

RESOLUTION 2022-067

A resolution conditionally approving Boulder County Community Planning & Permitting Docket LU-22-0012: Boulder County Parks & Open Space Howell Ditch Diversion

Recitals

A. Boulder County Parks & Open Space and City of Boulder Utilities (the “Applicants”) applied to Boulder County for Limited Impact Special Use Review under Article 4-600 of the Boulder County Land Use Code (the “Code”) for grading in excess of 500 cubic yards related to creek restoration, construction of a permanent ditch diversion, and the installation of a water delivery pipeline in Boulder Creek.

B. The proposed work will be performed at 11751 Kenosha Road, Boulder County Assessor Parcel Nos. 146511000031, 146511000032, 146511000010, 146511000001, 146502003001, 146501000017, 146501000026, 146501000027, and 146512000033 and straddles Boulder Creek and is located approximately 560 feet west of the intersection of Kenosha Road and North 119th Street and approximately 2,000 feet east of the intersection of North 115th street and Kenosha Road, northwest of the City of Erie in Section 11, Township 1 North, Range 69 West, in an Agricultural zoning district in unincorporated Boulder County (the “Project Area”). Access to the site is primarily from the south along Kenosha Road.

C. Partly due to historic flooding in 2013, significant erosion and undercutting exists along the Project Area, weakening its stability and resiliency for future flood events. The proposed work will return the creek to a more sustainable and natural alignment, and restore the eroded stream banks.

D. In addition, the project will enhance the Howell Ditch’s agricultural water right by establishing a permanent ditch diversion. Currently, water is conveyed into the Howell Ditch via an intake ditch and temporary push-up dam. This approach dries up a segment of the main channel of Boulder Creek and inhibits its natural ecological functioning. The location of the proposed permanent diversion is approximately 800 feet west (upstream) of the current push-up dam. The site was selected due to its geomorphic stability, increasing sustainability and resiliency. The diversion also includes a cascading boulder riffle structure that will allow for the passage of native fish.

E. The proposed project seeks to create a single, stable creek channel, improve ecosystem functioning, ensure the resilience of the riparian corridor in the event of future flooding, and improve the functioning of the Howell Ditch.

F. The above-described request was processed and reviewed as Boulder County Community Planning & Permitting (“CPP”) Docket LU-22-0012 (the “Docket”), as further described in the

memorandum and written recommendation to the Board of County Commissioners (the “Board”) by CPP Department planning staff dated August 18, 2022, together with its attachments (the “Staff Recommendation”). The Staff Recommendation found that the Docket could meet the criteria for approval with recommended conditions, and therefore, recommended that the Board conditionally approve the Docket.

G. At an online public hearing on the Docket held on August 18, 2022 (the “Public Hearing”), as further reflected in the official record of the Public Hearing, the Board considered the Staff Recommendation, as well as documents and testimony presented by CPP Department planning staff. The Board also heard testimony from Justin Atherton Wood, Kurt Bauer, Robert Glenn, and Mac Kobza on behalf of the Applicants. No members of the public spoke at the Public Hearing.

H. Based on the Public Hearing, the Board finds that the Docket meets the criteria for Limited Impact Special Use approval for the for grading in excess of 500 cubic yards related to creek restoration, construction of a permanent ditch diversion, and the installation of a water delivery pipeline in Boulder Creek as set forth in Article 4-601.

I. Therefore, the Docket can be approved, subject to the conditions stated below.

Therefore, the Board resolves:

Docket LU-22-0012 is approved on the basis and terms set forth in this Resolution, above, and subject to the following conditions:

1. Prior to commencement of site disturbance, the Applicants shall obtain all necessary local, state, and federal reviews and permits, including from US Fish & Wildlife, US Army Corps of Engineers, Colorado Parks & Wildlife, and Colorado Division of Water Resources.
2. The Applicants shall obtain a Floodplain Development Permit. Prior to issuance of a Floodplain Development Permit, the following information is required:
 - a. A no rise certification letter, an approved Conditional Letter of Map Revision from FEMA, or an approved Boulder County Floodway Review.
 - b. A map depicting all proposed staging and stockpiling areas in relation to the regulatory floodplain and floodway boundaries.
 - c. A site plan showing the proposed grading in relation to the regulatory floodplain and floodway boundaries and property boundaries.
 - d. A construction design stamped, signed, and dated by a Colorado-licensed Professional Engineer.

- e. A hydraulic model and report demonstrating floodplain impacts. The report must certify that no insurable structures are impacted by increases in 100-year water surface elevations.
- f. The project design shall be based on hydraulic modeling that complies with Article 4-404.2.E of the Boulder County Land Use Code.

3. Prior to commencement of site disturbance, the Applicants shall obtain a County Stream Restoration Permit from the CPP Department. Plans submitted for permitting shall be certified by a qualified Professional Engineer registered in the state of Colorado. Detailed plan review shall be performed at the time of permit application and engineering observations are required prior to final approval of the work covered in the stream restoration permit.

4. A Boulder County Storm Water Quality Permit (“SWQP”) is required. The application for the SWQP shall be submitted with the Stream Restoration Permit application. Specific Best Management Practices for refueling areas shall be detailed on the plans submitted for the SWQP.

5. The Applicants shall submit a Revegetation Plan for review and approval. The Revegetation Plan must include a Weed Management Plan for the Project Area and the subject properties, which shall be reviewed and approved by CPP and Parks & Open Space staff.

6. If applicable, a building permit shall be obtained for the new diversion structure.

7. The plans submitted for permit shall include a typical section for the proposed maintenance road. If the road will be removed after construction, the disturbed area must be revegetated and restored.

8. Prior to submittal of the building/grading permit, an updated grading fact sheet signed by a qualified Colorado-licensed Professional Engineer shall be submitted that identifies the amount of excess cut material and how it will be repurposed. If the excess material will be exported off site, a haul map showing the haul route shall be provided. Based on the haul information, Access & Engineering staff will determine if the Applicants are required to submit a Traffic Control Plan.

9. If material is transported off-site, a Boulder County Hauler License is required, regardless of where the material is deposited. This applies to the prime contractor as well as any subcontractors that collect, transport or dispose of any materials (dirt, gravel, garbage, recyclables, compostables, construction and demolition waste, or landscaping materials) anywhere except within the project site, including locations outside unincorporated Boulder County.

10. Prior to commencement of site disturbance, the limits of disturbance must be shown on plans submitted for permitting and clearly identified and fenced off in the field.

11. Final access, staging, stream access corridors and refueling locations must be shown on plans submitted for permitting. A 150-foot buffer around all gas facilities is required for access and in the event of an emergency or accident. Staging, stockpiling, and refueling must be located outside the regulatory floodplain. If not possible, an evaluation of alternative locations may be considered.

12. Final grades steeper than a 1½ to 1 slope require a retaining wall. A separate building permit is required for each retaining wall over four feet in height and engineering calculations are required for retaining walls over six feet in height.

13. As called for in the Boulder County Storm Drainage Criteria Manual (“SDCM”), biodegradable hydraulic fluids shall be used in all equipment and machinery operating in surface waters; all other applicable requirements in the SDCM shall be observed.

14. All equipment shall be cleaned and disinfected in accordance with the state Division of Parks & Wildlife protocols to prevent aquatic invasive species and noxious weeds before entering the construction site.

15. A “spill kit” for emergency pollutant isolation and written clean-up procedures shall be onsite during construction activity.

16. If the project includes stream restoration work that is independent of, and can be distinguished from, the diversion improvement project, and this work will result in increased depletions, a substitute water supply plan or augmentation plan shall be obtained from the Colorado Division of Water Resources.

17. All plantings must be approved by CPP, and tree and shrub plantings shall be monitored for a minimum of three years following completion of the project.

18. All straw utilized for mulch or as bale barriers must be certified weed-free, and seed drilling rather than hydromulching is encouraged for plantings.

19. The Applicants shall be subject to the terms, conditions, and commitments of record and in the file for Docket LU-22-0012 Boulder County Parks & Open Space Howell Ditch Diversion.

[Signature Page to Follow]

A motion to approve the Docket was made by Commissioner Claire Levy, seconded by Commissioner Marta Loachamin, and passed by a 2-0 vote. Commissioner Matt Jones was excused from the Public Hearing.

ADOPTED as a final decision of the Board on this _____ day of October 2022.

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

Marta Loachamin, Chair

Claire Levy, Vice Chair

Excused August 18, 2022

Matt Jones, Commissioner

ATTEST:

Clerk to the Board