



Community Planning & Permitting

Courthouse Annex • 2045 13th Street • Boulder, Colorado 80302
Mailing Address: P.O. Box 471 • Boulder, Colorado 80306
303-441-3930 • www.BoulderCounty.gov

BOARD OF COUNTY COMMISSIONERS PUBLIC HEARING

March 26, 2024 at 1:00 p.m.

Boulder County Courthouse, 3rd Floor,
1325 Pearl Street, Boulder
Virtual and in-person

PUBLIC HEARING with PUBLIC TESTIMONY

STAFF: Kelly Watson, Principal Floodplain Planner

DATE ISSUED: March 12, 2024

Docket Z-23-0001: Zoning Map Amendments to the Floodplain Overlay District

Amendments to the Boulder County Floodplain and Floodway based on FEMA's Physical Map Revision reflecting the Colorado Hazard Mapping Program (CHAMP) study.

Action Requested: Approval

PACKET CONTENTS

Item	Pages
Staff Recommendation	1 – 10
Authorization of Zoning Map Amendments Memo (Exhibit A)	A1 – A3
Agency Referral Responses (Exhibit B)	B1 – B8
Public Comment (Exhibit C)	C1 – C31

SUMMARY

The Colorado Hazard Mapping Program (CHAMP) has produced new regulatory floodplain maps for the waterways in unincorporated Boulder County most affected by the 2013 flood. The county's Floodplain Overlay District is comprised of both the *FEMA* Flood Insurance Rate Map (FIRM) and the *Boulder County* Floodplain and Floodway. In 2017, 2018, and 2020, the county incorporated draft and preliminary CHAMP data into the Boulder County Floodplain and Floodway. Now, the CHAMP study will be incorporated into the FEMA FIRM as of autumn 2024. Staff propose removing Boulder County Floodplain and Floodway for stream reaches included in the CHAMP study, such that the FEMA FIRM will be the only effective regulatory floodplain for CHAMP reaches after the FEMA map update.

BACKGROUND

The 2013 flood event caused widespread damage along waterways throughout Boulder County and other areas of the state. In response, the State of Colorado took steps to bolster long-term planning and resiliency efforts by approving funds through Senate Bill 15-245 for the Colorado Hazard Mapping Program (CHAMP), managed by the Colorado Water Conservation Board (CWCB). CHAMP is updating local hazard information, including producing new regulatory floodplain maps for the most affected waterways in unincorporated Boulder County (Figure 1).

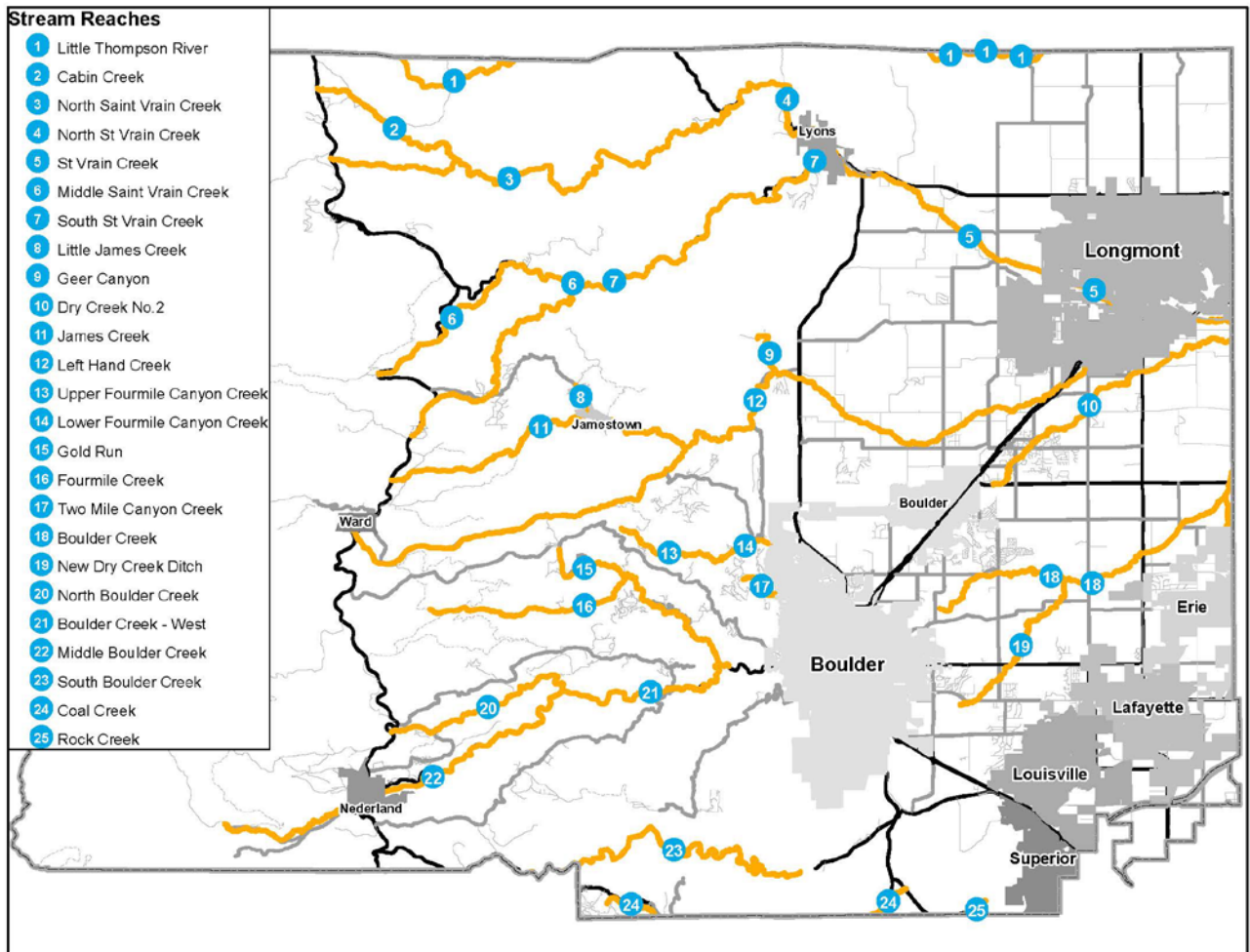


Figure 1. Stream Reaches within unincorporated Boulder County included in the CHAMP study.

The county has already incorporated draft and preliminary CHAMP data into the Boulder County Floodplain and Floodway. In 2017 and 2018, Boulder County undertook comprehensive zoning map amendments to the Floodplain Overlay District to adopt the two phases of CHAMP draft floodplain mapping (Dockets Z-17-0001 and Z-17-0002). These map amendments were accomplished through the map adoption process set forth in Articles 4-400 and 4-1102 of the Boulder County Land Use Code (the Code), and included technical review, public notification, and hearings before the Planning Commission and the Board of County Commissioners. The draft CHAMP data were adopted via Board of County Commissioners Resolutions 2017-68 and 2018-78.

In September 2019, the Federal Emergency Management Agency (FEMA) released Preliminary Flood Insurance Rate Maps (Preliminary FIRMs) based on the CHAMP remapping efforts. The Preliminary FIRMs had minor differences compared to the already adopted draft CHAMP maps, mainly due to smoothing of floodplain boundaries. Boulder County again adopted the Preliminary FIRMs as the best available information (Docket Z-23-0001, Resolution 2020-11).

In July 2023, FEMA released revised Preliminary FIRMs, which differed from the 2019 Preliminary FIRMs in eight areas where FEMA approved changes submitted during FEMA's 2020 and 2021 appeal periods. The eight appeal areas are:

1. Private access bridge at 7871 Lefthand Canyon Drive. This bridge replacement was funded with Community Development Block Grant Disaster Recovery (CDBG-DR) funds and FEMA agreed to incorporate the bridge into the floodplain mapping via the appeal process.
2. Private access bridge at 618 Apple Valley Road. This bridge replacement was funded with Community Development Block Grant Disaster Recovery (CDBG-DR) funds and FEMA agreed to incorporate the bridge into the floodplain mapping via the appeal process.
3. Private access bridge at 28328 South Saint Vrain Drive. This bridge replacement was funded with Community Development Block Grant Disaster Recovery (CDBG-DR) funds and FEMA agreed to incorporate the bridge into the floodplain mapping via the appeal process.
4. Private access bridge at 38148 Boulder Canyon Drive – modified ineffective flow areas based on additional or more accurate information.
5. 69 Hover Road – changed a small area from Zone AE to Zone AO based on topographic information.
6. Highway 119 in the City of Longmont – eliminated highway overtopping based on additional topographic information and more detailed hydraulic analysis.
7. Town of Erie planning area on Kenosha Road – showed additional Floodway encroachment based on more detailed hydraulic analysis.
8. Lefthand Creek downstream of US 36 and upstream of 49th Street – this appeal was resolved through a third-party Scientific Resolution Panel. Based on the panel's recommendation, the CHAMP mapping will not become the effective FIRMs in this area of Lefthand Creek only. Instead, this area will be re-studied using a different hydraulic modeling technique in 2024.

Outside of these eight areas, the 2023 revised Preliminary FIRMs match the 2019 original Preliminary FIRMs. We expect the revised Preliminary FIRMs will become the future effective FIRMs in autumn of 2024. In accordance with Section 4-403.D.1.a.ii of the Code, it is necessary to amend the Boulder County Floodplain and Floodway to reflect the changes FEMA made during their appeal resolution process.

CHAMP Floodplain Mapping

Floodplain mapping is based on hydraulic studies involving data collection, analysis, and numerical modeling of the interaction between the existing topography and the predicted flow in

creeks during the 1% annual chance flood event. The CHAMP mapping incorporates post-flood topographic survey and analysis of flow that incorporates rainfall and stream data collected during the 2013 floods.

Traditionally, information about revised flood hazards is not received by the communities until after FEMA has already created Preliminary FIRMs and distributed those Preliminary FIRMs at the beginning of FEMA’s appeal period. However, at the request of county staff, CWCB delivered ‘draft’ mapping associated with the CHAMP project to the county much earlier than typical so that county staff would be able to:

- Engage in technical review and provide feedback to CWCB/FEMA early in the process when change is easier to make,
- Engage community members that have site specific on-the-ground knowledge to also provide timely feedback to the remapping process, and
- Allow the county, after a period of technical review and outreach, to adopt the draft floodplain mapping as best available information.

As a result, before the draft floodplain mapping was adopted in 2017 and 2018, county staff engaged in technical review, requested revisions to draft data, and conducted extensive outreach to residents. Staff again conducted extensive outreach, including a series of six public meetings, in advance of FEMA’s 2020 appeal period.

PROPOSED ZONING MAP AMENDMENTS

The proposed zoning map amendments remove the Boulder County Floodplain and Floodway along approximately 230 miles of stream reaches within unincorporated Boulder County (Figure 1). Note that Boulder County Floodplain and Floodway will remain in place for non-CHAMP reaches including Coal Creek, Bullhead Gulch, Prince Tributaries, and Dry Creek No. 1.

The details of the proposed zoning map amendments are shown on an interactive web map at www.boco.org/FloodplainMapUpdate. The web map includes the following layers:

- Proposed Boulder County Flood Hazard Zones 2023 – the proposed Boulder County Floodplain and Floodway
- Preliminary FEMA Flood Hazard Zones 2023 – the revised Preliminary FIRMs released by FEMA in July 2023
- Areas with no FEMA Flood Hazard Zone Update – FEMA divides the FIRMs into panels. This layer shows FIRM panels that will not be updated by FEMA in 2024, including panels that are outside the CHAMP study area as well as panels along Lefthand Creek that will be excluded as a result of the appeal and Scientific Resolution Panel. This portion of Lefthand Creek will be restudied in 2024.
- Current Boulder County Regulatory Flood Risk Zones – the current Boulder County Floodplain and Floodway, reflecting the 2019 Preliminary FIRMs
- Current FEMA Flood Hazard Zones – the effective FEMA FIRM

Toggling on the Current Boulder County and Current FEMA layers enables better viewing of current vs. proposed floodplains.

Staff recommend implementing the map update in two steps:

1. Step 1 will remove Boulder County Floodplain and Floodway for the portion of Lefthand Creek affected by the Scientific Resolution Panel re-study (between approximately Geer Canyon and 49th Street). Staff recommend that step 1 become effective immediately upon Board of County Commissioners approval.
2. Step 2 will remove Boulder County Floodplain and Floodway from the remaining CHAMP reaches and is recommended to become effective at the same time as the FEMA update, expected in autumn of 2024.

The two-step process allows the Boulder County Floodplain and Floodway to reflect the Scientific Resolution Panel for Lefthand Creek sooner rather than later, while keeping the CHAMP data in place for the rest of the county until the FEMA map update is complete.

Revisions to FEMA Floodplain Maps

The effective FEMA Flood Insurance Rate Map (FIRM) is regularly revised to reflect man-made and natural changes to the floodplain, or new technical data. Once the CHAMP study is incorporated into the FEMA FIRMs, future revisions to the effective floodplain mapping will occur through one of FEMA's Letter of Map Change processes. The requestor (property owner, developer, engineer, etc.) typically submits the Letter of Map Change request to the county for review and concurrence before submitting to FEMA for final review and incorporation into the effective FIRM. If the county does not concur with the revision request and provides explanation for their concerns, FEMA will still review the request and consider the county's concerns. FEMA requires that property owners affected by map revisions be notified by the requestor or by the county, either through individual letters or a newspaper notice. In accordance with Section 4-403.A.1 of the Code, Letters of Map Change approved by FEMA are automatically incorporated into the county's Floodplain Overlay District.

Removing the Boulder County Floodplain and Floodway for CHAMP-studied reaches allows future map revisions to proceed without requiring additional zoning dockets to update the Boulder County Floodplain and Floodway.

REFERRALS AND OUTREACH

The rezoning application was referred to relevant agencies and stakeholders on November 28, 2023. Copies of all responses received by the Floodplain Remapping Team are compiled in Exhibit B. No agencies expressed any conflict.

All property owners whose property intersects the Floodplain Overlay District on a CHAMP reach were sent postcards inviting them to view the proposed maps and attend a community meeting. The proposed map update and community meetings were also publicized via the Floodplain Remapping email list and other departmental emails lists, totaling 11,985 total recipients. The interactive web map has had over 1,000 views.

Two community meetings were held to inform residents of the map changes, answer questions, and receive feedback. The first meeting was held November 30, 2023, in-person at the Parks & Open Space office and was aimed at residents along Lefthand Creek that are affected by the Scientific Resolution Panel re-study. 17 residents/stakeholders attended and 10 staff members from the county, state, and FEMA were also present. The second, county-wide meeting was held

virtually on December 13, 2023, and the recording was posted online afterwards. 48 people attended the meeting.

All comments and questions that staff received from the public are summarized in Exhibit C. Additional lengthy comments are attached (pages C-4 to C-31).

PLANNING COMMISSION PUBLIC HEARING

This docket was considered by the Boulder County Planning Commission at a public hearing on January 17, 2024. Commissioners Ann Goldfarb, Sam Libby, Gavin McMillan, Mark Bloomfield, Dave Hsu, and George Gerstle were present. Staff members presented the docket and staff's recommendation that the Planning Commission recommend approval of the zoning map amendments to the Boulder County Board of County Commissioners.

Following the staff presentation, the Planning Commission posed questions to the staff members related to the presentation and information presented in the Staff Report.

Several commissioners asked for further details about the Scientific Resolution Panel (SRP) decision and outcome. Staff explained the FEMA appeal and SRP process. Staff clarified that the area to be re-studied on Lefthand Creek (the "SRP area") is being excluded from FEMA's map update at this time. So, the current Boulder County Floodplain and Floodway, for the SRP area only, will not be part of the future FEMA FIRM and therefore staff recommends removing Boulder County Floodplain and Floodway for the SRP area as soon as possible. The pre-2013 floodplain map will remain effective in the SRP area for now. The re-study of Lefthand Creek will result in a change to the FEMA map via the usual Letter of Map Change process.

Commissioner Libby asked whether the CHAMP study generally resulted in increases or decreases in floodplain area compared to the effective FEMA map. Staff explained that the floodplain area both increases and decreases, depending on the stream. Roughly equal numbers of structures go into the floodplain as are removed from the floodplain. A few streams were newly mapped as floodplain and/or floodway. Some streams that previously had 100-year floodplain mapped or were mapped under old Floodway standards received new floodways. Staff further explained the impacts to residents, both for flood insurance requirements, and requirements for development in floodplains.

Several commissioners then asked about the public comment related to New Dry Creek. Staff explained the New Dry Creek has had a mapped floodplain since 1979. If someone wanted to demonstrate that there is no flood risk on this stream, they would need to provide technical data through FEMA's Letter of Map Change process. That data could be provided to FEMA at any time. The county is still involved in the Letter of Map Change process and may either concur or not concur that any proposed changes to FEMA floodplain maps meet county regulations. Staff recommends that the property owners concerned about floodplain on New Dry Creek go through the appropriate FEMA process.

Staff then invited Terri Fead with the Colorado Water Conservation Board (CWCB) to address the question of whether irrigation ditches can be mapped as floodplain. Ms. Fead explained that ditches are generally not used for stormwater conveyance unless there is an agreement with the

ditch company. Ditches are considered to be already running full during a 100-year flood analysis. This ensures that the flood risk in the natural drainage is not underestimated. However, some ditches to have mapped floodplain that was delineated a long time ago, or if there is an agreement with the ditch company. Kevin Doyle, a floodplain mapping contractor for the county with Michael Baker, International, then explained that there is some confusion on the names of the drainages and ditches in this area. There is an irrigation ditch called New Dry Creek Ditch. However, the drainage with a mapped floodplain is called New Dry Creek or Dry Creek No. 3 and is a watershed with runoff drainage and a mapped floodplain.

The Planning Commission then opened the public hearing. Two people spoke. An attorney representing property owners along New Dry Creek requested that New Dry Creek not be included in the remapping and questioned the notice that was sent to property owners. One of the property owners involved in the Lefthand Creek appeal and SRP also spoke.

The public hearing was closed. Staff addressed the public testimony by noting that property owners were notified of map changes according to the requirements for comprehensive rezonings in the Code, including publishing notice in the newspaper and via electronic means. Additionally, staff sent postcards to all property owners whose property intersects the floodplain multiple times throughout the CHAMP project.

The Planning Commission entered deliberation. The commissioners confirmed the proposed changes to the Floodplain Overlay District and the proposed changes to the FEMA floodplain with staff.

A motion was made by Commissioner Gerstle to approve and recommend approval of docket Z-23-0001 to the Board of County Commissioners. The motion was seconded by Commissioner Bloomfield and passed [6-0] unanimously.

CRITERIA REVEIW

Staff has evaluated the standards for approval for zoning map amendments per Article 4-1102 of the Code, and finds the following:

1) A public need exists for the map amendment;

Previously, local adoption of the draft and preliminary CHAMP data allowed staff and residents to use the best available flood hazard information at the time. However, it required the regulation of two separate maps: the effective FEMA FIRM and the Boulder County Floodplain and Floodway. With FEMA's resolution of appeals and the incorporation of CHAMP data into the FIRMs, the FEMA map will now reflect the best available information. The Boulder County Floodplain and Floodway are no longer needed for CHAMP reaches and should be removed to simplify future regulation and flood hazard communication.

Therefore, staff finds this criterion is met.

2) ***The amendment is consistent with and in furtherance of the stated intent and purposes of this Code;***

Staff finds that the proposed Floodplain Overlay District map amendments are consistent with and in furtherance of the purpose of the county's floodplain regulations, as stated in Article 4-401 of the Code: *"To provide land use controls necessary to qualify unincorporated areas of Boulder County for flood insurance under requirements of the National Flood Insurance Act of 1968, as amended; to protect life, property, and health; to ensure the best available data is used in making development decisions; ..."*.

Therefore, staff finds this criterion is met.

3) ***The amendment is in accordance with the Boulder County Comprehensive Plan and any applicable intergovernmental agreement affecting land use development;***

Staff finds the proposed map amendment is in accordance with the Boulder County Comprehensive Plan, Natural Hazards Element, Goals, Policies, & Maps including:

- Natural Hazards Policy NH1.02: *"Natural hazards potentially affecting the county should continue to be identified and made known to the public and public officials. The county should promote a high level of public awareness about the risks of these identified hazards which may impact people, property, and their environment..."*
- Natural Hazards Policy NH4.01: *"The county should strongly discourage and strictly control land use development from locating in designated floodplains, as identified in the Boulder County Zoning Maps."*

Aligning the Boulder County Floodplain and Floodway with the FEMA FIRM simplifies public communication of flood hazards, enabling the desired high level of public awareness of risk.

Therefore, staff finds this criterion is met.

4) ***The subject property is an appropriate site for the map amendment, and is a reasonable unit of land for such reclassification;***

County, state, and FEMA technical review of the hydrologic data, modeling procedures, and floodplain mapping support the proposed amendments. The revised Preliminary FIRMs represent the best available flood hazard information. The affected properties are appropriate sites for map amendment and should be reclassified as proposed.

Therefore, staff finds this criterion is met.

5) ***The map amendment would not have a material adverse effect on the surrounding area;***

Staff finds that this map amendment will benefit the welfare, health, and safety of surrounding areas by supporting appropriate regulation of development within identified flood hazard areas and minimizing development that might increase flood hazard risks for those surrounding areas.

Therefore, staff finds this criterion is met.

6) ***The map amendment will not result in an over-intensive use of land;***

Staff finds this criterion is not applicable.

7) ***The map amendment will not have a material adverse effect on community capital improvement programs;***

Staff finds that appropriate regulation of development within identified flood hazard areas will benefit community capital improvement programs.

Therefore, staff finds this criterion is met.

8) ***The map amendment will not require a level of community facilities and services greater than that which is available;***

Staff finds that local adoption of the best available flood hazard risk information serves to inform residents and visitors to the county of known flood hazards. Knowing the risk encourages preparation for that risk and ultimately results in a more resilient community and better use of community resources during flooding events.

Therefore, staff finds this criterion is met.

9) ***The map amendment will not result in undue traffic congestion or traffic hazards;***

Staff finds this criterion is not applicable.

10) ***The map amendment will not cause significant air, water, or noise pollution;***

Staff finds this criterion is not applicable.

11) ***The map amendment will not permit the use of any area designated within the Boulder County Comprehensive Plan for the extraction of commercial mineral deposits in a manner which would interfere with the present or future extraction of such deposit by an extractor to any greater extent than under the present zoning of the property;***

As an overlay zoning district, the proposed amendments to the Floodplain Overlay District will not permit additional uses on impacted properties beyond the uses currently allowed by the existing underlying zoning. As such, the amendments will not permit uses

which would impact extraction of mineral deposits to any greater extent than under present zoning.

Therefore, to the extent the proposed Floodplain Overlay District amendments include any areas designated within the Boulder County Comprehensive Plan for the extraction of commercial mineral deposits, staff finds this criterion is met.

- 12) *It must be demonstrated that any structures to be built on the property will not be affected by geologic hazards if they exist;*

Staff finds this criterion is not applicable.

- 13) *The map amendment will not otherwise be detrimental to the health, safety, or welfare of the present or future inhabitants of Boulder County;*

Aligning the Boulder County Floodplain and Floodway with the FEMA FIRM is beneficial to the health, safety, and welfare of both present and future inhabitants of Boulder County because it provides accurate hazard information critical for bolstering long term planning and resiliency efforts.

Therefore, staff finds this criterion is met.

STAFF RECOMMENDATION

STAFF RECOMMENDS THAT THE BOARD OF COUNTY COMMISSIONERS APPROVE DOCKET Z-23-0001, ZONING MAP AMENDMENTS TO THE FLOODPLAIN OVERLAY DISTRICT, with an immediate effective date for the portion of Lefthand Creek affected by the Scientific Resolution Panel re-study (between Geer Canyon and 49th Street) and an effective date coincident with the FEMA effective date, on or after September 26, 2024, for the rest of the map amendments.



Community Planning & Permitting

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BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING

June 27, 2023 – 10:30 AM
Third Floor Hearing Room
County Court House
1325 Pearl Street, Boulder

Authorization under Article 4-1101 of the Boulder County Land Use Code to proceed with analysis of Comprehensive Zoning Map Amendments to the Floodplain Overlay District

Authorization for staff to analyze possible zoning map amendments for the Floodplain Overlay District, specifically the Boulder County Floodplain and Floodway, based upon the Federal Emergency Management Agency's (FEMA's) expected Physical Map Revision reflecting the Colorado Hazard Mapping Program (CHAMP) study for Boulder County.

Staff: Kelly Watson, Principal Floodplain Planner, Community Planning & Permitting Department
Sarah Heller, Floodplain Program Planner, Community Planning & Permitting Department

Public Testimony will not be taken – Action Requested/Approval

SUMMARY

Comprehensive zoning map amendments must be initiated by the Board of County Commissioners or Planning Commission pursuant to Article 4-1101.A.2.a of the Land Use Code (Code). Staff requests that the Board authorize staff to undertake an analysis of possible map amendments to the Floodplain Overlay District. The proposed amendments are necessary to align the Boulder County Floodplain and Floodway with expected changes to the FEMA Floodplain and Floodway for streams included in the CHAMP study (Figure 1).

BACKGROUND

The 2013 flood event caused widespread damage along waterways throughout Boulder County and other areas of the state. In response, the State of Colorado took steps to bolster long-term planning and resiliency efforts by funding CHAMP, managed by the Colorado Water Conservation Board (CWCB). CHAMP is updating local hazard information, including producing new regulatory floodplain maps for the most affected waterways.

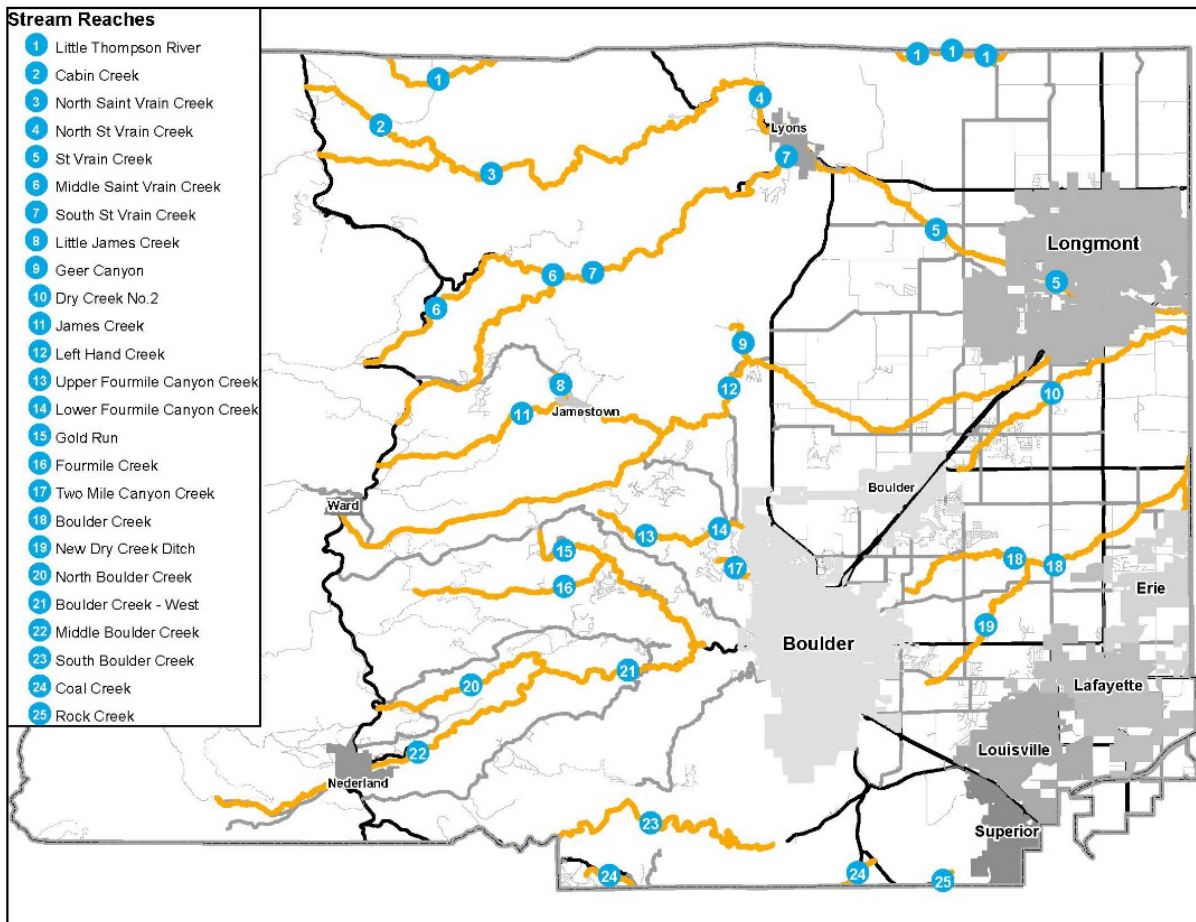


Figure 1. Stream reaches included in the Colorado Hazard Mapping Program (CHAMP) study for Boulder County.

The county’s Floodplain Overlay District is comprised of both the FEMA Floodplain and Floodway and the Boulder County Floodplain and Floodway. The county has already incorporated draft CHAMP data into the Boulder County Floodplain and Floodway via Resolutions 2017-68, 2018-78, and 2020-11.

In July 2023, we expect FEMA will release revised Preliminary Flood Insurance Rate Maps (Preliminary FIRMs) based on the CHAMP remapping efforts. The revised Preliminary FIRMs will differ from the already adopted draft CHAMP maps in eight areas where FEMA approved changes submitted during FEMA’s 2020 and 2021 appeal periods. The appeals included a Scientific Resolution Panel for portions of Lefthand Creek. We expect the revised Preliminary FIRMs will become the future effective FIRMs in early 2024.

In accordance with Section 4-403.D.1.a.ii of the Code, it is necessary to amend the Boulder County Floodplain to incorporate the changes FEMA made during their appeal resolution process. Aligning the Boulder County Floodplain and Floodway with the revised Preliminary FIRMs will reflect the best available flood hazard data.

Staff plans to conduct at least two public meetings (estimated for August and September 2023) to educate property owners on the proposed map amendments, including the impacts of FEMA map changes on flood insurance. Staff will then bring the revisions to the Planning Commission and Board of County Commissioners at legally noticed public hearings (estimated for November and December 2023).

STAFF RECOMMENDATION

Staff requests the Board of County Commissioners authorize staff to pursue comprehensive zoning map amendments to the Boulder County Floodplain Overlay District as described above.



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December 11, 2023

TO: Kelly Wason, Principal Floodplain Planner; Community Planning & Permitting

FROM: Anita Riley, Principal Planner; Community Planning & Permitting,
Development Review Team – Access & Engineering

SUBJECT: Docket # Z-23-0001: Zoning Map Amendments to the Floodplain Overlay
District

The Development Review Team – Access & Engineering staff has reviewed the above referenced docket and find no conflicts with it.

This concludes our comments at this time.



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Building Safety & Inspection Services Team

MEMO

TO: Kelly Watson
FROM: Michelle Huebner, Plans Examiner Supervisor
DATE: December 4, 2023

RE: Referral Response, Docket Z-23-0001: Zoning Map Amendments to the Floodplain Overlay District

Thank you for the referral. We have reviewed the proposal and have no conflicts with it.

If the applicants should have questions or need additional information, we'd be happy to work with them toward solutions that meet minimum building code requirements. Please call (720) 564-2640 or contact us via e-mail at building@bouldercounty.org

From: [Kelly Driscoll](#)
To: [Floodplain Admin](#)
Subject: [EXTERNAL] RE: Referral Packet for Z-23-0001: Zoning Map Amendments to the Floodplain Overlay District
Date: Wednesday, December 20, 2023 8:25:29 AM
Attachments: [image001.png](#)

Kelly,

The Town of Erie has no comments on the Zoning Map Amendments.

Thank you,

Kelly Driscoll | Interim Planning Manager

Town of Erie | Planning

Phone: 303-926-2774 | Cell: 720-534-1050 |

www.erieco.gov | [Facebook](#) | [Twitter](#) | [LinkedIn](#)

From: Morgan, Heather <hmorgan@bouldercounty.gov>

Sent: Tuesday, November 28, 2023 10:37 AM

To: Flax, Ron <rflax@bouldercounty.gov>; Frederick, Summer <sfrederick@bouldercounty.gov>; HealthWaterQuality-EnvironmentalBP LU <HealthWQ-EnvironBPLU@bouldercounty.gov>; Huebner, Michelle <mhuebner@bouldercounty.gov>; Milner, Anna <amilner@bouldercounty.gov>; Sanchez, Kimberly <ksanchez@bouldercounty.gov>; Skufca, Erika <eskufca@bouldercounty.gov>; Transportation Development Review <TransDevReview@bouldercounty.gov>; West, Ron <rowest@bouldercounty.gov>; Hippely, Hannah <hhippely@bouldercounty.gov>; #AssessorReferral <AssessorReferral@bouldercounty.gov>; #CAreferral <CAreferral@bouldercounty.gov>; #CEreferral <CEreferral@bouldercounty.gov>; Skufca, Erika <eskufca@bouldercounty.gov>; Kiepe, Bob <bkiepe@bouldercounty.gov>; TD Stormwater Shared Mailbox <stormwater@bouldercounty.gov>; Stadele, Lee <leestadele@bouldercounty.gov>; Stadele, Lee <leestadele@flagstaffsurveying.com>; sbeck@sdmsi.com; lloften@sdmsi.com; jhebert@LTWD.org; COback@ltwd.org; jstruble@northernwater.org; bflockhart@northernwater.org; terri.fead@state.co.us; info@eldoradosprings.com; mark@jimtown.org; ysorokin@watershed.center; info@ltwatershed.org; cccia80403@gmail.com; eldoracivicassociate@gmail.com; eldocommunity@gmail.com; allensparkwater@gmail.com; president@eastboulderwater.com; cade metro-district.com <cade@metro-district.com>; Hunter Wright <hwright@eldora.com>; Steve Buckbee <sbuckbee@lefthandwater.org>; chrissmith@lefthandwater.org; g.allen@lpwd.org; lionconsult1@centurylink.net; admin@niwotsanitation.com; bob@pinebrookwater.com; office@svlhwcd.org; scott.griehling@svlhwcd.org; Melinda Helmer <mhelmer@erieco.gov>; Deborah Bachelder <dbach@erieco.gov>; Kelly Driscoll <kdriscoll@erieco.gov>; townclerk@jamestownco.org; don.burchett@longmontcolorado.gov; communitydevelopment@townoflyons.com; planner@nederlandco.org; townadmin <townadmin@nederlandco.org>; submittals@udfcd.org; timothy.bilobran@state.co.us; Maya@boulderwatershedcollective.org; bonnellj@bouldercolorado.gov; CollinsB@bouldercolorado.gov; CassidyJ@bouldercolorado.gov; Butler, James <jbutler@bouldercounty.gov>; Chard, Mike <mchard@bouldercounty.gov>; doug.mahan@state.co.us; terri.fead@state.co.us; marta.blancocastano@state.co.us;

sthompson@mhfd.org; Brian.varrella@state.co.us; christine.gaynes@fema.dhs.gov; Atherton-Wood, Justin <jatherton-wood@bouldercounty.gov>; Moline, Jeffrey <jmoline@bouldercounty.gov>
Cc: Watson, Kelly <kwatson@bouldercounty.gov>; Bowers, James <jbowers@bouldercounty.gov>
Subject: Referral Packet for Z-23-0001: Zoning Map Amendments to the Floodplain Overlay District

External Email: Do not click links or open attachments unless you recognize the sender and know the content is safe.

Please find attached the public notice and referral packet for Docket *Referral Packet for Z-23-0001: Zoning Map Amendments to the Floodplain Overlay District*.

Please return responses and direct any questions to [Kelly Watson](mailto:kwatson@bouldercounty.gov) by *December 31, 2023*. (Boulder County internal departments and agencies: Please attach the referral comments in Accela.)

Heather Morgan | Lead Administrative Technician

Planning Division | Boulder County Community Planning & Permitting

P.O. Box 471, Boulder, CO 80306 | Courthouse Annex—2045 13th St., Boulder, CO 80302

hmorgan@bouldercounty.gov | (720) 864-6510 | www.boco.org/cpp

My usual working hours are Monday-Friday, 7:30 a.m.-4:00 p.m.

*Boulder County has migrated all email to the .gov domain. Please update your contact lists to reflect the change from hmorgan@bouldercounty.org to hmorgan@bouldercounty.gov. **Emails sent to both .org and .gov addresses will continue to work.** This work is part of the migration to the .gov domain that began in July 2022 when the Boulder County website moved to www.bouldercounty.gov. This move to the .gov domain provides a higher level of cybersecurity protection.*



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Docket Z-23-0001: Zoning Map Amendments to the Floodplain Overlay District

November 28, 2023

Dear Stakeholder / Interested Party,

On June 27, 2023, the Boulder County Board of County Commissioners authorized staff to consider zoning map amendments for the Floodplain Overlay District, specifically the Boulder County Floodplain and Floodway, based upon the Federal Emergency Management Agency’s (FEMA’s) expected Physical Map Revision reflecting the Colorado Hazard Mapping Program (CHAMP) study for Boulder County.

View the proposed zoning map amendments on the map review platform: www.boco.org/floodplainmapupdate.

The purpose of this referral is to provide interested stakeholders an opportunity to comment on the proposed changes to the floodplain maps and to have certainty about the floodplain mapping that affects property in the county.

More information can be found on the docket webpage: www.boco.org/z-23-0001.

These floodplain zoning map amendments include public notification and hearings before the Planning Commission and 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.

Community Planning & Permitting staff, County Commissioners, and Planning Commissioners value comments from individuals and referral agencies. Please check the appropriate response below or email FloodplainAdmin@bouldercounty.gov with your comments. All comments will be made part of the public record. Please return responses to the above email address by **December 31, 2023**. Late responses will be reviewed as the process permits.

We have reviewed the proposal and have no conflicts.
 Letter is enclosed.

Signed Andy Thomas Printed Name Andy Thomas

Agency or Address Little Thompson Water District

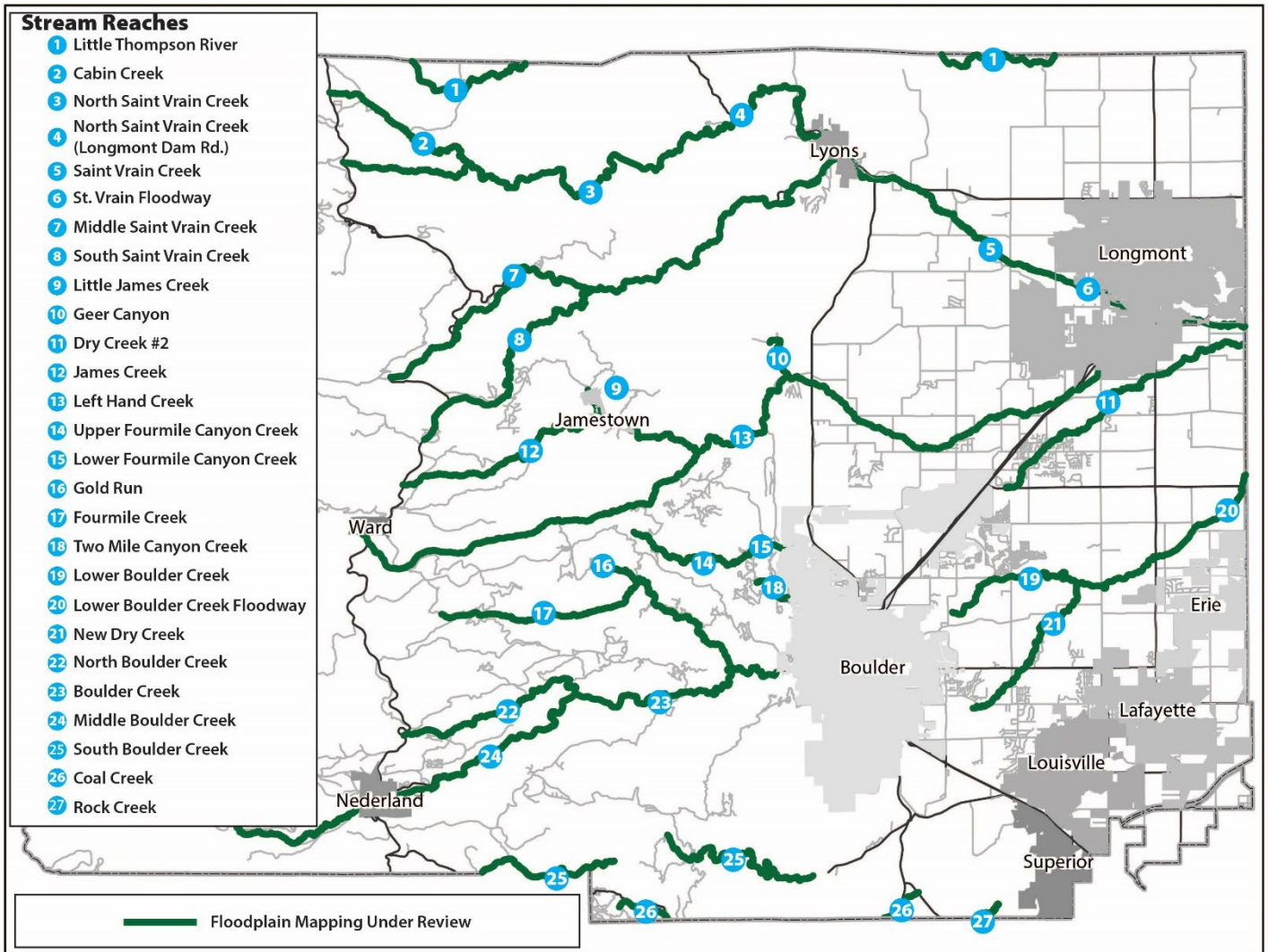


Figure 1. Stream reaches in unincorporated Boulder County that are under consideration for zoning map amendments to the Floodplain Overlay District.

From: [Ryan Tigera](#) on behalf of [submittals](#)
To: [Morgan, Heather](#)
Cc: [Watson, Kelly](#); [Kurt Bauer](#)
Subject: [EXTERNAL] RE: Referral Packet for Z-23-0001: Zoning Map Amendments to the Floodplain Overlay District
Date: Thursday, December 28, 2023 4:29:24 PM
Attachments: [image001.png](#)
[MHFD-MainLogo-RGB-Color_dc850310-e98b-4e51-9ccb-9e6ba9e6d393.png](#)
[SocialLink_Facebook_32x32_dddf4d22-a17b-4b5e-a60e-a0d1c141aee6.png](#)
[SocialLink_Instagram_32x32_a5cf709f-423e-42d0-9b21-63116bf8f89c.png](#)
[SocialLink_Linkedin_32x32_b7a2051d-355d-4a7b-b923-ebe2177ea89b.png](#)
[SocialLink_Twitter_32x32_a6576c8a-bc49-4df2-8e65-1ec629178a82.png](#)

Hi Heather,

Thanks for the referral. The MHFD Boulder Creek Watershed team does not have any comments on the zoning map amendments.

Hope you have a Happy New Year!

Thanks,

Ryan

Ryan Tigera, P.E.

Project Manager

MILE HIGH FLOOD DISTRICT

12575 W. Bayaud Ave. | Lakewood, CO 80228

Office: 303-455-6277 | Direct: 303-749-5420 | www.mhfd.org

Protecting People, Property, and our Environment

MHFD

MILE HIGH FLOOD DISTRICT



From: Morgan, Heather <hmorgan@bouldercounty.gov>

Sent: Tuesday, November 28, 2023 10:37 AM

To: Flax, Ron <rflax@bouldercounty.gov>; Frederick, Summer <sfrederick@bouldercounty.gov>; HealthWaterQuality-EnvironmentalBP LU <HealthWQ-EnvironBPLU@bouldercounty.gov>; Huebner, Michelle <mhuebner@bouldercounty.gov>; Milner, Anna <amilner@bouldercounty.gov>; Sanchez, Kimberly <ksanchez@bouldercounty.gov>; Skufca, Erika <eskufca@bouldercounty.gov>; Transportation Development Review <TransDevReview@bouldercounty.gov>; West, Ron <rowest@bouldercounty.gov>; Hippely, Hannah <hhippely@bouldercounty.gov>; #AssessorReferral <AssessorReferral@bouldercounty.gov>; #CAreferral <CAreferral@bouldercounty.gov>; #CEreferral <CEreferral@bouldercounty.gov>; Skufca, Erika <eskufca@bouldercounty.gov>; Kiepe, Bob <bkiepe@bouldercounty.gov>; TD Stormwater Shared Mailbox <stormwater@bouldercounty.gov>; Stadele, Lee <leestadele@bouldercounty.gov>; Stadele, Lee <leestadele@flagstaffsurveying.com>; sbeck@sdmsi.com; lloften@sdmsi.com; jhebert@LTWD.org; COback@ltwd.org;

jstruble@northernwater.org; bflockhart@northernwater.org; terri.fead@state.co.us;
info@eldoradosprings.com; mark@jimtown.org; ysorokin@watershed.center;
info@ltwatershed.org; cccia80403@gmail.com; eldoracivicassociate@gmail.com;
eldocommunity@gmail.com; allensparkwater@gmail.com; president@eastboulderwater.com; cade
metro-district.com <cade@metro-district.com>; Hunter Wright <hwright@eldora.com>; Steve
Buckbee <sbuckbee@lefthandwater.org>; chrissmith@lefthandwater.org; g.allen@lpwd.org;
lionconsult1@centurylink.net; admin@niwotsanitation.com; bob@pinebrookwater.com;
office@svlhwcd.org; scott.griebing@svlhwcd.org; mhelmer@erieco.gov; dbach@erieco.gov;
kdricoll@erieco.gov; townclerk@jamestownco.org; don.burchett@longmontcolorado.gov;
communitydevelopment@townoflyons.com; planner@nederlandco.org; townadmin
<townadmin@nederlandco.org>; submittals <submittals@mhfd.org>; timothy.bilobran@state.co.us;
Maya@boulderwatershedcollective.org; bonnellj@bouldercolorado.gov;
CollinsB@bouldercolorado.gov; CassidyJ@bouldercolorado.gov; Butler, James
<jbutler@bouldercounty.gov>; Chard, Mike <mchard@bouldercounty.gov>;
doug.mahan@state.co.us; terri.fead@state.co.us; marta.blancocastano@state.co.us; Stacey
Thompson <sthompson@mhfd.org>; Brian Varrella <brian.varrella@state.co.us>;
christine.gaynes@fema.dhs.gov; Atherton-Wood, Justin <jatherton-wood@bouldercounty.gov>;
Moline, Jeffrey <jmoline@bouldercounty.gov>
Cc: Watson, Kelly <kwatson@bouldercounty.gov>; Bowers, James <jbowers@bouldercounty.gov>
Subject: Referral Packet for Z-23-0001: Zoning Map Amendments to the Floodplain Overlay District

You don't often get email from hmorgan@bouldercounty.gov. [Learn why this is important](#)

Please find attached the public notice and referral packet for Docket ***Referral Packet for Z-23-0001: Zoning Map Amendments to the Floodplain Overlay District***.

Please return responses and direct any questions to [Kelly Watson](#) by ***December 31, 2023***. (Boulder County internal departments and agencies: Please attach the referral comments in Accela.)

Heather Morgan | Lead Administrative Technician

Planning Division | Boulder County Community Planning & Permitting

P.O. Box 471, Boulder, CO 80306 | Courthouse Annex—2045 13th St., Boulder, CO 80302

hmorgan@bouldercounty.gov | (720) 864-6510 | www.boco.org/cpp

My usual working hours are Monday-Friday, 7:30 a.m.-4:00 p.m.

*Boulder County has migrated all email to the .gov domain. Please update your contact lists to reflect the change from hmorgan@bouldercounty.org to hmorgan@bouldercounty.gov. **Emails sent to both .org and .gov addresses will continue to work.** This work is part of the migration to the .gov domain that began in July 2022 when the Boulder County website moved to www.bouldercounty.gov. This move to the .gov domain provides a higher level of cybersecurity protection.*

Public Comments

Count	Comment Source	Date	Address/Location	Associated Stream Reach	Comment Summary	Date of Staff Response	Staff Response Summary
1	Email	11/20/2023	6536 Robin Dr	Lefthand Creek	A neighbor just contacted me wondering if I know anything about why our two properties show "no data" on the proposed map, but still in the AE 100yr FP, surrounded by 500 yr FP for other properties. Do you have any info to clarify this data? Are we finally going to be out of the Floodplain? I planned to watch the recorded version after the meeting too.	11/21/2023	FEMA is changing their map to match the current Boulder County Floodplain. After the FEMA update, the map showing your house outside the floodplain will be the only map going forward. There is some 500-year floodplain (which is not part of the regulatory Floodplain Overlay District) shown on your property, but the house is outside all mapped floodplains.
2	Email	11/21/2023	6500 Robin Dr	Lefthand Creek	My neighbor informed me that the "new" maps from the website show both of our houses will be out of the "new" flood plain. I just wanted to confirm this for 6500 Robin Dr. Longmont.	11/21/2023	Staff confirmed the current and future flood zones for the property.
3	Email	11/21/2023	7090 Johnson Cir	Dry Creek No. 2	I have difficulty reading the new maps in determining if our property is in a flood zone according to the new FEMA map. With property taxes going up I certainly would like to get out from under paying for flood insurance.	11/21/2023	Staff confirmed the current and future flood zones for the property.
4	Email	11/21/2023	5075 N 119th St	Boulder Creek	I just got a postcard in the mail about proposed changes to be made to the floodplain map and have a question. Why is it that my house (5075 n 119th St, Erie, 80516) is now showing as being in the floodplain when my two neighbors immediately to the north are showing as AE 100 year? By design, our house sits at a higher elevation either of those properties so this doesn't make sense to me.	11/21/2023	This area was the subject of an appeal submitted by the Town of Erie. Staff provided the appeal report and directed further question to the Erie Floodplain Administrator. Staff also recommend the owner pursue a Letter of Map Amendment (LOMA) with FEMA.
5	Map comment	11/21/2023	217 Gold Run Rd	Gold Run	Our address shows that my house is on my neighbor's property. Should I be concerned that the mapping is overlaid incorrectly? The LIDAR records are overlaid onto these maps. It is inconclusive as to the FIRMS and CHAMP assessments that are shown. This is a very important assessment as to how our property is deemed. Can these maps be corrected? If not, how can any accuracy be trusted as true?	11/21/2023	There is a known issue in the county where parcel boundaries are slightly "off" in some mountain areas. However, the floodplain mapping is overlaid correctly when compared to the ground topography and aerial imagery. It is the parcel boundaries, not the floodplain maps, that don't line up.
6	Voicemail	11/28/2023	1416 Apple Valley Rd	North St. Vrain Creek	I'm trying to sign up for the Zoom public meeting December 13th at 6:00 PM regarding the floodplain mapping remapping in this area. This says my property is going to be affected, so I want to sign up for that meeting and your system isn't working,	11/28/2023	Staff left a voice message with instructions for the zoom meeting.
7	Email	11/29/2023	not specified	not specified	The Boulder Daily Camera mentioned a virtual meeting at 6 p.m. on Dec. 13 regarding floodplain mapping modifications. The link they provided for registration does not work. How do I register?	11/30/2023	Staff provided the registration link and requested that the Boulder Daily Camera fix their article.
8	Phone	11/30/2023	not specified	Lefthand Creek	Expressed concerns about sediment loads and stream mobility in Lefthand Creek	12/6/2023	Staff met with this individual in-person and discussed concerns about culverts, stream maintenance, the 2013 flood, and the Lefthand Creek watershed in general.
9	Phone	11/30/2023	7001 Nimbus Rd	Lefthand Creek	Requested information on the zoom meeting and expressed concerns about at Parks & Open Space fence encroaching in the channel.	12/1/2023	Staff provided information on the zoom meeting, current and future flood zones, and how to report a code violation.
10	Email	12/1/2023	not specified	n/a	I would like to share the information below to our ditch company contacts/partners, but don't want to create unnecessary concern. Therefore, I wanted to get your input on the draft proposed message below. What do you think?	12/4/2023	Staff expressed thanks for keeping ditch partners informed of floodplain changes and suggested including county contact information in the message.

Public Comments, Continued

Count	Comment Source	Date	Address/Location	Associated Stream Reach	Comment Summary	Date of Staff Response	Staff Response Summary
11	Email	12/2/2023	5305 Niwot Rd	Lefthand Creek	We received your notice of the "Zoom" public meeting concerning the remapping process of the "Floodplain Overlay District." Left Hand Creek runs through our property. Of course, we are interested. We do not "Zoom." There are probably other concerned property owners who do not "Zoom" either. We ask that the meeting scheduled for Wednesday, December 13, at 6 p.m., be an "open-in-person" meeting.	12/4/2023	Staff provided information on how to participate in the zoom meeting without using the zoom app and offered to meet individually. Staff also provided information on current and future flood zones on the property.
12	Email	12/3/2023	Raymond	Middle St. Vrain Creek	Why don't you focus on something else besides the floodway. You are diminishing the value of property and wasting tax payer money. After the 2013 Flood, the properties that are in the floodway have already been affected. It's obvious that this "Floodplain Program" is in affect, property theft. Focusing on the rampant drug issue within our cities and homelessness would be a much better way of spending our tax dollars. Kelly Watson should get a job at the homeless shelter...Something that needs immediate attention is also the fentanyl and other drugs that are killing the population...It barely rains in Boulder County...Find another job.	12/4/2023	Boulder County residents face a wide variety of issues, including homelessness. Many of these issues are reflected in the Board of County Commissioners' Strategic Priorities. The 2013 flood demonstrated that flooding is a very real issue in the county, with consequences for life and property. The county, state, and FEMA all want to ensure that residents have access to the best available flood hazard data in order to make informed decisions about development. This is why we are updating floodplain maps for the waterways that were most affected by the 2013 flood. New maps also make our community more resilient to future flood events. Ultimately, the county must maintain updated floodplain maps and regulations in order to receive federal disaster assistance and participate in the National Flood Insurance Program, which in turn allows for our residents to be able to purchase flood insurance.
13	Email	12/4/2023	4248 N 109th St	Bullhead Gulch	The maps show the Current Boulder County Regulatory Flood Risk Zones shows my house is not in the floodplain. This matches the Proposed Boulder County Flood Hazard Zones 2023. But the Preliminary FEMA Flood Hazard Zones 2023 does have our house in the floodplain. Does this mean that the Boulder County Map will be updated to match the Preliminary FEMA map next year, so my house will be in the floodplain next year? Or is the Proposed Boulder County Map going to be in effect next year, meaning my house will not be in the floodplain at that time?	12/4/2023	Staff explained that this property was not part of the CHAMP study and provided information on current flood zones.
14	Email	12/5/2023	3354 61st St	Boulder Creek	Expressed concerns about the floodplain mapping on this property and provided information on a wall/fence recently installed, as well as house elevations and the experience during the 2013 flood.	12/8/2023	Staff encouraged the owners to pursue a Letter of Map Amendment (LOMA) and had further correspondence regarding past mapping and proposed development.
15	Phone	12/7/2023	8200 Fourmile Canyon Dr	Boulder Creek	Requested information on flood zones and insurance. Expressed disappointment with how the county handled reconstruction of private access bridges following the 2013 flood.	12/8/2023	Staff provided information on current and future flood zones and insurance information from FEMA.
16	Phone	12/11/2023	4990 N 119th St	Boulder Creek	Requested information on flood zones.	12/11/2023	Staff confirmed the current and future flood zones for the property.

Public Comments, Continued

Count	Comment Source	Date	Address/Location	Associated Stream Reach	Comment Summary	Date of Staff Response	Staff Response Summary
17	Email	12/14/2023	887 Fourmile Canyon Dr	Fourmile Creek	Unfortunately, I was unable to attend the meeting last night in regards to the floodplain mapping and still have a lot of questions around when it will be updated. We recently paid our insurance for the third time since the maps were redrawn and am pretty frustrated that I continue to pay for insurance that is unnecessary and unhelpful given our topography. Do you have any updates as to when the redrawing will officially become public record so that I can take it to my mortgage owner and get rid of the insurance. Seems like the can keeps getting kicked down the road. Appreciate the info.	12/15/2023	Staff provided the link to the youtube recording of the meeting and provided information on the timing of map updates.
18	Email	12/18/2023	not specified	not specified	Can you please direct me to a site where I can review the proposed new floodplain map just by itself....and not in a video? I would like to be able to zoom into certain areas of the map.	12/18/2023	Staff provided the link to the interactive webmap.
19	Email	1/2/2023	3920 Ogallala Rd	Lefthand Creek	see attachment, pages C-4 to C-6		
20	Email	1/2/2023	8027 N 41st St	Lefthand Creek	see attachment, pages C-7 to C-11		
21	Email	1/2/2023	Mallard Pond Dr	New Dry Creek	see attachment, pages C-12 to C-24		see attachment, pages C-25 to C-27

MEMORANDUM

DATE: January 1, 2024

FROM: Michael Janeczko, member of the Lefthand Creek Senior Citizens Group

TO: Boulder County Flood Administration and Boulder County Commissioners

SUBJECT: Response to request for comments regarding currently posted floodplain/floodway Boulder County Flood Insurance Rate Maps (FIRMS) Zoning Docket Z-23-0001

At this point in the over ten year ordeal that we (The Lefthand Creek Senior Citizens Group) have endured it seems somewhat redundant to try to elucidate any new comments that haven't already been presented in memos, e-mails, and public meeting statements over and over again to the flood administration, planning commission, county engineer and County Commissioners regarding the erroneous mapping of the floodway in our residential area of Left-hand Creek. Specifically the reach of Lefthand Creek from US 36 downstream past 41st Street.

It does seem appropriate at this time to repeat, for the record again, some of the timeline, discussions, citizens's personal comments, and most importantly, the conclusions drawn by the National Scientific Resolution Panel (SRP) as presented in their report to the Federal Emergency Management Agency (FEMA) dated November 18, 2022.

- 1) It now has been over TEN YEARS since the catastrophic flood of 2013. The PRELIMINARY Champ flood maps which are NOT FEMA approved and are now deemed to be erroneous were prematurely adopted by the Boulder county Commissioners over five years ago.
- 2) The Page one summary of the SRP states "The Panel has determined that the FEMA's data does not satisfy National Flood Insurance Program (NFIP) mapping standards defined in FEMA's Guidelines and Standards for flood risk analysis and mapping and MUST BE REVISITED."
- 3) The SRP's DECISION shown on page eighteen of the SRP report emphatically states the following: "The preliminary floodways shown on the

proposed floodplain mapping does not appear to be based on the result of hydraulic modeling, do not appear to be consistent with the accepted and current FEMA definition of a floodway and **appear to be placed in such a fashion as to place as many existing residential structures as possible in a REGULATORY floodway. The proposed floodways do not appear to be placed on any currently accepted encroachment methodology and it is not clear how the adoption of the floodways as proposed would be in the best interest and provide for the health safety and welfare of the citizens of Boulder County**".

- 4) The SRP's DECISION on page eighteen goes on to say **"...The mapping may not have been completed in accordance with FEMA standards" and "The expansion and contractions between sections appears random"**.
- 5) Other pertinent conclusions of the SRP go on to state that it does NOT appear that areas of the left overbank flow are hydraulically connected to main channel flow and that the **modeling allows flows to jump back and forth between low lying areas and main channels with no signs of hydraulic connectivity.**
- 6) Not only does there not appear to be any connectivity in some floodway areas to any actual floodway channel the SRP also concludes that **the floodway delineation on the map does not match the HEC-RAS model in several locations.**

I will personally deliver a hard copy of the SRP Decision and Report to any interested party.

- There are a few unanswered question that I still would like to have some feedback on. How is it possible that a report filled with such blatant, easily detectible grave errors could be generated in the first place, somehow pass through the review of the flood administration personnel, also be reviewed by yet a second engineering consulting firm and then in turn be adopted by the County Commissioners?
- Why were none of the residents of the area affected by this mapping ever contacted as to what actually happened during the "one hundred year" flood prior to the generation and adoption of the maps? If that were the case, as I have repeatedly stated in prior memos and e-mails I would have asked the question..."Since my home was NOT IN the floodway during the actual catastrophic flood event ...how in gods name can it be in the floodway now? I am still waiting for some logical explanation of this phenomenon.
- Why is there almost no water shown in the main channel of the creek after millions of dollars were spent on streambed improvement to carry the bulk of

the flow of the river? And why was this simple observation not questioned before the maps were adopted by the county?

- As I did during the latest zoom meeting with the flood administrators I again respectfully request that the mapping of our reach of Lefthand Creek be discredited **on the map** indicating that reach of the river is in error so that any interested party will know that this area is under further study which is expected to take many months.
- I would also like to know what measures will be taken to ensure that the main channel of the Lefthand Creek will be cleared of vegetation and debris so that a free flowing main channel will actually carry the bulk of a flood flow and NOT be artificially diverted out of the main channel of the stream? As it stand now, the channel is already being obstructed by fairly dense vegetation.
- Boulder County employs a resident “County Engineer”. One would think that this person would be intimately involved in this very important, engineering oriented process. Why has this person been conspicuously absent from any of the proceedings that have taken place over the past few years?
- **Most importantly**, I strongly request that we (The Lefthand Creek Senior Citizens Group) along with our engineering representative Mr. Curt Parker meet with whoever is selected to redo this study. I would hope that this meeting can take place as soon as possible. It is hoped that this process can be specifically directed to rectify the glaring errors that have been made in the past and not be just another “rubber stamp” on the already discredited engineering and floodplain/floodway mapping.

Finally, I realize that this last request is a reach...I personally, as well as the other individuals in our group, would appreciate some semblance of apology from the county for all of the hundreds of hours of time, tens of thousands of dollars spent, obvious destruction of our property values and untold hours of personal grief and anguish that we have all suffered through for the past ten years that were caused by the generation and adoption of these faulty maps.

From: [KMD](#)
To: [Boulder County Board of Commissioners](#); [Floodplain Admin](#); [Floodplain Admin](#)
Subject: [EXTERNAL] Comments RE: Left Hand Creek and public meeting of November 13, 2023
Date: Tuesday, January 2, 2024 11:27:40 PM

January 2, 2024

TO: Boulder County Commissioners, Planning Commission, Floodplain Administrator

RE: November 13, 2023 public meeting requested comments for Left Hand Creek, Boulder County proposal;

These comments first need to acknowledge our gratitude to FEMA at the NATIONAL level for providing the SCIENTIFIC RESOLUTION PANEL (SRP) for our appeal as five aggrieved and senior citizen residents/couples near Left-Hand Creek in Boulder County, Colorado.

An SRP is the ultimate FEMA-approved appeal decision-making body with regard to technical flood determination matters- effectively an administrative Supreme Court. An SRP decision is national, public, and so extraordinary that, if we understand correctly, out of presumably thousands of nationwide regulatory flood issues every year, only THREE such SRP tribunals have apparently been granted in the ENTIRE country in the last THREE years. Our case vs Boulder County et al was one of them.

We are also grateful to, and we pursued this matter with the representation and support of, our engineer Curt Parker, former Boulder County Floodplain Administrator and a former Boulder County engineer.

Because of the County requirement of submission of these comments during this brief period of the holidays, I am writing them in haste, under duress, and without fully consulting with my neighbors who have been part of the national SRP appeal. I do not believe that they would disagree with the content herein, but even though I say "we", I cannot represent anyone but myself and these comments are solely my own. I reserve the right to add to, subtract from, correct or otherwise explain them further under these exigent circumstances. If I am wrong about anything herein, I want to know about it. But I don't think so.

Suffice it to say that I have NO DESIRE WHATSOEVER to be writing these comments, but at each juncture it has been necessary to defend or lose against Boulder County et al with the enormous power and resources thereof and willingness to oppose and crush us- even up to the level of the national SRP.

We need to begin with agreement on our part with the proposal by the Boulder County Land Use Department, that our homes and properties should now officially be removed from floodway zoning, mapping and other similarly related status. This is both immediately NECESSARY AND ACCEPTABLE. As per the final decision of the SRP, there is NO correct data and mapping to support the current floodway overlay zoning, mapping or regulation imposed upon us by Boulder County.

If this removal of our properties from floodway status was the end of it, we would likely refrain from objecting further herein for practical purposes, as these comments wouldn't be necessary. Our desire is to leave this matter behind. But ONLY with normal expectations for our homes, property and well-being intact.

THE FIRST ELEPHANT IN THE ROOM, is that REGULATORY FLOODWAY STATUS, overlay zoning, mapping and regulation effectively hollows out and destroys the normal value, use and enjoyment of, and effectively takes, one's property. This inherently does FAR MORE DAMAGE to our well-being as the property owners thereof, than ANY actual flooding could ever do. The harm inflicted upon us from imposing this injurious floodway status is knowing and intentional on the part of Boulder County. And even more so, is such confiscatory regulatory floodway status harmful to SENIOR CITIZENS, as our homes are our most valuable asset and end of life provision for ourselves, our spouses and families. Just like everybody else.

Beginning at some point just prior to the July 2019 Commissioners approval meeting, the proposed and now

discredited, flood maps were radically changed and substituted, WITHOUT NOTICE to us, so as to include FLOODWAY STATUS for our homes and most of our properties. We have both the before and after screenshots. There is NO WAY that such a radical and life altering map-changing decision could have been made without knowledge on the part of Boulder County that such a floodway decision would severely impact our affected properties and us, as the owners thereof.

THE SECOND ELEPHANT IN THE ROOM, is that SINCE our engineer saw the obvious flaws from the beginning in the floodplain/floodway conclusions and the defective flood modeling and mapping of our homes; SINCE our engineer notified Boulder County of these SAME flaws in two appeals, and SINCE the SRP saw the SAME flaws and drew the SAME conclusions about the SAME erroneously based modeling and mapping, then Boulder County, and its floodplain partner entities and paid consultants HAD TO HAVE SEEN AND BEEN AWARE OF the SAME flawed situation also.

Yet for SEVERAL YEARS, Boulder County pressed KNOWINGLY AHEAD with this false situation, and with wrongful floodway overlay zoning, mapping and regulation upon us, well aware of the crushing effect this has had on a small bunch of old people, while apparently confident that we would never get so far as the SRP. Boulder County knows well who we are, and the public desirability of property which we have happened to own for many years. How can the County's actions under the circumstances not be seen as ELDER ABUSE?

THE THIRD ELEPHANT IN THE ROOM is that the national SRP decision, technically unmasked this situation and further began publicly exposing this matter in its entirety.

THE FOURTH ELEPHANT IN THE ROOM is that, while the current proposal by the Land Use Department to correctly and acceptably now remove our properties from demonstrably erroneous floodway status, this necessary removal, however, apparently only takes the necessary resolution of this matter PART OF THE WAY to the rightful and proper solution. Boulder County needs to take ADDITIONAL steps for our restorative well-being.

Apparently, the concurrent plan now is to ALSO restudy our reach of Left Hand Creek with "NEW" data, evaluated by the SAME entities with the many of the SAME individuals in the drivers seat- including those who individually or collectively were responsible for the erroneous data, mapping, zoning, advocacy thereof, and opposition to our legitimate objections to the now discredited modeling. Given what has transpired over the last several years, and the way the County has visited YEARS OF SUFFERING upon us heretofore, what would ANY ordinary and reasonable person think of this proposed re-study scenario with the SAME participants who previously persecuted us, on a wrongful basis, now once again sitting as judge and jury in this matter?

Suffice it to say, that we are well aware that the SRP decision has been a highly unexpected and tremendous potential public personal and professional embarrassment, to the entities and people who have been confident in their efforts to fly the original data, evaluations, modeling and mapping and roll over us PRIOR to the SRP- and the SRP's decision to overrule and rebuke the same.

Would a reasonable person think the possibility imaginable, that the only way out of this embarrassment and defeat is with a certain brand of "new modeling" (aka wide-latitude speculation dressed up with numbers and untold assumptions), in which the "new modeling" eventually comes to a SIMILAR OR SAME result as in the former defective model, which has been publicly discredited by the national SRP? In other words, the possibility of an ultimate absolution with "much ado about nothing" approach and result? That accusation can't be definitively made, but it certainly can be entertained and watched for. Clearly, in general, with enough latitude, anything can be modeled to a desired result. Obviously, that is what has happened heretofore. We can only look at what has been demonstrated without mercy towards us thus far.

The possibility of future results arriving in friendly fashion to the discredited model, needs to be kept front and center. We cannot at our age further endure, and simply do not deserve, what Boulder County et al has visited upon us, our property and our well-being during our retirement years with motives and regulation which can only be peripherally related to our genuine and reasonable health and safety.

From what we understand, Boulder County et al would now apparently continue to seek a floodway with the widest possible "2D" and other expanded parameters, and then would seek to impose regulatory floodway specificity from a theoretical snapshot in time, over imagined events and specifics far into the future which, by definition, CAN NOT

be reasonably known fully, nor with specificity. Why stop here- why not require all homes to be regulated for the effects of speculative coming nuclear wars? This quickly becomes a journey into the absurd and unbalanced.

Furthermore, the engineers who Boulder County presented at the recent public meeting of November 13, 2023 and who obviously are, even without fault, eager to speculate data into results, made a big deal of, and openly admitted that, when it comes to our flood conditions and terrain, things are constantly changing. The speculative nature of this is in multiple statements during the powerpoint and oral presentation of that meeting.

Ergo, WHY ON EARTH would Boulder County, if there would be indeed any good faith intent for our genuine well-being, even be seeking to hold us and our homes strictly, oppressively, regulatory, and as we have seen, even wrongfully, floodway accountable, with regard to some proffered moment in time, for some admittedly ever-changing FUTURE imagined and theoretical events and consequences, which will never be more than a questionably educated guess? And ordinary citizens and seniors should pay the price in all conceivable ways with our most valuable lifetime physical asset because?

Let's face it, everyone and their brother strongly "suspects" that these situations are really all about LAND USE, POWER, CONTROL AND JUSTIFICATION, AND CONFISCATION OF PROPERTY RIGHTS. "Health and safety" is merely the vehicle. As we recall, early on in this matter, there was another Boulder County attempt to declare an ENTIRE floodplain as a floodway in the East Boulder Creek area, in order to administratively prevent oil and gas drilling. That had to have been attempted at the knowing expense of dragging the homes and land of rural County residents there into wrongful regulatory floodway status.

THE FIFTH ELEPHANT IN THE ROOM is that Boulder County has had OVER ONE YEAR after the SRP decision, to remedy ASAP the knowingly harmful and wrong floodway mapping and zoning affecting us and our properties. If this matter has truly been about accuracy, health and safety, and "best available data", as claimed by the County, then WHY would Boulder County have been dragging its feet, even for a second, on the required and necessary corrective action for our benefit? Even if required, this resolution could have been brought before the Commissioners in short order. Apparently, it was much easier and appropriate to let us continue to twist in the wind.

In the meantime, despite informal promises of future remedy to more than one of us, there has been no apology, no contrition, no apparent haste from the County. We have been forced to further fight for an acceptable resolution of removal of regulatory floodway mapping and for floodway zoning reversal. Officially, however, we have treated to more and additional crushing floodplain/floodway regulations imposed upon us; the expressed concern about what might happen to final approval of the other County floodplain maps in light of the SRP decision, and the need for "new strategy" from internal email communications.

When we eventually began passing copies of the SRP out to planning and county commissioners during the last year, they seemed at the time to have no advance knowledge of the existence of the SRP, it's importance, nor of its impact. Clearly, it's not like our situation has been off the radar, while we have been further stiff-armed and tormented.

THE SIXTH ELEPHANT IN THE ROOM is the obvious need for an END to the regulatory abuse for apparent ulterior Boulder County motives. Especially when that abuse knowingly harms citizens such as ourselves, who were ALREADY DAMAGED by natural disaster itself, who are supposed to receive protection from our representative local government, floodplain partners, consultants and staff.

Whether it be ourselves, our neighbors, both nearby and in other flood affected areas in Boulder County, the Marshall fire victims, or other rural residents who are affected by natural disasters in the unincorporated County, the CORRECT SOLUTION in all these cases to the natural disasters is NOT to pile on, and/or finish us off, with INCREASED phony and speculative dangers, concerns, rules, regulations, processes, delays and costs- these benefit only the virtue signaling of those who seek to impose these things upon us, but which in reality, are self-rewarding conflicts of interest dressed up as public service.

ADDITIONALLY, if the goal of Boulder County is GENUINELY the well-being of its rural citizens, rather than to crush us with increased regulatory burden, even those regulations which existed at the time of acquisition, and any associated detriments therefrom, should actually be LESSEned AND/OR WAIVED in order to benefit those who have already been damaged by the natural disaster itself.

FINALLY, THE SEVENTH ELEPHANT IN THE ROOM is a GENUINE FLOODWAY ITSELF.

Our understanding is that NO floodway is actually required by FEMA. Apparently, it has only been Boulder County itself, which has requested a floodway and is set to do so yet again, in the “re-study” with the proposed generous parameters, from what we heard. Like the aforementioned 2D modeling, which according to published data is apparently not well-suited for floodways in BROAD, GENERALLY LEVEL AREAS such as OURS. We don’t even live on Left Hand Creek and the likely future of actual flooding damage to us is MINIMAL, just by virtue of the broad, generally level terrain. We are only talking about INCHES of water, if ever. Figuratively, half of Boulder County had some form of inches of water in 2013- which just goes to show the unpredictability.

Of course, the foregoing assumes the ABSENCE of the negligence in the lack of stream and stream-side maintenance being required and performed by Boulder County itself on the main channel. The lack of maintenance and wild growth allowed by the County created debris dams which funneled water directly at us in 2013. We feel that Boulder County was directly, if not solely responsible for our 2013 flooding. Similarly, with regard to the Marshall fire, the understanding here is that unmaintained open space, much of it County-owned, provided enormous fuel for the destruction of homes.

It is important to note that the current state of maintenance on Left-Hand Creek, shows a marked return to Boulder County’s negligence regarding a lack of stream and vegetation maintenance prior to the 2013 flood. Trees and vegetation are once again growing wild and free along the banks and apparently waiting to create any future debris dams. Would a reasonable person think this further demonstrates Boulder County’s lack of actual concern for genuine public health and safety?

This makes no sense to a reasonable person. Boulder County creates a mess, and then instead of straightening up its own act, it clamps down on regulating and further crushing already injured property owners as the remedy. As we are well advanced in years, the stress of the false regulatory floodway imposition upon one of us was so great in this matter at hand, that we believe it literally caused or hastened his demise. How would any reader of these comments like to come to the final moments of your own life, with some of your last thoughts on earth being that of Boulder County ripping off your home and provision for your spouse and family? Once again, how is our treatment not ELDER ABUSE?

THERE IS ONLY ONE ACCEPTABLE FLOODWAY SOLUTION WHICH GENUINELY PROTECTS OUR “HEALTH AND SAFETY” AND DOES NOT CAUSE US ACTUAL HARM:

THE TRADITIONAL, COMMON SENSE, NOTION AND DEFINITION of a floodway is the MAIN CHANNEL and if necessary, only mere feet of over-bank.

If Boulder County is going to insist upon a floodway, it should be LIMITED TO the use and maintenance of the MAIN CHANNEL of Left Hand Creek for GENUINE citizen protection purposes. That means directing, enhancing and maintaining the main channel to carry as much water as possible, and away from homes and residents, during any potential flood. It DOES NOT mean using floodways for property acquisition purposes under disingenuous health, safety and danger claims. Again, we cite the SRP with regard to our section of Left Hand Creek:

“The preliminary floodways shown on the proposed floodplain mapping do not appear to be based on the result of hydraulic modeling, do not appear to be consistent with the accepted and current FEMA definition of a floodway and appear to be placed in such a fashion as to place as many existing residential structures as possible in a regulatory floodway.” (page 18 of the SRP final decision)

We should not be punished yet more antiseptically for speculative national disasters, whether they be imagined configurations for floods, fires, earthquakes or meteor strikes.

And if somehow, there occurs the rare instance of a home and/or structures which somehow exist in the main channel, those homes and structures should be granted “islands of regulatory floodway exception” as they have managed to exist with the County’s full knowledge and acquiescence for an extensive time. It is FAR MORE IMPORTANT that owner of any such structures, if they should exist, be granted the private property rights which any reasonable person would want and need, than to be burdened with Boulder County’s oppressive regulatory

floodway zoning. People have to be allowed to live normally without the County's foot upon their neck.

IT IS SIMPLY TIME FOR BOULDER COUNTY TO FUNDAMENTALLY TURN AROUND AND PUT AN END TO THE REGULATORY WAR WHICH IT HAS WAGED UPON ITS RURAL CITIZENS FOR YEARS. ESPECIALLY WITH REGARD TO THOSE ALREADY INJURED BY NATURAL DISASTERS.

WHAT ARE WE TO DO?

There is NO confidence here that we are not walking into another regulatory trap which may look like a break at first, but we know well that the devil is always in the details in this matter. Unless the County can give us concrete further assurance, without diligence, we might just end up back where we started years ago. Fighting multiple levels of governmental bureaucracy, with its unlimited power and resources, is a near impossible task for a small group of citizens in our 70's.

Once again, the olive branch is held out. What we want is simple: 1. Get us out of the regulatory floodway now. 2. Keep us out of any future regulatory floodway. Strict floodway regulation borders on preposterous because something speculatively COULD happen in just a certain way 50 years from now from inches of water in an admittedly ever-changing broad, generally level area. 3. Act for our actual visible protection without confiscating our property rights, and leave us alone within reason and within the bounds of the law. That's what we pay for. 4. Apply these and similar inherently beneficial principles as a new standard to us and the rest of unincorporated County residents.

At the hands of Boulder County, we have simply suffered enough in every way from this situation. And for years. As citizens. And as seniors.

Kenneth Montgomery Deault

8027 N 41st St
Longmont, CO 80503

From: [Karl Kumli](#)
To: [Floodplain Admin](#)
Cc: terri.fead@state.co.us; pineviewllc@comcast.net; [Daniel Rubin](#); [Robyn Kube](#)
Subject: [EXTERNAL] Boulder County Floodplain Remapping Project Dockets Z-23-0001, Z-19-0001, Z-17-0001 and Z-17-0002 - New Dry Creek Ditch
Date: Tuesday, January 2, 2024 4:40:50 PM
Attachments: [image001.png](#)
[20240102 Comment to Boulder County Remapping Project - New Dry Creek Ditch Final 6178046.docx](#)
[Exhibit A - BoCoSignedStudyMemo 1.pdf](#)
[20240102 Comment to Boulder County Remapping Project - New Dry Creek Ditch Final 6178046.pdf](#)

Dear Ms. Watson,

Attached please find a letter to your office regarding the New Dry Creek Ditch and requesting, *inter alia*, that the Ditch be removed from the CHAMP process and Boulder County's current flood mapping project. Kindly note that the letter is sent to you in both .pdf format, and in Word format, in order to preserve embedded links which are citations or which provide additional information, and which appear only in the latter version of the document. The one Exhibit A is provided as a .pdf attachment as it is a County document for which we believe you are likely to have search functionality.

Thank you very much for your attention to this matter. Please do not hesitate to contact me directly if you have any questions.

Sincerely,

Karl Kumli
303-898-7350



Karl F. Kumli, III
Shareholder/Vice President
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Disclaimer

Exhibit C

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Peter C. Dietze 1934-2019
Joel C. Davis 1936-2013

January 2, 2024

Ms. Kelly Watson
Boulder County Floodplain Administrator
Boulder County Community Planning & Permitting
PO Box 471
Boulder, CO 80306
FloodplainAdmin@bouldercounty.org

Sent via Email and First Class Mail

Re: Boulder County Floodplain Remapping Project Dockets Z-23-0001, Z-19-0001, Z-17-0001 and Z-17-0002 – New Dry Creek Ditch

Dear Ms. Watson:

This letter is written to you in your capacity as the Boulder County Floodplain Administrator. We appreciate Boulder County’s (County) and the Federal Emergency Management Agency’s (FEMA) coordinated efforts with the Colorado Hazard Mapping Program (CHAMP) to bring updated flood risk information to the State of Colorado. The purpose of this letter is to call to your attention the nature and character of a water feature known variously as the Dry Creek Ditch, Dry Creek Ditch #1, the New Dry Creek Ditch, and the Dry Creek Carrier (the Ditch), and to request that the Ditch be removed from the CHAMP process and Boulder County’s current flood mapping project.¹

¹ In particular, this request is for that portion of the Ditch located west of 75th Street, i.e. between Base Line Reservoir and 75th Street.

Boulder County Floodplain Remapping Project – New Dry Creek Ditch

January 2, 2024

Page 2

I. Introduction

This comment is submitted on behalf of our client, PINE VIEW, L.L.C., whose address is:

PO Box 5628
Minneapolis, MN 55440-5628

and whose email address is: pineviewllc@comcast.net; and on behalf of our client CM3 Living Trust, whose address is identical to that of PINE VIEW, L.L.C. Both the Trust and the LLC are referred to in this letter as the clients.

Our clients own properties in Section 36, T1N, R70W which are located proximate to, or which underlie, a portion of the Ditch.

Following the public informational meeting held on December 13, 2023, our clients became concerned that the irrigation ditch identified as New Dry Creek Ditch has been misclassified by the Colorado Hazard Mapping Program (“CHAMP”). *See*, Phase I Fact Sheet/Study Memo (“Study Memo” attached as **Exhibit A**). Based on a review of historical data, CHAMP technical study documents, online mapping and water rights databases hosted by the Colorado Water Conservation Board (“CWCB”), records of the Division of Water Resources, and regulations promulgated by Colorado’s Department of Natural Resources (DNR), we believe the evidence supports the conclusion that New Dry Creek Ditch has been improperly classified in Boulder County’s Floodplain Remapping Project and that Boulder County, CWCB, and FEMA should not have designated 100-year floodplain information for the New Dry Creek Ditch because it is a man-made irrigation ditch, and because DNR regulations provide that agreement between irrigation ditch owners and local governing jurisdictions, as to flood conveyance capacity, should be reached prior to rendering any such designation. We are unaware of any agreement between the governmental agencies and the owners of rights in the Ditch.

II. Background

New Dry Creek Carrier Ditch takes South Boulder creek water, and water from other sources such as Base Line Reservoir itself, to other ditches that flow below Baseline Reservoir.² The Ditch Project, New Dry Creek Carrier, available [here](#). The Ditch does not have its own water right. *Id.* Rather it is a “carrier ditch” which transports water for other ditches, as well as water released from Base Line Reservoir. *Id.* These “Dry Creek ditches” together maintain the New Dry Creek Carrier Ditch. *Id.* Originally, this ditch flowed through land now covered with Baseline Reservoir. *Id.* When the reservoir was built, the New Dry Creek Carrier was re-routed. *Id.* Cottonwood #2, Leyner Cottonwood, Davidson-Dry Creek, Andrews Farwell, and Lewis H Davidson ditches, and below Base Line Reservoir, water from that reservoir as well, all use the New Dry Creek Carrier and its extension. *Id.*

² It should be noted that due to the shortage of time after the December 13, 2023 meeting, and the constraints of the holiday season, our clients were not afforded an opportunity to have us exhaustively research and document all aspects of the factual background and relationships involving the Dry Creek Carrier, and the operation of the water rights associated with it, and with releases of water from Base Line Reservoir, to shareholders down-gradient from that reservoir. Accordingly, our clients have been prejudiced by an inability to make substantive comments necessary to fully protect their interests given the one public notice which they received and the seasonal interruptions following the December 13 meeting. *See*, Section V, *infra*.

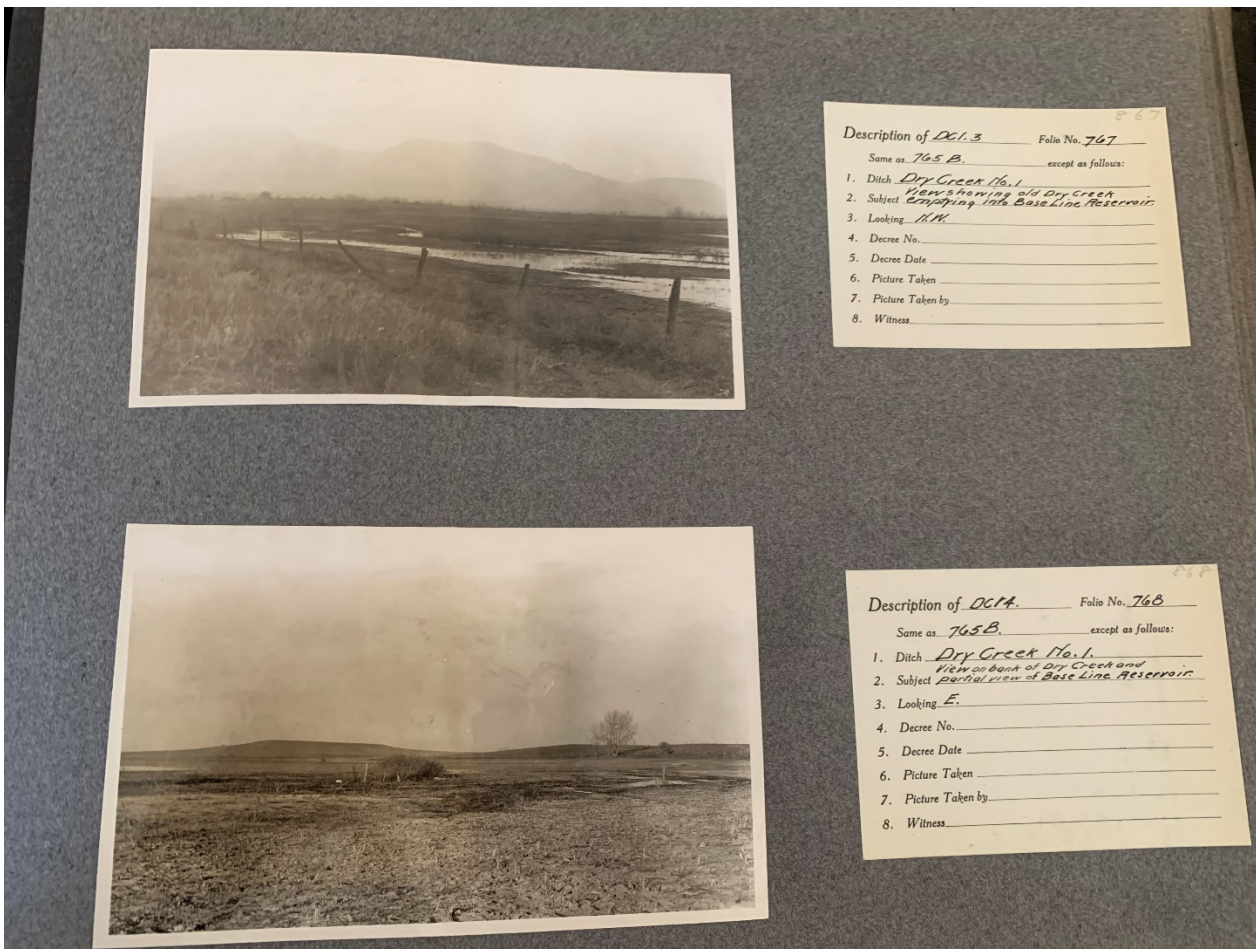
Boulder County Floodplain Remapping Project – New Dry Creek Ditch

January 2, 2024

Page 3



The natural watercourse formerly known as “Old Dry Creek,” emptied into Baseline Reservoir when the reservoir was constructed beginning in 1903. *See below*, Ditch Photographs circa 1907-1909, available at Carnegie Library, Boulder (“Subject: View showing old Dry Creek emptying into Base Line Reservoir”); *see also* Construction Plans for Baseline Reservoir, available at the Dietze and Davis P.C. Office.



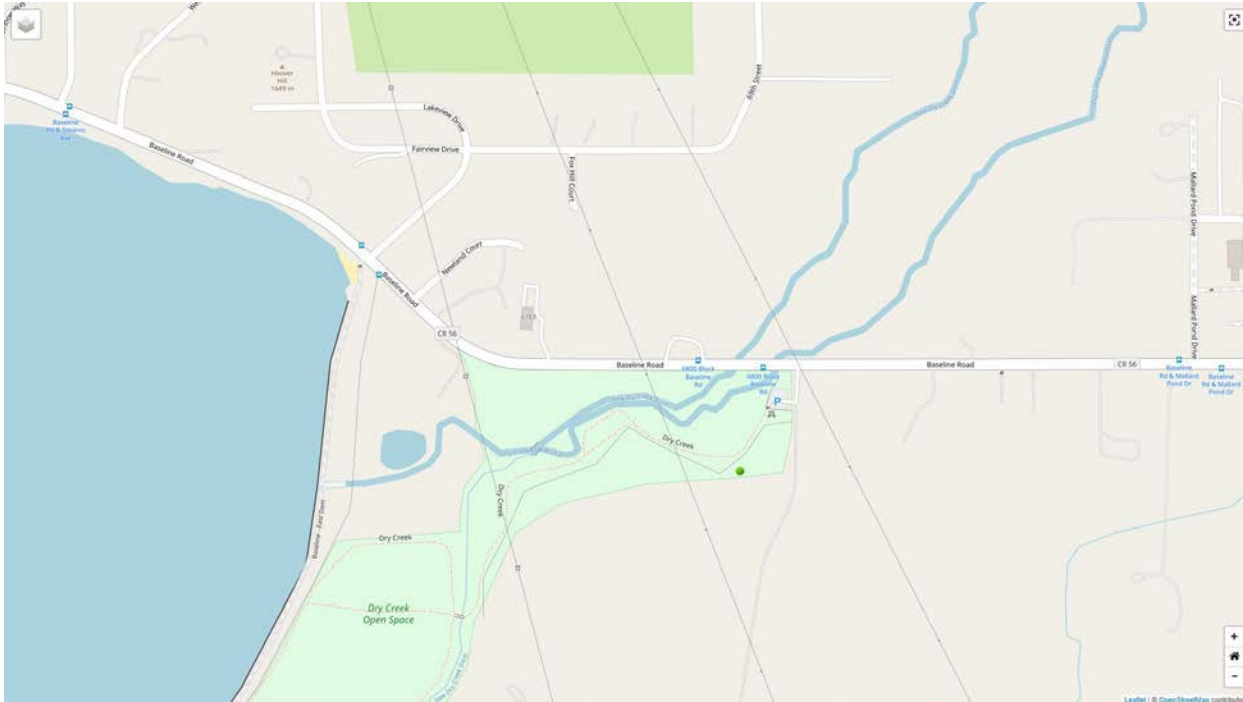
Since construction of Baseline Reservoir, the natural Dry Creek waterway has been extinguished. What had been Old Dry Creek has been converted into a network of irrigation ditches filled with water from the Baseline Reservoir’s spillway, or rerouted from South Boulder Creek through the New Dry Creek Carrier Ditch. The Ditch Project, New Dry Creek Carrier. The DNR keeps diversion records for New Dry Creek Carrier Ditch,

Boulder County Floodplain Remapping Project – New Dry Creek Ditch

January 2, 2024

Page 4

which is designated as a ditch. *See* DNR Diversion Records, available [here](#). Records kept by DNR in its Water Rights – Transactions database indicate that all water carried in the ditches below Baseline Reservoir is attributable to the South Boulder Creek water source, and no independent water right (i.e. no diversion) is associated with the now extinguished Old Dry Creek. *See* DNR Water Rights – Transactions Database, available [here](#); *See also* DNR Water Rights – Transactions Database, Interactive Map, excerpt below (“New Dry Creek Ditch” and “Dry Creek Davidson Ditch”).



Id.

III. Rules and Regulations for Regulatory Floodplains in Colorado

The Rules and Regulations for Regulatory Floodplains in Colorado, codified as 2 C.C.R. §408-1 (the “Rules”), generally set forth the regulations governing formulation of the regulatory floodplain in Colorado. 2 C.C.R. § 408-1. The Rules specifically exclude from their scope the dam failure floodplain or “the area potentially inundated by the catastrophic or sudden failure of any man-made structure such as a dam, canal, **irrigation ditch**, pipeline, or other artificial channel.” 2 C.C.R. § 408-1, Rule 3(B)(3)(emphasis added).

Rule 10, entitled “Stormwater Detention,” specifically concerns irrigation facilities:

The CWCB recommends that irrigation facilities (including but not limited to ditches and canals) not be used as stormwater or flood conveyance facilities, unless specifically approved and designated by local governing jurisdictions and approved by the irrigation facility owners. The flood conveyance capacity of irrigation facilities shall be acknowledged only by agreement between the facility owners and local governing jurisdictions. The CWCB will designate and approve 100-year floodplain information for irrigation facilities if the above recommendations are met.

2 CCR 408-1, Rule 10(B).

IV. CWCB’s CHAMP Project Reach Designations

New Dry Creek Ditch was therefore improperly included in CWCB’s CHAMP surveying project because it is at present day, operated as a carrier ditch. Old Dry Creek, a naturally occurring waterway, was extinguished over a century ago through the construction of Baseline Reservoir and its subsequent re-irrigation paradigm. As named in the attached Study Memo (**Exhibit A**), New Dry Creek Ditch was the only irrigation ditch included for study in the original CHAMP project. *See below*, excerpt of Study Memo (New Dry Creek Ditch is the only reach identified with “Ditch” in the name).

New Dry Creek Ditch (SV-15)	From confluence with Boulder Creek upstream 5.6 miles	5.6	Enhanced	2013 USGS LiDAR	CDOT Phase II	Summer 2015
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Id.

V. Due Process and Concerns Regarding Arbitrary Administrative Action

Our clients did not receive direct notice via mail of any reclassification of the New Dry Creek Ditch either from Boulder County, the CHAMP project, or from the Federal Emergency Management Agency (FEMA) until receiving correspondence advising them of the Dec. 13, 2023 – Virtual General Countywide Floodplain Remapping Informational Meeting. Prior to that meeting, only one public meeting was held specifically regarding the New Dry Creek Ditch reach, four years earlier on January 14, 2020. *See* Floodplain Mapping - How to Stay Informed [page](#). The County now anticipates holding public hearings before the Planning Commission and Board of County Commissioners early in 2024, with the deadline for public comment set as January 2, 2024, immediately following the holiday season.

This procedure and this process have severely limited the ability of our clients, as well as other affected community members, to review floodplain studies, as envisioned by the Rules: “The Rules provide for a process whereby all affected communities have the opportunity to review, analyze, and object to the floodplain studies if not based on technically accurate and sound scientific data.” 2 C.C.R. § 408-1, Statements of Basis and Purpose, effective November 17, 2010 - Proposed Basis and Purpose for CWCB Floodplain Rules and Regulations (3). Additionally, federal regulations state that proposed flood elevation determinations should be accompanied by “notification by certified mail, return receipt requested, of the proposed flood elevation determination.” 44 C.F.R. § 67.4(b). *See also* Guidance for Flood Risk Analysis and Mapping Post-Preliminary Due Process, FEMA, November 2023, available [here](#). No such notification was received by our clients.

Given the extended timeline of Boulder County’s ongoing floodplain remapping efforts due to the COVID Pandemic, and the insufficiency of direct public notice to our clients, allowing a late appeal of the New Dry Creek Ditch floodplain determination is appropriate to afford property owners with adequate due process. Due Process Clause, U.S. Const. amend. V, amend. XIV; *see also Ridgely v. FEMA*, 512 F.3d 727, 734 (5th Cir. 2008). Additionally, refusing to re-evaluate the designation of New Dry Creek Ditch’s floodplain classification would be an arbitrary and capricious action as proscribed by the Colorado Administrative Procedure Act, C.R.S. § 24-4-101 to 24-4-108.

Boulder County Floodplain Remapping Project – New Dry Creek Ditch

January 2, 2024

Page 6

VI. Request for Appeal or Reevaluation

At this time, our clients hereby request that Boulder County: 1) remove the “New Dry Creek Ditch” from the FEMA proposed Preliminary Flood Insurance Rate Maps (“Preliminary FIRMs”); and 2) allow a late appeal of the New Dry Creek Ditch floodplain designation, as set out in this letter, before finalizing and formally adopting the FEMA FIRMs. In the alternative, we request that Boulder County continue public hearing before the Boulder County Planning Commission in order to further investigate and review the New Dry Creek Ditch classification issue, with appropriate public notice and opportunity to comment substantively before finalizing and formally adopting the Preliminary FIRMs.

Kindly direct all correspondence regarding this matter to our firm at the addresses listed above, as well as to our clients at the address provided above. We look forward to working with you on this matter.

Sincerely,

DIETZE AND DAVIS, P.C.

Karl F. Kumli, III

Karl F. Kumli, III
Attorneys for PINE VIEW, L.L.C.
and CM3 Living Trust

Copies sent to:

Ms. Terri Fead
Floodplain Mapping Coordinator
Colorado Water Conservation Board
Colorado Department of Natural Resources
terri.fead@state.co.us

The Honorable Deanne Criswell
Administrator
Federal Emergency Management Agency
500 C Street SW
Washington, DC 20472-3100



FACT SHEET/STUDY MEMO

<i>Project Name:</i>	Colorado Hazard Mapping Program – Phase I		
<i>Regarding:</i>	Coordination of Project Scope	<i>Date:</i>	November 19, 2015
<i>Community</i>	Boulder County		
<i>Community Contact(s)</i>	Varda Blum, Floodplain Manager: vblum@bouldercounty.org , 720-564-2659 Deb Gardner, Chairman, Board of Commissioners: commissioners@bouldercounty.org , 303-441-3500 Julie McKay, Planning Manager: jmckay@bouldercounty.org , 720-564-2662 Shea Thomas, Master Planning Project Manager: stomas@udfcd.org , 303-455-6277 David Mallory, Manager of Floodplain Management: dmallory@udfcd.org , 303-455-6277		
<i>Project Contacts:</i>	Stephanie DiBetitto, CWCB Hazard Mapping Specialist: stephanie.dibetitto@state.co.us , 303-866-3441 x3221 Rigel Rucker, AECOM Assistant Project Manager: rigel.rucker@aecom.com , 303-740-2752		

This memo documents the Colorado Water Conservation Board (CWCB) is coordinating with the appropriate community contacts regarding the scope and methodology of the Colorado Hazard Mapping Program (Project). The Project will take multiple years to complete, so it is important to have a record of this coordination. This memo serves to show the communities have reviewed and agree with the study methodology by signing at the bottom, and is for documentation purposes only. A summary of the Project is described below.

Project Objective

The Project involves conducting new flood hazard analyses and special flood hazard area delineations for streams particularly affected by the September 2013 flood event in the St. Vrain and Big Thompson HUC-8 watersheds (IDs 10190005 and 10190006, respectively). The resulting products and deliverables are expected to form the basis for a subsequent regulatory update for all studied streams under the Federal Emergency Management Agency's (FEMA's) Risk Mapping, Assessment, and Planning (MAP) Program. This regulatory update is not scoped or funded at this time. Throughout this process, CWCB and their consultant, AECOM, plan to coordinate with Federal, State, and local government entities as well as other relevant stakeholders to collaborate on project efforts, increase flood awareness, and assist in identifying risk mitigation actions.

General Project Approach

The following methodology will be applied to studying the selected streams in the St. Vrain and Big Thompson watersheds, except where deviations are specifically noted in the community-specific section below. All studies will be conducted using FEMA's applicable Guidelines and Standards for Flood Hazard Mapping. Project activities, including field surveys, will commence in the summer of 2015, except for reaches that will be studied starting in the fall of 2016 due to ongoing construction and recovery efforts.

The project tasks vary based on the study level of each stream. The scoped streams and their study levels are shown on the enclosed Scoping Map. Enhanced Level studies include survey and field reconnaissance and will eventually result in special flood hazard area delineations with plotted base flood elevations and regulatory floodways. Base Level studies do not incorporate field reconnaissance or survey data, rely exclusively on topographic data for terrain information, and will eventually result in model-backed special flood hazard areas without plotted base flood elevations. The Project tasks generally include the following sequence:

- Field Survey and Reconnaissance – Task will include the following for enhanced reaches (base level studied reaches are not surveyed):
 - Documenting the condition and types of hydraulic structures, such as bridges and culverts, and estimating associated parameters to include Manning coefficients
 - Surveying structure dimensions and adjacent cross sections
 - Surveying the channel and special flood hazard areas along cross sections spaced approximately 2,000 to 3,000 feet apart in the plains and mountains, respectively, where structure spacing allows
- Topographic Data – Task will include generating terrain models using topographic data from:
 - USACE 2014 LiDAR where available, collected in October 2014
 - USGS 2013 LiDAR elsewhere, collected from October 2013 through January 2014



FACT SHEET/STUDY MEMO

- Hydrology – Task will include:
 - Using CDOT post flood hydrologic analyses where available and modifying it to include the “1% plus” and 4% flow rates per FEMA specifications
 - Calculating new peak flood flows for the 10%, 4%, 2%, 1%, “1% plus” and 0.2% annual chance events for streams not included in the CDOT post-flood hydrology analyses
- Hydraulics – Task will include performing 1-dimensional, steady-state HEC-RAS hydraulic analyses for all identified streams.
- Flood Hazard Mapping – Task will include producing special flood hazard area delineations for each level of study. While this phase of the project does not include a regulatory update, the work will tie into FEMA’s National Flood Hazard Layer (NFHL) as appropriate and the analysis will be in accordance with FEMA’s specifications and quality procedures. The following special flood hazard areas are mapped based on study level:
 - Enhanced Level – 1% and 0.2% annual chance flood hazard areas and regulatory floodway boundaries calculated with a ½ foot rise with profiles and floodway data tables
 - Base Level – 1%-annual-chance flood hazard areas
- Outreach – Due to the large area covered, project duration, and numerous stakeholders involved, routine communication is critical to this project. CWCB announced the project scope and objective to community stakeholders by email on May 28, 2015 and held a project kickoff meeting at CDOT’s facility in Loveland on July 9, 2015. Community and county-specific discussions have been taking place as described in the section below. If additional or alternate contacts should be included in future discussions, please notify the project contacts listed above.

Quarterly progress meetings will be held in Loveland starting in October, project information will be disseminated via newsletters and the project website (www.coloradohazardmapping.com), and flood risk review meetings will occur as necessary when results have been generated. Outreach is directed toward community officials, so they can disseminate appropriate information to the general public as necessary. Accompanying this memo is a brief flyer describing the scope and intent of this Project that can be shared with the public.

Community Specific Studied Streams and Decision Documentation

Streams were initially selected for study based on areas particularly affected by 2013 flood events. The table below summarizes additional conversations that were held and led to revision and/or confirmation of scope. Although the reach of St. Vrain Creek from Lyons to Longmont, as well as small sections of North St. Vrain Creek and South St. Vrain Creek (including the confluence in Lyons), is being studied under a separate task order (the St. Vrain Watershed Risk MAP project) funded by FEMA with assistance from CWCB, the work will be concurrently performed with this Colorado Hazard Mapping Program project. The St. Vrain Watershed Risk MAP project held its kickoff meeting on May 1, 2015 in Longmont and will follow a slightly different process with separate submittals and routine reviews by FEMA for each of the data development steps (i.e. survey, hydrology, hydraulics, etc.). Future communication pertaining to the St. Vrain Watershed Risk MAP project will be transmitted separately from this Colorado Hazard Mapping Program project.

Date	Correspondence Type	Stakeholder	Comments Provided
May 29 and June 2, 2015	Emails	Jamestown	<ul style="list-style-type: none"> • Requested that the portions of Little James Creek and James Creek, upstream of the community boundary be removed from the study list. (<i>SV-14b has been retained per Boulder County – 11/6/15</i>) • Prefer to have the study on James Creek and Little James creek expedited.
July 9, 2015	Kickoff Meeting	Lyons	<ul style="list-style-type: none"> • Plan on coordinating with ongoing St. Vrain modeling efforts.
July 9, 2015	Kickoff Meeting	Longmont	<ul style="list-style-type: none"> • There is potential synergy in coordinating with ongoing St. Vrain modeling efforts.



FACT SHEET/STUDY MEMO

Date	Correspondence Type	Stakeholder	Comments Provided
May 28, June 9-10, July 17 and 21, 2015	Emails	Boulder County & UDFCD	<ul style="list-style-type: none"> • Prefers that surveyors send written documentation to property owners prior to survey effort. • UDFCD requested that future conditions hydrology be considered for segments crossing their boundary. Tie ins with future conditions hydrology across UDFCD boundaries will be handled on a case-by-case basis and communicated appropriately. Hydrology will be available from UDFCD. • Indicated that studies initially identified within UDFCD boundary did not need to be studied per email correspondence. Those listed in this memo were the only ones that were added.
June 16, 2015	Email and transmitted scoped streams CAD files		<ul style="list-style-type: none"> • Added Base study for portions of Coal Creek (extended from UDFCD boundary downstream to Highway 128) and Rock Creek (upstream of Highway 128) per communication with UDFCD at kickoff meeting. Confirm that CDOT hydrology ties in with Coal Creek MDP properly.
July 9, 2015	Kickoff Meeting		<ul style="list-style-type: none"> • Portions of Fourmile Canyon Creek and Two Mile Canyon Creek upstream of the City of Boulder were requested for study with detailed portions inside UDFCD's boundary.
August 12, 2015	Phone Calls		<ul style="list-style-type: none"> • Requested Dry Creek #2 be studied downstream of UDFCD's boundary. • Requested a small portion of SV-6 be studied in detail at downstream end (SV-6a), but held until after March 2016. • Requested that Geer Canyon be added and studied in detail, but held until after April 2016. • Indicated data from Michael Baker Jr. is available for Fourmile Canyon Creek. • Indicated that studies should be held for approximately 1 year on Left Hand Creek, Gold Run, Fourmile Canyon Creek, and Fourmile Creek to wait for ongoing construction.
November 6, 2015 November 16, 2015	1 st Quarterly Meeting and Phone Call	Boulder County	<ul style="list-style-type: none"> • Retain segment SV-14b (James Creek) as private lands exist • Extend SV-8a (enhanced) to extent of private property and removed SV-8b (base) • Although 'hydrology source' is listed in the table below, decisions are still ongoing on several reaches concerning which hydrology source(s) to use.

The table below summarizes the streams scoped for study within Boulder County.

Stream Name and Reach ID	Reach Description	Length (mi)	Level of Study	Topography Source	Hydrology Source	Anticipated Start
Little Thompson River (BT-2a)	From confluence with Big Thompson River upstream 28.2 miles (St Vrain Canal Rd) <i>only a small portion is within Boulder County</i>	28.2	Enhanced	2014 USACE LiDAR	CDOT Phase II	Summer 2015
Little Thompson River (BT-2b)	From St. Vrain Canal Rd upstream 16.2 miles <i>only a small portion is within Boulder County</i>	16.2	Base Level	2013 USGS LiDAR	CDOT Phase I/II	Summer 2015
West Fork Little Thompson River (BT-7)	From confluence with Little Thompson River upstream 9.8 miles <i>only a small portion is within Boulder County</i>	9.8	Base Level	2013 USGS LiDAR	CDOT Phase I	Summer 2015
Boulder Creek (SV-2a)	From confluence with St. Vrain Creek upstream to just downstream of Fourmile Canyon, Boulder Creek, and South Boulder Creek confluence	17.2	Enhanced	2014 USACE LiDAR	CDOT Phase II	Summer 2015



FACT SHEET/STUDY MEMO

Stream Name and Reach ID	Reach Description	Length (mi)	Level of Study	Topography Source	Hydrology Source	Anticipated Start
Boulder Creek (SV-2b)	From UDFCD boundary upstream to confluence of North/Middle Boulder Creek	6.5	Enhanced	2014 USACE LiDAR	CDOT Phase I	Summer 2015
Left Hand Creek (SV-3)	From confluence with St. Vrain Creek upstream 30.3 miles	30.3	Enhanced	2014 USACE LiDAR	CDOT Phase I/II	Fall 2016
Coal Creek (SV-4a)	From Colorado State Highway 128 crossing, upstream 9 miles <i>only a small portion is within Boulder County</i>	9.0	Base Level	2014 USACE LiDAR	SWMM	Summer 2015
Coal Creek (SV-4c)	From 5.5 miles upstream of UDFCD boundary upstream 2.4 miles	2.4	Base Level	2014 USACE LiDAR	SWMM	Summer 2015
South Boulder Creek (SV-5)	From 0.5 miles west of UDFCD boundary upstream 18.3 miles	18.3	Base Level	2013 USGS LiDAR	To Be Determined	Summer 2015
North St. Vrain Creek (SV-6a)	From 5.3 Miles Upstream of confluence of South St. Vrain Creek upstream 1.4 miles	1.4	Enhanced	2014 USACE LiDAR	CDOT Phase I	Fall 2016
North St. Vrain Creek (SV-6b)	From 6.7 Miles Upstream of confluence of South St. Vrain Creek upstream 14.9 miles	14.9	Base Level	2014 USACE LiDAR	CDOT Phase I	Fall 2016
South St. Vrain Creek (SV-7a)	From 1 mile upstream of confluence with St. Vrain Creek upstream to confluence of Middle St. Vrain Creek	9.0	Enhanced	2014 USACE LiDAR	CDOT Phase I	Summer 2015
South St. Vrain Creek (SV-7b)	From confluence of Middle St. Vrain Creek upstream 8.7 miles	8.7	Base Level	2013 USGS LiDAR	CDOT Phase I	Summer 2015
Fourmile Creek (SV-8a)	From confluence with Boulder Creek upstream 10.8 miles	10.8	Enhanced	2013 USGS LiDAR	CDOT Phase I	Fall 2016
Fourmile Canyon Creek (SV-9a)	From UDFCD boundary downstream 1.7 miles	1.7	Enhanced	2013 USGS LiDAR	SWMM	Fall 2016
Fourmile Canyon Creek (SV-9b)	From UDFCD boundary upstream 3.7 miles	3.7	Base Level	2013 USGS LiDAR	SWMM	Fall 2016
Middle Boulder Creek (SV-10)	From confluence with Boulder Creek upstream to CO-72	7.7	Enhanced	2013 USGS LiDAR	CDOT Phase I	Summer 2015
Middle St. Vrain Creek (SV-11)	From confluence with South St. Vrain Creek upstream 8.1 miles	8.1	Enhanced	2013 USGS LiDAR	CDOT Phase I	Summer 2015
North Boulder Creek (SV-12)	From confluence with Boulder Creek upstream to CO-72	6.5	Base Level	2013 USGS LiDAR	CDOT Phase I	Summer 2015
Little James Creek (SV-13)	From confluence with James Creek upstream 1 miles	1.0	Enhanced	2014 USACE LiDAR	CDOT Phase I	Fall 2016
James Creek (SV-14)	From confluence with Left Hand Creek upstream 3.7 miles	3.7	Enhanced	2014 USACE LiDAR	CDOT Phase I	Fall 2016
James Creek (SV-14b)	From 0.4 miles upstream of confluence with Little James Creek upstream 6.7 miles	6.7	Base Level	2014 USGS LiDAR	CDOT Phase I	Fall 2016
New Dry Creek Ditch (SV-15)	From confluence with Boulder Creek upstream 5.6 miles	5.6	Enhanced	2013 USGS LiDAR	CDOT Phase II	Summer 2015
Cabin Creek (SV-16)	From confluence with North St. Vrain upstream to CO-7	5.3	Base Level	2013 USGS LiDAR	CDOT Phase I	Fall 2016
Gold Run (SV-17)	From confluence with Fourmile Creek upstream 3.3 miles	3.3	Enhanced	2013 USGS LiDAR	CDOT Phase I	Fall 2016



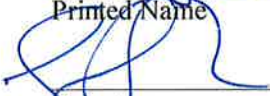



FACT SHEET/STUDY MEMO

Stream Name and Reach ID	Reach Description	Length (mi)	Level of Study	Topography Source	Hydrology Source	Anticipated Start
Two Mile Canyon Creek (SV-19)	From City of Boulder community boundary upstream 1.2 miles	1.2	Enhanced	2013 USGS LiDAR	SWMM	Summer 2015
Geer Canyon (SV-20)	From confluence with Left Hand Creek, upstream 1.5 miles	1.5	Enhanced	2013 USGS LiDAR	CDOT Phase I	Fall 2016
Dry Creek No.2 (SV-21)	From Confluence with St. Vrain Creek, upstream to UDFCD boundary	11.8	Enhanced	2013 USGS LiDAR	CDOT Phase II	Summer 2015
Rock Creek (SV-22)	From approximately 1.0 mile downstream of State Highway 128 crossing, upstream 2.8 miles <i>only a small portion is within Boulder County</i>	3.8	Base Level	2013 USGS LiDAR	SWMM	Summer 2015

Request for Concurrence

Should you have any questions or comments regarding the stated scope of work, please contact Stephanie DiBetitto, CWCB Hazard Mapping Specialist (stephanie.dibetitto@state.co.us or 303-866-3441 x3221) or Rigel Rucker, AECOM Assistant Project Manager (rigel.rucker@aecom.com or 303-740-2752). Otherwise please indicate your concurrence with the above approach and project understanding by returning a scanned signed copy of this Fact Sheet/Study Memo to Ms. DiBetitto or Mr. Rucker (only one community representative needs to sign). We request that you contact us or provide concurrence within 10 business days. We appreciate your timely response and look forward to working with you on this Project.


 Printed Name _____ Title/Position _____ Agency 

 Signature _____ Date 

From: [Rogers, Erica](#)
To: karlk@dietzedavis.com
Cc: [Floodplain Admin](#); [Terri Fead - DNR](#); [Case, Dale](#); [Flax, Ron](#); [Larremore, Liana](#)
Subject: FW: Boulder County Floodplain Remapping Project Dockets Z-23-0001, Z-19-0001, Z-17-0001 and Z-17-0002 - New Dry Creek Ditch
Date: Monday, January 8, 2024 9:43:28 AM
Attachments: [image001.png](#)
[20240102 Comment to Boulder County Remapping Project - New Dry Creek Ditch Final 6178046.docx](#)
[Exhibit A - BoCoSignedStudyMemo 1.pdf](#)
[20240102 Comment to Boulder County Remapping Project - New Dry Creek Ditch Final 6178046.pdf](#)
[EXTERNAL RE Flood remapping.msg](#)

Mr. Kumli,

We have reviewed your January 2, 2024 letter. In your letter, you request that Boulder County: 1) remove the “New Dry Creek Ditch” from the FEMA proposed Preliminary Flood Insurance Rate Maps (“Preliminary FIRMs”); and 2) allow a late appeal of the New Dry Creek Ditch floodplain designation, as set out in the letter, before finalizing and formally adopting the FEMA FIRMs.

As to #1, the County does not have the ability to unilaterally remove the “New Dry Creek Ditch” from the FEMA proposed Preliminary FIRMs. The New Dry Creek Ditch has been mapped as a floodplain since 1979. In order to request a change to the mapping, you will need to go through the appropriate FEMA processes.

As to #2, the FEMA appeal deadlines have passed related to the Preliminary FIRMs, and the County does not have the ability to change those deadlines. Again, you will need to go through the appropriate FEMA processes to request a change to the maps.

I also wanted to address the issue regarding notice. County records show that in 2017, notices were sent in advance of a January 10, 2017 public meeting regarding the floodplain remapping in this area. Additionally, notices were sent in advance of 2019 Planning Commission and Board of County Commissioner hearings. Pine View LLC is on the mailing list for both notices.

For these reasons, the Community Planning & Permitting Department will not request to table the upcoming hearings considering adoption of the Preliminary FIRMs. You are of course welcome to provide public comment to the Planning Commission and Board of County Commissioners related to these issues.

Thank you,

Erica Rogers
Senior Assistant County Attorney
Boulder County Attorney’s Office
303-441-3862 (direct)

Boulder County has migrated all email to the .gov domain. Please update your contact lists to reflect the change from name@bouldercounty.org to name@bouldercounty.gov. Emails sent to both .org and .gov addresses will continue to work. This work is part of the migration to the .gov domain that

began in July, 2022 when the Boulder County website moved to www.bouldercounty.gov. This move to the .gov domain provides a higher level of cybersecurity protection.

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From: Karl Kumli <karlk@dietzedavis.com>

Sent: Tuesday, January 2, 2024 4:38 PM

To: Floodplain Admin <floodplainadmin@bouldercounty.gov>

Cc: terri.fead@state.co.us; pineviewllc@comcast.net; Daniel Rubin <drubin@dietzedavis.com>; Robyn Kube <robkube@dietzedavis.com>

Subject: [EXTERNAL] Boulder County Floodplain Remapping Project Dockets Z-23-0001, Z-19-0001, Z-17-0001 and Z-17-0002 - New Dry Creek Ditch

Dear Ms. Watson,

Attached please find a letter to your office regarding the New Dry Creek Ditch and requesting, *inter alia*, that the Ditch be removed from the CHAMP process and Boulder County's current flood mapping project. Kindly note that the letter is sent to you in both .pdf format, and in Word format, in order to preserve embedded links which are citations or which provide additional information, and which appear only in the latter version of the document. The one Exhibit A is provided as a .pdf attachment as it is a County document for which we believe you are likely to have search functionality.

Thank you very much for your attention to this matter. Please do not hesitate to contact me directly if you have any questions.

Sincerely,

Karl Kumli
303-898-7350



Karl F. Kumli, III
Shareholder/Vice President
Dietze and Davis, P.C.
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**Also admitted in Wyoming

Peter C. Dietze 1934-2019
Joel C. Davis 1936-2013

January 16, 2024

SENT VIA EMAIL ONLY

Boulder County Planning Commission
2045 13th St.
Boulder, CO 80302
c/o Ms. Kelli Watson, Principal Floodplain Planner at kwatson@bouldercounty.gov

Re: Boulder County Floodplain Remapping Project Dockets Z-23-0001, Z-19-0001, Z-17-0001 and Z-17-0002 – New Dry Creek Ditch

Dear Commissioners:

We submit this comment on behalf of our clients, PINE VIEW, L.L.C. (“Pine View, LLC”) and CM3 Living Trust (“CM3”), owners of property crossed by the New Dry Creek Ditch. It is submitted in response to earlier correspondence between the undersigned, Ms. Kelly Watson, and Assistant Boulder County Attorney Erica Rogers, which is included in your packet.

2 C.C.R. § 408-1 (2022) requires the County to exclude New Dry Creek Ditch from floodway designation on the County’s currently designated Boulder County Floodplain and Floodway (BCFF) and to reject the adoption of FEMA’s FIRMs for this reach.

As explained in earlier correspondence, our clients have sought to have the New Dry Creek Ditch reach excluded from the County’s adoption of FEMA’s FIRMs as part its rezoning of the Boulder County Floodplain and Floodway (BCFF). In response, Ms. Rogers has opined that, “the County does not have the ability to unilaterally remove the ‘New Dry Creek Ditch’ from the FEMA proposed Preliminary FIRMs. The New Dry Creek Ditch has been mapped as a floodplain since 1979.” Without regard to the accuracy of these statements, changes in regulations concerning the

Boulder County Planning Commission

January 16, 2024

Page 2

‘Regulatory Floodplains in Colorado, adopted by the Colorado Department of Natural Resources’ Colorado Water Conservation Board in 2022, which were adopted after the CHAMP study was completed, dictate that irrigation ditches and irrigation facilities should not be designated as floodways and not be used as flood conveyance facilities, unless specifically approved by the irrigation facility owners. 2 C.C.R. § 408-1, Rule 9 (E) (2022).¹

Rather, these new regulations require the County to re-evaluate the State’s CHAMP mapping as it relates to designation of a floodway and floodplain for an irrigation ditch, namely New Dry Creek Ditch. Given the 2022 effective date of the State regulations, the County’s adoption of new floodplain maps in this proceeding requires a re-evaluation of New Dry Creek Ditch, as the law has changed since the original study informing the creation of the CHAMP maps was conducted. New Dry Creek Ditch, as discussed in prior comment is the only irrigation ditch included in FEMA’s proposed Preliminary FIRM in Boulder County, and the County must follow the new regulations concerning designation of floodplains for irrigation ditches when adopting new floodplain maps in this Docket Z-23-0001 with hearing set in 2024.

The County lacks authority to adopt so much of the FEMA FIRM as includes New Dry Creek Ditch as part of its changes in these Dockets

Article 4-1102 of the Boulder County Land Use Code sets forth the standards that must be met for the approval of zoning map amendments by the Board of County Commissioners. Subsection 4 of that Article requires a determination that “the subject property is an appropriate site for the map amendment, and is a reasonable unit of land for such reclassification.” The New Dry Creek Ditch reach does not satisfy this requirement.

As previously discussed, New Dry Creek Ditch is an irrigation ditch. State regulations adopted in 2022, require that such ditches not be designated as floodways and not be used as flood conveyance facilities. As a result, under Colorado law, the New Dry Creek Ditch reach is not an appropriate site for the proposed map amendment, especially when the map amendment relies on a federal standard that was formulated without consideration for the 2022 State regulation concerning irrigation facilities.

Under the criterion set forth by the Land Use Code, the New Dry Creek Ditch reach is not an appropriate piece of property for floodplain reclassification to a federal standard, because a more stringent and appropriate State standard exists and now specifically applies to irrigation facilities in the County. As such, it would exceed the County’s authority to include so much of the FEMA FIRM that includes New Dry Creek Ditch as part of the changes anticipated in these Dockets. Instead, the County should reclassify the ditch, giving it a non-floodway designation under the BCFF.

¹ “These revised Rules apply to the Designation and Approval of all Flood Hazard Information made by the CWCB and **all other Floodplain activities** [in the State] on or after January 14, 2022.” 2 C.C.R. § 408-1, Rule 20 (2022) (entitled “Effective Date”) (emphasis added).

Boulder County Planning Commission

January 16, 2024

Page 3

Renewed Due Process Objection

Generally, the other stream reaches being reclassified in this docket are appropriate for reclassification, but any failure by the County inspect individual properties subject to special circumstances, such as those explained above pertaining to New Dry Creek Ditch, will result in a failure to properly afford citizens due process rights, given the lack of notice that was given to property owners affected by the proposed reclassification after changes to State regulations in 2022, and generally throughout this process.

The procedure and process utilized by the County in its proposed adoption of newly revised FEMA FIRMs have severely limited the ability of our client to review floodplain studies, as envisioned by 2 C.C.R. § 408-1: “The Rules provide for a process whereby all affected communities have the opportunity to review, analyze, and object to the floodplain studies if not based on technically accurate and sound scientific data.” 2 C.C.R. § 408-1, Statements of Basis and Purpose (2005, 2010 Proposed). Additionally, federal regulations state that proposed flood elevation determinations should be accompanied by “notification by certified mail, return receipt requested, of the proposed flood elevation determination.” 44 C.F.R. § 67.4(b). *See also* Guidance for Flood Risk Analysis and Mapping Post-Preliminary Due Process, FEMA, November 2023.

In Ms. Rogers’ response, she states: “I also wanted to address the issue regarding notice. County records show that in 2017, notices were sent in advance of a January 10, 2017 public meeting regarding the floodplain remapping in this area. Additionally, notices were sent in advance of 2019 Planning Commission and Board of County Commissioner hearings. Pine View LLC is on the mailing list for both notices.”

Notwithstanding the blanket statement by Ms. Rogers that notices were sent, we have undertaken a review of records held by management of Pine View LLC, for the period of 2016 through the date immediately prior to the date upon which the notice of the December 13, 2023 meeting was received, and have found no record of any receipt by Pine View, LLC of any notice given by the County regarding any floodplain matters whatsoever. In addition, we are unaware of any notice provided to CM3 Living Trust, or any trustee therefor.

While our clients are investigating why the above referenced notices were not received, our clients have been prejudiced by an inability to make substantive comments necessary to fully protect their interests given the one public notice which they did receive prior to the December 13, 2023 meeting, and the seasonal interruptions following that meeting. Further, given the changes to State regulations effective in 2022, the notices cited by Ms. Rogers, even if properly sent and received, would have been insufficient to afford our client proper due process in this matter, as no notice was sent after the changes to State regulations, but before the applicable appeal period had concluded. Our clients, Pine View LLC and CM3 Living Trust were injured by this failure to receive proper advanced notice of these proceedings, were injured by the inability to participate meaningfully in the proceedings, and the outcome of these proceedings appears to have materially and negatively impacted our clients’ property rights.

Boulder County Planning Commission
 January 16, 2024
 Page 4

Accordingly, we object, and assert that our clients' due process rights have been violated, and that as a result, their substantive property rights have been adversely affected.

New Dry Creek Ditch is an Irrigation Ditch

Lastly, New Dry Creek Ditch is an irrigation ditch and not a naturally occurring watercourse. In addition to the documentation provided in the January 2, 2024, comment, New Dry Creek Ditch has also been previously and repeatedly, pronounced a ditch.

We assert that Old Dry Creek was converted into a network of irrigation ditches filled with water from the Baseline Reservoir's spillway, or rerouted from South Boulder Creek through the New Dry Creek Carrier Ditch when the reservoir was constructed. Modern records kept by DNR in their Water Rights – Transactions database confirm that all water carried in the ditches below Baseline Reservoir is attributable to the South Boulder Creek water source, and no independent water right (i.e. no diversion) is associated with the water way now commonly referred to as Dry Creek.

As a result, our clients hereby renew their request that the County acknowledge that no floodplain designation is appropriate for New Dry Creek Ditch and adopt a non-floodway designation for the reach on the BCFF, excluding the reach from the area to be regulated under FEMA's FIRMs once they are finalized and adopted by the county as the applicable regulatory floodplain maps. We also assert that this is the only relief at this stage that will properly cure due process violations that have injured our clients as a result of the County's process in this docket, and, more generally, in the floodplain remapping project.

In conclusion, we ask that, as part of your recommendation to the Board of County Commissioners, you recommend that because the New Dry Creek Ditch is an irrigation ditch subject to 2 C.C.R. § 408-1 (2022), its reach should not be adopted as part of the changes sought in these Dockets and that it should not otherwise be included in the revised zoning district.

We look forward to providing additional in-person comments at the Planning Commission hearing set for January 17, 2024.

Sincerely,

DIETZE AND DAVIS, P.C.



Karl F. Kumli, III

- c: Ms. Kelly Watson (via email only FloodplainAdmin@bouldercounty.org)
 Erica Rogers, Esquire (via email only erogers@bouldercounty.gov)
 Community Planning Department Staff (via email only planner@bouldercounty.org)