

RESOLUTION 2025-042

A resolution conditionally approving Boulder County Community Planning & Permitting Docket LU-25-0006: Rogue Rabbit Ranch Earthwork

Recitals

A. Luke Clemente (the “Applicant”) applied to Boulder County for Limited Impact Special Use Review under Article 4-601 of the Boulder County Land Use Code (the “Code”) for approximately 842 cubic yards of non-foundational earthwork for slope tie-in and backfill of the previous house foundation on an approximately 21-acre parcel.

B. The subject property is located at 6081 Nimbus Road, located on the north side of Nimbus Road approximately 0.25 miles west of its intersection with N. 73rd Street, in Section 26, Township 2 North, Range 70 West, in an Agricultural zoning district in unincorporated Boulder County (the “Property”).

C. The Property is located generally north of the Gunbarrel area of the City of Boulder. Left Hand Creek flows north of the Property and forms a part of the northern Property boundary. Most of the Property is located within the Floodplain Overlay (“FO”) District.

D. Prior to submission of the subject application, a Site Plan Review (“SPR”) proposal to deconstruct the existing residence and replace it with a new one in a different location on the Property was approved in SPR-23-0105. A subsequent building permit request was submitted for the approved residence, but the elevation of the residence above the flood protection elevation necessitated several feet of fill. The building permit application also included 2,450 cubic yards of non-foundational earthwork that was generally intended to tie the elevated area immediately surrounding the residence back into the natural grade of the Property. As such, Community Planning & Permitting staff determined that an application for Limited Impact Special Review (“LU”) was required because the non-foundational earthwork exceeded 500 cubic yards.

E. During the application review, staff raised concerns about the extent of site disturbance and the amount of imported fill to be distributed on site. Staff also clarified that earthwork associated with structures, even structures that are not counted as floor area (like a swimming pool), is considered “foundational” and exempted from the 500-cubic-yard review threshold described in Article 4-102.F.3.c of the Code. Similarly, the earthwork associated with remediation of existing structures is considered foundational and exempt. As submitted, the Applicant’s non-foundational earthwork calculations included cut and fill for a proposed pool on the north side of the new residence, as well as cut and fill associated with remediation of the existing (to be deconstructed) house’s foundation and septic system, as non-exempt earthwork. After clarification from staff that this earthwork was, in fact, exempted from the review

threshold, the Applicant submitted a revised plan set on July 21, 2025 that reduced the proposed non-foundational earthwork total to 842 cubic yards.

F. Although the proposed non-foundational earthwork has been significantly reduced when compared to the original proposal, it still exceeds the 500-cubic-yard review threshold, and LU is therefore still required. The purpose of the proposed earthwork is unchanged. The Applicant proposed substantial non-foundational earthwork in order to regrade the site around a new residence and tie the elevated slopes around it back to the existing grade.

G. The above-described request was processed and reviewed as Boulder County Community Planning & Permitting Docket LU-25-0006 (the “Docket”), as further described in the memorandum and written recommendation to the Board of County Commissioners (the “Board”) by Boulder County Community Planning & Permitting Department planning staff dated July 2, 2024¹, together with its attachments (the “Staff Recommendation”). The Staff Recommendation found that the Docket could meet the criteria for approval with recommended conditions, and therefore, recommended that the Board conditionally approve the Docket.

H. At a public hearing on the Docket held on July 31, 2025 (the “Public Hearing”), as further reflected in the official record of the Public Hearing, the Board considered the Staff Recommendation, as well as documents and testimony presented by County Community Planning & Permitting Department planning staff. The Board also heard testimony from the Applicant’s project architect, Leonard Thomas, and his project engineer, Jim Brzostowicz. No members of the public spoke at the Public Hearing.

I. Based on the Public Hearing, the Board finds that the Docket meets the criteria for Limited Impact Special Use approval for non-foundational earthwork as set forth in Article 4-601 of the Code, subject to the conditions stated below.

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

Therefore, the Board resolves:

Docket LU-25-0006 is approved on the basis and terms set forth in this Resolution above, and subject to the following conditions:

1. The development is subject to the requirements of the Boulder County Building Safety and Inspection Services Team and adopted County Building Codes, as outlined in the referral comments, including, but limited to, required grading permit, observation reports, and plan review.

¹ The date is incorrect and should be July 31, 2025.

2. Approximately 842 cubic yards of non-foundational earthwork is approved as proposed in the plans dated May 30, 2025, and as revised on July 21, 2025.

3. The proposed earthwork is in the FO District. In accordance with Article 4-400 of the Code, a Floodplain Development Permit (“FDP”) is required for this project. FDP-25-005, issued March 24, 2025, covers the proposed grading. Any changes from the plans approved under FDP-25-005 must be resubmitted to FloodplainAdmin@bouldercounty.gov.

4. Prior to and during construction, the Applicant is required to stake the boundary of the floodway on the Property. Absolutely no earthwork may take place in the floodway without additional hydraulic analysis.

5. At grading permit submittal, the Applicant must submit to the Community Planning & Permitting Department for review and approval a Revegetation Plan. The plan must incorporate mapped delineation of all areas disturbed, such as construction staging and stockpiling areas, and include information regarding native grass species to be used, an explanation of the treatment of excavated topsoil, locations of silt fences or erosion control logs down slope of disturbed areas, and matting requirements on steeper slopes.

Prior to final inspection, the Community Planning & Permitting Department must inspect and approve the full installation of the approved Revegetation Plan. If weather is not conducive to seeding, or if adequate revegetation efforts have not occurred, and vegetation is not adequately established at the time of final inspection request, an irrevocable letter of credit or monies deposited into a County Treasurer account will be required to assure the completion of revegetation. The Applicant should consider the following well in advance of the revegetation inspection:

- a. Whether applying for a Certificate of Occupancy, final inspection, or the return of funds held in escrow for completion of revegetation, some level of germination and growth of grass seed is required.
- b. Steeper slopes and dryer soil require greater attention to establish a level of germination adequate to obtain revegetation approval.
- c. Areas of disturbance found at inspection not included on the Revegetation Plan are still subject to reseeding and matting.

6. All construction materials including stockpiles, machinery, dumpsters, and other items must be staged on the Property as to not impede the travelway or drainage.

7. During construction (i.e. during the day while work is being performed), all vehicles must be parked on site or to the side of the private road as to not impede the travelway.

8. Prior to issuance of a grading permit, the existing Stormwater Quality Permit ("SWQP") SWQP-25-011 must be updated, or a new SWQP must be submitted, to reflect the approved non-foundational earthwork.

9. Appropriate erosion and perimeter control measures for all disturbed areas must be installed downslope and parallel to contours including staging areas. Stockpiles in place over 30 days shall be properly covered and/or stabilized with temporary vegetation.

At building permit, the Applicant must submit information regarding the following stormwater control measures: stockpiling locations, concrete washout location, port-a-potty location including staking, and perimeter (erosion) controls around the limits of disturbance.

Prior to any grading or site disturbance, the erosion and perimeter control measures must be installed as required per the approved plans.

At foundation form inspection for the approved residence and all subsequent inspections, Community Planning & Permitting Department staff must verify that the approved stormwater control measures have been installed.

10. At building permit, the Applicant must submit revised plans indicating how concentrated flows will not impact the adjacent private road and neighboring property.

11. The Applicant shall be subject to the terms, conditions, and commitments of record and in the file for Docket LU-25-0006: Rogue Rabbit Ranch Earthwork.

A motion to approve the Docket was made by Commissioner Claire Levy, seconded by Commissioner Ashley Stolzmann, and passed by a 3-0 vote.

[Signature Page to Follow]

ADOPTED as a final decision of the Board on this _____ day of August 2025.

The signatures below indicate approval of the text of the Resolution but are not necessarily reflective of the votes taken at the Public Hearing.

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

Marta Loachamin, Chair

Claire Levy, Vice Chair

Ashley Stolzmann, Commissioner

ATTEST:

Clerk to the Board