org/wp-content/uploads/2017/03/general-floodplain-development-permit.pdf>
- Individual FDP: <https://www.bouldercounty.org/transportation/permits/flood-control/#individual>
- DC-15-0004: <https://www.bouldercounty.org/property-and-land/land-use/planning/land-use-code-update/dc-15-0004/>
- Boulder County Comprehensive Plan (BCCP): <https://www.bouldercounty.org/property-and-land/land-use/planning/boulder-county-comprehensive-plan/>

# Proposed Land Use Code Amendments

[This document only shows Land Use Code language that would undergo changes as a result of this update.]

## 4-802 Applicability and Scope of the Site Plan Review Process for Development

- A. Site Plan Review shall be required for (unless not required or waived pursuant to sections B and C below):
  - 8. Any development or earthwork requiring an Individual fFloodplain dDevelopment pPermit.
- B. Site Plan Review shall not be required for:
  - 3. Restoration of a structure ~~or access~~ that has been damaged or destroyed by causes outside the control of the property owner or their agent. ~~provided the restoration involves the original location, floor area, and height. Such restoration must comply with the current provisions of the Boulder County Land Use Code other than 4-800 (also see Nonconforming Structures & Uses, Article 4-1002(D) and 4-1003(F)).~~
    - a. Restoration must involve the original location along the stream for stream spanning hydraulic structures, and in the case of a non-hydraulic structure, the original location, floor area, and height, if applicable. Such restoration must meet the other applicable provisions of this Code, including but not limited to the applicable zoning district setback and height requirements and the provisions of the Floodplain Overlay District (also see Nonconforming Structures & Uses, Article 4-1002(D) and 4-1003(F)).
    - b. ~~Such~~ Restoration must be commenced within one year after the date on which the structure ~~or access~~ was damaged or destroyed, or a latent defect discovered. This limitation may be extended in the case of extenuating circumstances as determined by the Director.
    - c. Restoration ~~Replacement~~ of bridges, box culverts, ~~or~~ low-water crossings, ~~or~~ other hydraulic structures, either as a temporary or permanent hydraulic structure, and ~~accesses spanning a creek or other drainage within a mapped floodplain under Article 4-400, may also be exempt from Site Plan Review under this Subsection 3.~~ are subject to ~~administrative approval~~ review by the County Engineer for compliance with the Boulder County Storm Drainage Criteria Manual and the Multimodal Transportation Standards. The County Engineer may ~~additionally~~ impose conditions on the construction to assure basic safety, ~~including but not limited to requiring construction of a replacement bridge or crossing that is compliant with the Land Use Code and the Storm Drainage Criteria Manual either as a temporary or permanent replacement hydraulic structure.~~
    - d. The provisions of this Section 4-802(B)(3) shall not apply to Substantial Improvements to buildings in the Floodplain Overlay District as provided for in Section 4-400 of this Code.
  - .....
  - 6. Any development or earthwork ~~which the County Engineer deems~~ eligible for a General

- Floodplain Development Permit.
7. Any development or earthwork requiring an Individual Floodplain Development Permit, so long as the Land Use Director finds no conflicts with the standards listed in Article 4-806 of this Code.
- C. Site Plan Review may be waived for the following circumstances if the Land Use Director determines that there is no potential for any significant conflict with the criteria listed in Article 4-806 of this Code:
8. Any development or earthwork requiring an Individual Floodplain Development Permit ~~for which the Director does not exempt Site Plan Review per 4-802(B)(7) above., so long as the Director consults with the County Engineer before granting the waiver.~~

## Attachment B: Referral Comments

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## Land Use

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**Mailing Address:** P.O. Box 471 • Boulder, Colorado 80306 • [www.bouldercounty.org](http://www.bouldercounty.org)

December 21, 2018

**Docket DC-18-0005: Text Amendments to the Site Plan Review Provisions in Art. 4-800 of the Boulder County Land Use Code Related to Floodplain Development Permits**

Request: Review of draft text amendments to Article 4-800 of the Boulder County Land Use Code to clarify and streamline requirements for projects that require Floodplain Development Permits.

(Staff Leads: Christy Wiseman, Land Use Department; Harry Katz, Transportation Department)

Dear Stakeholder/Interested Party,

On October 4, 2018, the Board of County Commissioners (BOCC) authorized Land Use staff to pursue text amendments to the Site Plan Review (SPR) provisions in Article 4-800 of the Boulder County Land Use Code ("the Code") related to Floodplain Development Permits (FDPs). The purpose of the Code amendments is to clarify and streamline existing requirements for projects requiring an Individual FDP. The resulting Code provisions will better match projects requiring an Individual FDP with the appropriate Land Use review process. The proposed amendments were drafted in close coordination with staff from the Floodplain Team in the Transportation Department.

**Summary of Proposed Changes:**

- Providing an option to exempt a project that requires an Individual FDP from triggering SPR, so long as the Land Use Director finds that the project has no potential conflicts with the standards listed in Article 4-806.
- Clarifying the language related to restoration of structures that have been damaged or destroyed by causes outside the control of the property owner or their agent in Article 4-802.B.

**Attachments:**

Attachment	Description
A	Proposed Text Amendments to the Land Use Code <i>(excerpts of existing Code language with changes shown in redline)</i>

This draft of proposed changes to the Land Use Code is being referred to agencies and members of the public to garner feedback. Staff will make necessary changes to the draft before it is recommended for adoption through the public hearing process. The existing text and a draft of the proposed text amendments are attached to this letter for your review. You may also view the proposed draft text amendments and future revisions in our office or online at: [www.bit.ly/dc-18-0005](http://www.bit.ly/dc-18-0005)

The docket review process for the proposed amendments will include a public hearing before the Boulder County Planning Commission and the Boulder County Board of County Commissioners. Public comment will be taken at both hearings. Confirmation of hearing dates and times will be published online at the link above and in local newspapers.

The Land Use staff and County Commissioners value comments from individuals and referral agencies. Please check the appropriate response below or send a letter or email with your comments. All comments will be made part of the public record. If you have any questions regarding this docket, please contact us at (303) 441-3930 or [cwiseman@bouldercounty.org](mailto:cwiseman@bouldercounty.org).

Please return responses by January 3, 2019. Late responses will be reviewed as the process permits.

We have reviewed the proposal and have no conflicts.

Letter is enclosed.

Signed Matt Ashley PRINTED Name Matt Ashley, Associate Property Agent

Agency or Address City of Boulder Open Space and Mountain Parks

**Cindy Domenico** County Commissioner

**Deb Gardner** County Commissioner

**Elise Jones** County Commissioner

Attachment A: Proposed Text Amendments to the Land Use Code

## Proposed Land Use Code Amendments

*[This document only shows Land Use Code language that would undergo changes as a result of this update.]*

### 4-802 Applicability and Scope of the Site Plan Review Process for Development

- A. Site Plan Review shall be required for (unless not required or waived pursuant to sections B and C below):
  - 8. Any development or earthwork requiring an Individual ~~f~~loodplain ~~d~~evelopment ~~p~~ermit.
- B. Site Plan Review shall not be required for:
  - 3. Restoration of a structure ~~or access~~ that has been damaged or destroyed by causes outside the control of the property owner or their agent. ~~provided the restoration involves the original location, floor area, and height. Such restoration must comply with the current provisions of the Boulder County Land Use Code other than 4-800 (also see Nonconforming Structures & Uses, Article 4-1002(D) and 4-1003(F)).~~
    - a. Restoration must involve the original location along the stream for stream spanning hydraulic structures, and in the case of a non-hydraulic structure, the original location, floor area, and height, if applicable. Such restoration must meet the other applicable provisions of this Code, including but not limited to the applicable zoning district setback and height requirements and the provisions of the Floodplain Overlay District (also see Nonconforming Structures & Uses, Article 4-1002(D) and 4-1003(F)).
    - b. ~~Such~~ Restoration must be commenced within one year after the date on which the structure ~~or access~~ was damaged or destroyed, or a latent defect discovered. This limitation may be extended in the case of extenuating circumstances as determined by the Director. *EXCEPTIONS NEED TO BE MADE FOR PROJECTS REQUIRING MULTIPLE FEDERAL, STATE, & LOCAL PERMITS AS IT IS UNLIKELY RESTORATION COULD BEGIN WITHIN 1 YEAR ON THOSE PROJECTS.*
    - c. Restoration ~~Replacement~~ of bridges, box culverts, ~~or~~ low-water crossings, ~~or~~ other ~~FEDERAL, STATE,~~ hydraulic structures, either as a temporary or permanent hydraulic structure, and ~~accesses spanning a creek or other drainage within a mapped floodplain under Article 4-400, may also be exempt from Site Plan Review under this Subsection 3,~~ are subject to ~~administrative approval review~~ by the County Engineer for compliance with the Boulder County Storm Drainage Criteria Manual and the Multimodal Transportation Standards. The County Engineer may impose conditions on the construction to assure basic safety, ~~including but not limited to requiring construction of a replacement bridge or crossing that is compliant with the Land Use Code and the Storm Drainage Criteria Manual either as a temporary or permanent replacement hydraulic structure.~~
    - d. The provisions of this Section 4-802(B)(3) shall not apply to Substantial Improvements to buildings in the Floodplain Overlay District as provided for in Section 4-400 of this Code.
  - .....
  - 6. Any development or earthwork ~~which the County Engineer deems~~ eligible for a General Floodplain Development Permit.

Attachment A: Proposed Text Amendments to the Land Use Code

7. Any development or earthwork requiring an Individual Floodplain Development Permit, so long as the Land Use Director finds no conflicts with the standards listed in Article 4-806 of this Code.
  - C. Site Plan Review may be waived for the following circumstances if the Land Use Director determines that there is no potential for any significant conflict with the criteria listed in Article 4-806 of this Code:
    8. Any development or earthwork requiring an Individual Floodplain Development Permit for which the Director does not exempt Site Plan Review per 4-802(B)(7) above, ~~so long as the Director consults with the County Engineer before granting the waiver.~~
- \* OR ANY PROJECT PERFORMED BY AN ENTITY, ORGANIZATION, OR MUNICIPALITY WITH PROJECT STANDARDS AND BEST MANAGEMENT PRACTICES THAT MEET OR EXCEED BOULDER COUNTY'S LAND USE AND/OR BUILDING REGULATIONS.