

# Article 19



## ■ ■ ■ Procedures Following Disasters

### Article 19 • Procedures Following Disasters

#### Purpose:

Boulder County is vulnerable to natural and human caused disasters that can damage property and cause injury or death, including wildfires, flood, hail storms, rock slides, blizzards, high winds, and tornadoes. Boulder County's Land Use Code contains provisions for rebuilding structures damaged or destroyed by means outside the control of the property owner; however, specific disaster events may warrant modified permitting and approval procedures to allow property owners to rebuild in a timely, safe, and responsible manner while also encouraging reasonable improvements in redevelopment consistent with current regulations and the Comprehensive Plan.

In addition, to respond appropriately in a disaster emergency, extraordinary actions must be taken quickly and efficiently. Some actions must occur faster than previously established permit processing timelines allow. Some actions require uses not normally allowed in certain zones, or not allowed without discretionary review, or not allowed without certain public process.

This Article addresses disaster emergency response in two ways. First, Section 19-100 grants temporary authority to certain county staff, upon the declaration of a local, state, or federal disaster emergency affecting Boulder County. Second, sections 19-200 and 19-300 include regulations tied to specific disasters, namely the Fourmile Canyon Fire of September 2010 and the Front Range Extreme Flood and Rain Event of September 2013.

## 19-100 Emergency Procedures and Permitting

- A. Duration – Upon the formal declaration of a local, state, or federal disaster emergency affecting Boulder County, the authority granted certain county staff by this section 19-100 is activated for six months, unless and until such authority is terminated, extended, or otherwise amended by the Board of County Commissioners.
- B. Damage Assessment
  - 1. If necessary, the County will conduct Damage Assessment pursuant to the Damage Assessment Annex to the Boulder County All Hazards Plan, as reflected by placards placed on structures classifying the nature of the damage to that structure.
  - 2. Once a placard has been attached to a building, it shall not be removed, altered, or covered by anyone other than an authorized representative of the County or, in the alternative, without written consent by the County. Failure to comply with this prohibition may be considered a violation under the Boulder County Building Code or Articles 14 or 17 of the Land Use Code.
- C. Development Suspension
  - 1. The Land Use Director, County Engineer, or Chief Building Official shall have the authority to establish a moratorium on the issuance of permits they administer including but not limited to building permits, access permits, and acceptance of land use permit applications or other permit applications related to the use, development, and occupancy of private property authorized under the Land Use Code, adopted building codes, and related ordinances, provided that such action is reasonably justifiable to protect life and property and to conduct recovery activities in a prioritized and orderly fashion.
  - 2. Any temporary cessation of land use permit applications will include applications currently under review governed by codified timeframes for that review (such as Site Plan Review). The review timeframe will be suspended from the date of the declared disaster and resume as soon as possible, but no later than the lifting of the Development Suspension.
  - 3. Any Development Suspension is subject to the following:
    - a. Notice of the moratorium shall be posted in the usual place for posting Boulder County public notices and shall clearly identify the boundaries of the area in which the moratorium is in effect as well as the exact nature of the development permits temporarily held in abeyance.
    - b. Any moratorium imposed shall be subject to review by the Board of County Commissioners at the earliest possible time, but no later than 90 days after it begins, at which time the Board shall take action to terminate, extend, or otherwise modify such moratorium.
- D. Special Authorization for Temporary Emergency Use
  - 1. Notwithstanding the uses normally allowed within a particular zoning district, the Director, County Engineer, or Chief Building Official may authorize in any zoning district the temporary emergency use of property to aid in the immediate restoration of an area adversely impacted by a disaster, including without limitation:
    - a. Critical response facilities. Any police, fire, medical, or communications facility that will aid in the emergency recovery.
    - b. Critical infrastructure facilities. Any road, bridge, or other transportation facility, any water or sewer facility, or any natural gas or electric power or other public utility facility that will aid in emergency recovery.
    - c. Temporary housing. Any temporary lodging set up for emergency personnel or shelters for disaster victims.
    - d. Debris collection and sort yards.
  - 2. Any such special authorization must be made in writing and include findings that the proposed temporary use will not be detrimental to the immediate neighborhood, will not adversely affect the Comprehensive Plan, and will aid in the successful recovery of areas adversely impacted by the disaster. In making the determination, the Land Use Director, County Engineer, or Chief Building Official may require such information as they find necessary to determine the impacts of the proposed use, including without limitation the information listed in Land Use Code Section 3-100.D.1. Where necessary, conditions may be imposed on special authorizations to mitigate impacts.

**E. Temporary Emergency Repair Permits**

1. Immediately following a disaster, temporary emergency repairs to secure structures and protect property damaged in the disaster against further damage or to protect neighboring property may be made without permits. Work which constitutes "temporary emergency repairs" includes, without limitation, temporary roof repairs to prevent further water damage, temporary stabilization to shore up structures, temporary stabilization involving earthwork to avoid imminent collapse of structures or property, and temporary restoration of public recreational facilities such as trails and trailhead parking areas.
2. The Land Use Director must be notified of all such temporary emergency repairs within 10 working days of the commencement of the repair work.
3. Permits may be required for permanent work. In particular, nothing in this section shall be construed to exempt property owners from complying with county floodplain regulations and any state or federal regulatory requirements such as U.S. Army Corps of Engineers permits.

**F. Deconstruction/Demolition of Damaged Structures**

1. Deconstruction permits are required for disaster recovery work, including deconstruction/demolition of damaged structures and certain debris removal work. The Chief Building Official may waive portions of the permitting requirements for such work, where appropriate in light of the nature of the disaster and the particular circumstances.
2. Where the need to address an immediate health and safety concern makes it unfeasible to obtain a deconstruction permit or a permit related to debris removal, property owners must contact the Chief Building Official to get verbal consent before commencing work. In addition, property owners must apply for the appropriate deconstruction and other permits within 72 hours of the commencement of the deconstruction or demolition.

## 19-200 Fourmile Canyon Fire (September, 2010)

Description of disaster and County's response: This fire ("the Fire") began in Fourmile Canyon on September 6, 2010, and was not fully contained until a week later. The Fire caused the evacuation of approximately 3,500 area residents and burned approximately 6,181 acres of territory in the Fourmile Canyon, Gold Hill, and Sunshine Canyon areas. It damaged or destroyed numerous structures and utilities and devastated the landscape. In terms of numbers of homes destroyed (at least 169) and value of property affected (at least \$217 million), the Fire was the worst in Colorado history.

Adoption of Article 19-200 is part of a community-wide effort to offer emergency services to Fire victims and assist them in their rebuilding efforts. Article 19-200's provisions depart from otherwise applicable Land Use Code, Building Code, and Transportation Standards review processes while serving the essential purposes of the County's land development regulations and the goals and policies of the Comprehensive Plan. Article 19-200 allows sufficient time for property owners to apply for building permits to rebuild Fire-damaged or destroyed structures. It establishes a building permit review process giving owners the option to restore structures as they existed before the Fire, or to rebuild somewhat modified structures with the goals of improving the land use impacts of preexisting development, providing more functional living space, and promoting enhanced fire-resistance and energy-efficiency. Article 19-200 also aims to accommodate reconstruction by providing a building permit process for temporary on-site emergency housing and accessory structures associated with property cleanup and restoration.

### A. Structure Deconstruction/Demolition Permitting

1. A deconstruction/demolition permit for the removal of damaged or destroyed structures must be obtained from the Building Division when at least one non-foundation wall of over six feet in height is left standing. The requirements of Building Code Section N1105.2.1 ("Deconstruction") of 2009 IRC Chapter 11 (commonly known as "Boulder County BuildSmart") shall not apply to such permits. However, owners are encouraged to recycle building materials and contents where safe and practicable.
2. The Building Division's deconstruction/demolition permit does not substitute for other applicable permitting requirements, including but not limited to those related to asbestos removal administered by the Colorado Department of Public Health and Environment.

### B. Temporary Structures on Fire-Affected Properties

#### 1. Temporary Emergency Housing

- a. A Temporary Emergency Housing Unit may be located on affected property provided the Building Official first issues a Temporary Emergency Housing Unit permit for the structure.
- b. The Building Official may issue a Temporary Emergency Housing Unit permit only in conjunction with:
  - (i) a building permit for work on the damaged or destroyed permanent dwelling,
  - (ii) an acceptable plan and timetable for rebuilding that demonstrates the owner's intent and ability to apply for a building permit for the permanent dwelling by September 30, 2012.
- c. Temporary Emergency Housing Units shall be occupied only by the property owner and the owner's family.
- d. Only one Temporary Emergency Housing Unit shall be permitted per parcel unless the owner can demonstrate that additional space is necessary.
- e. Temporary Emergency Housing Units must be safe structures for temporary occupancy. They must be installed according to manufacturer's specifications, and applicable County safety requirements such as being properly secured/tied down and properly connected to electricity and/or fuel source.
- f. Temporary Emergency Housing Units shall be connected to an approved on-site wastewater system unless the Boulder County Public Health Department approves a different sanitation arrangement.
- g. Temporary Emergency Housing Units shall comply with zoning setback requirements unless the Director determines that existing site conditions make such location impractical or unnecessary.
- h. Temporary Emergency Housing Units shall not be situated in County rights-of-way and shall be safely served by existing access ways.
- i. Temporary Emergency Housing Units shall be located in a manner providing safety from natural hazards, including flood, fire, fire damage, unstable soils, and geologic hazards.
- j. A Temporary Emergency Housing Unit may remain on affected property only for the time indicated in the permit. The Unit may not remain after September 30, 2012, unless a building permit for the permanent dwelling has been issued or applied for by that date, or the Director has granted an extension under Subsection F.1., below. Once a building permit to rebuild the permanent dwelling has been issued, the Unit may remain while a valid County building permit for work on the permanent dwelling is in effect. Within two weeks after the County issues a certificate of occupancy for the permanent dwelling, the Temporary Emergency Housing Unit either must be removed from the property along with the site of its location being fully restored, or must be converted to a legal, permanent accessory structure.

- k. The Building Official may impose reasonable conditions on any Temporary Emergency Housing Unit permit to assure compliance with these requirements. The Building Official may order any Temporary Emergency Housing Unit to be vacated or removed if these conditions are violated or the Building Official determines that the Unit has become unsafe for occupancy.
2. Temporary Accessory Structures
- a. A temporary accessory structure may be located on affected property to assist with rebuilding on, or cleanup of, the property, provided the Building Official first issues a building permit for the structure.
  - b. Temporary accessory structures may not exceed 500 square feet of combined total floor area on a parcel, and may not be used for human occupancy.
  - c. Temporary accessory structures must be safe structures for temporary storage or other legitimate purpose related to property restoration. They must be installed according to manufacturer's specifications, and County safety requirements such as being properly secured/tied down and properly connected to electricity and/or fuel source.
  - d. Temporary accessory structures shall be located in compliance with zoning setback requirements unless the Director determines that existing site conditions make such location impractical or unnecessary.
  - e. Temporary accessory structures shall not be situated in County rights-of-way, and shall be safely served by existing access ways as necessary.
  - f. Temporary accessory structures shall be located in a manner providing safety from natural hazards, including flood, fire, fire damage, unstable soils, and geologic hazards.
  - g. A temporary accessory structure may remain on affected property only for the period indicated in the permit. A structure may not remain after September 30, 2012, unless a building permit for a principal structure on the property has been issued or applied for by that date, or the Director grants an extension under Subsection F.1., below. Once a building permit to rebuild the principal structure has been issued, the temporary accessory structure may remain while a valid County building permit for work on the principal structure is in effect. Within two weeks after the County issues a certificate of occupancy or final approval for the principal structure, the temporary accessory structure either must be removed from the property along with the site of its location being fully restored, or must be converted to a legal, permanent accessory structure.
  - h. The Building Official may impose reasonable conditions on any temporary accessory structure permit to assure compliance with these requirements. The Building Official may order any temporary accessory structure to be vacated or removed if these conditions are violated or the Building Official determines that the temporary accessory structure has become unsafe.
  - i. Where the principal structure on a property has been destroyed but a legal accessory structure remains, the accessory structure may be used on a temporary basis for legal accessory uses while the principal structure is rebuilt under Article 19-200. No building permit is required for such use provided the accessory structure is legal.
- C. Fire-Damaged/Destroyed Structures Eligible for Facilitated Rebuilding/Repair
- 1. Any legal structure that was damaged or destroyed by the Fire, may be rebuilt or repaired if approved through the building permit review process set forth in Sections D. through H. below. Land Use Code site plan review approval (Article 4-800), special use review approval (Article 4-600), and compliance with residential floor area Development Credit acquisition requirements (Article 4-1300), are not required for the rebuilding of such structures, which are hereafter referred to as "eligible structures."
  - 2. Legal structures include:
    - a. Structures erected according to a valid County building permit; and
    - b. Structures erected without a valid County building permit, if the owner can demonstrate that the structure preexisted the effective date of County building permit requirements in the mountainous area of the County (January 27, 1966 for subdivided land, and December 22, 1975 for unsubdivided land), or was exempt from applicable building permit requirements. The owner must demonstrate when the structure was established and what its dimensions (floor area and height) and location were. This information can be provided through County Assessor's records, photographs, maps, and surveys, property disaster assessments, property insurance claim submittals, or other documentation deemed acceptable by the Director.
  - 3. Proposed construction not involving eligible structures in the Fire burn area, as well as proposed construction involving eligible structures that is outside the scope of Sections D. through H. below, may be undertaken if approved under the applicable provisions of the other articles of this Code.

**D. Legal Building Lot Requirements to Rebuild/Repair Eligible Structures**

1. Prior to issuing a building permit to rebuild/repair an eligible structure, the Director must confirm that the subject property is a legal building lot.
2. If the property is not a legal building lot due to a lot creation or boundary line adjustment that did not increase allowable zoning density, the Director may approve the lot subject to the applicable criteria of Section 9-102 of this Code, without a subdivision exemption approval under Article 9-100. The Director may impose reasonable conditions in any such approval to allow the applicable criteria to be met.
3. If the property is not a legal building lot due to a lot creation or boundary line adjustment that did increase allowable zoning density, then a subdivision exemption to recognize the lot under Article 9-100 of this Code is required.

**E. Access Requirements to Rebuild/Repair Eligible Structures**

1. Prior to issuance of a building permit to rebuild/repair an eligible structure that is to be in the same location as preexisted the Fire, no showing of legal or adequate physical access to the structure is required. However, if an existing driveway does not have acceptable emergency vehicle pullouts and/or turnarounds, these improvements must be constructed to the extent practicable.
2. Prior to issuance of a building permit to rebuild/repair an eligible structure (whether principal or accessory) in a different location from that preexisting the Fire, which will be served by all or most of the preexisting access, no showing of legal access to the structure is required. However, the Transportation Department will review the adequacy of the physical access for the new location, and may require reasonable measures to protect public health and minimize environmental damage related to the access.
3. Prior to issuance of a building permit to rebuild/repair an eligible structure (whether principal or accessory) in a different location from that preexisting the Fire, which will be served by a substantially new access, a showing of both legal and adequate physical access is required. The new access shall conform with the Transportation Standards in effect at the time of building permit application.
4. Any relaxation of County access requirements under this Section E. shall not preclude the County from evaluating the adequacy of legal or physical access for future development on properties rebuilding under this Article 19-200, or from attaching conditions to enable such development to meet the Transportation Standards in effect at the time.

**F. Timeline to Rebuild/Repair Eligible Structures**

1. Any eligible structure may be rebuilt or repaired pursuant to a building permit reviewed under the procedures specified in Sections G. or H., below, as applicable, provided a complete application for a building permit is submitted to the Land Use Department on or before September 30, 2012. The Director may extend this period for a reasonable period of time, but not beyond March 31, 2014. The owner of any eligible structure located on a parcel where the Fire destroyed more than 8 structures, may have up to September 30, 2018 to submit a complete building application for rebuilding/repair.
2. Once a building permit is issued, work may be pursued so long as a valid building permit for the work is in effect.
3. Any ground-mounted accessory solar energy system that requires a site plan review waiver under this Code, may be approved along with a building permit application submitted for the associated principal structure under Sections G. or H., below, without site plan review, provided the Director determines the system meets the criteria in Subsection H.1.b., below.

**G. Process to Rebuild/Repair Eligible Structures to Preexisting Specifications**

1. Any eligible structure, whether or not part of a nonconforming use (see Article 4-1003), may be rebuilt/repared at its same floor area and height, and at its same location, as preexisted the Fire, subject to issuance of a County building permit. A proposed reduction in preexisting floor area and/or height will be considered the same floor area or height under this provision.
2. In addition to the usual building permit requirements, and to address heightened visibility concerns, any building permit issued under this Section G. shall require that the structure's color be an approved medium to dark earth tone color to blend with the natural environment, unless the structure is within an area where other colors may be appropriate to complement or replicate the recognized historic character of the area. The Director also may add reasonable measures for erosion control and Fire debris/damage clean-up affecting the structure and immediate vicinity of the structure. The use of wildlife-safe fencing is encouraged. If the structure was built pursuant to a Land Use Code site plan review approval, the Director will incorporate into the building permit the conditions of site plan approval that continue to apply.

- H. Process to Rebuild/Repair Eligible Structures with Modest Size or Height Increase or At Different Location**
1. Any eligible structure, whether or not part of a nonconforming use (see Article 4-1003), may be rebuilt/repared with a larger floor area or at a different location than preexisted the Fire, subject to application for and issuance of a County building permit, provided the following requirements are met:
    - a. The proposed floor area increase (for all such structures rebuilt/repared on a parcel) does not exceed 530 square feet per parcel, except that no size increase shall be allowed if the total residential floor area on the parcel will exceed 6,000 square feet; and
    - b. The Director determines that the size increase, location change, or resulting footprint expansion does not:
      - (i) occur on a dangerously steep slope, wildfire-prone draw, or other natural hazard area;
      - (ii) protrude on prominent ridgelines;
      - (iii) adversely affect riparian areas or wetlands;
      - (iv) substantially impair a significant historic resource or distinct rural community character;
      - (v) compromise emergency or safe access;
      - (vi) interfere with septic field siting or property sanitation service as confirmed by the Boulder County Public Health Department; or
      - (vii) have a significant negative visual impact on adjacent properties, in cases where a different location is proposed.
    - c. No size increase or location change shall be approved for a nonconforming structure (see Article 4-1002) unless it is made conforming.
    - d. Allowable size increases and location changes are especially encouraged if they improve emergency access, solar orientation, structure conformity with zoning setback and height requirements, and structure visibility and safety; lessen driveway length, land disturbance, and environmental impacts; eliminate property line encroachments; and otherwise reduce land use impacts and promote sustainable development.
  2. In addition to the usual building permit requirements, and to address heightened visibility concerns, any building permit issued under this Section H. shall require that the structure's color be an approved medium to dark earth tone color to blend with the natural environment, unless the structure is within an area where other colors may be appropriate to complement or replicate the recognized historic character of the area. The Director also may add reasonable measures for erosion control and Fire debris/damage clean-up affecting the structure and immediate vicinity of the structure, and requirements to allow approved structures to meet the provisions of this Section H. such as limitations on structure size, height, and location, and Transportation Department access specifications. The use of wildlife-safe fencing is encouraged. If the structure was built pursuant to a Land Use Code site plan review approval, the Director will incorporate into the building permit the conditions of site plan approval that continue to apply.
- I. County Building Code Compliance**
1. All building permits must comply with the Building Code provisions in effect at the time of building permit application, except for the deconstruction of Fire-damaged or destroyed structures under Section A., above.
  2. The Building Official may apply the basis for granting a modification (creation of practical difficulties or excessive expense in the upgrade of an existing residential structure) contained in Section N.1105.3.1. of 2009 IRC Chapter 11 of the Building Code (commonly known as "Boulder County BuildSmart"), to any residential structure proposed to be restored to its preexisting size under this Article 19-200.
- J. Compliance with Other County Permitting Requirements**
1. Building permits under this Article 19-200 must comply with any applicable requirements in Article 4 of this Code for limited impact special review for grading in excess of 500 cubic yards; in Article 4-400 for reconstruction in the Floodplain Overlay Zoning District; and in Article 15 (Historic Preservation) if they affect structures over 50 years old or landmarked structures/sites. Any other County permitting requirement or related provision not specifically addressed in this Article 19-200, shall be presumed to apply, unless the Land Use Director determines that strict application is contrary to the intent and purposes of this Article. The Director may grant appropriate relief from the strict application, subject to reasonable mitigating measures.
  2. Existing OWS systems may be used if they were not damaged in the Fire and if the restored residence or structure does not contain more bedrooms than preexisted the Fire. Owners should contact the Boulder County Public Health Department for details on applicable OWS requirements. The building permit and any required OWS permit or approval may be reviewed concurrently.
  3. In the event of a conflict between this Article 19-200 and any other code provision, this Article shall apply.
- K. Enforcement**

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

## 19-300 Front Range Extreme Rain and Flood Event (September, 2013)

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

In the immediate aftermath, as well as for the longer term, the County is resolved to take all reasonable measures to avoid the catastrophic impacts of another such disaster, help keep the public and their property safe from future extreme rain and flood events, and restore and preserve the community's critical infrastructure to the maximum extent practicable. As a starting point in this effort, Boulder County has reviewed its land use regulations and determined that immediate changes are needed to respond to the unique and widespread nature of the 2013 Extreme Rain and Flood Event, to help guide the recovery effort wisely so that future risks from such hazards can be substantially reduced. The County also recognizes that it must regulate development following this disaster in conformity with the Land Use Code's recently updated floodplain management program, which the Federal Emergency Management Agency has approved under the National Flood Insurance Program to protect the integrity of the floodplain, and provide reasonable flood insurance rates for eligible property owners.

The essential purpose of this Article 19-300, therefore, is to strike an appropriate balance between citizens being able to rebuild their homes and businesses and resume their post-disaster lives, while assuring that the ongoing recovery effort is well planned in anticipation of the possibility of history repeating or exceeding itself. Clearly the County and its affected citizens and communities can and should be in a better position to cope with the widespread manifestations and varied impacts of extreme rain and flood events, including too much water in all the wrong places, excessive soil saturation, and the attendant triggering of debris flows, mudslides, rock falls, channel realignments, uncontrolled terraforming, topographic instability, and other associated destructive forces of nature. Article 19-300 is one of many first steps that the County is taking in that direction. As ongoing studies of, and community response to, the 2013 Extreme Rain and Flood Event proceed, this Article, the Land Use Code overall, and the County's companion regulations affecting land use and post-disaster redevelopment almost certainly will require further adjustment as information is gathered and analyzed. This promises to be a major effort in which the County openly invites its citizens to participate, so that local land use regulations can be sensibly meshed with property owner needs, a possible increased intensity in weather patterns, and the responsibility of county government to protect the public health, safety, and welfare.

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

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

Subsections 4-802.B.3.a. and 4-802.B.3.c. are hereby amended for purposes of rebuilding or restoring structures damaged or destroyed by the 2013 Extreme Rain and Flood Event (whether by flooding, debris flows, mudslides, topographic changes or instability, drainage channel shifts, area drainage system impairments or failures, soil saturation, or related hazardous events triggered by the disaster), for the interim period under this Article 19-300, as follows:

- B.** General Duration and Applicability of Article 19-300

1. Subsection 4-802.B.3.a.'s six-month exemption period from Site Plan Review shall be deemed to have commenced on the effective date of these regulations (November 4, 2013), and shall continue until the Board determines the exemption period should be amended or terminated in light of ongoing response to the Extreme Rain and Flood Event ("the Post-Event Rebuilding Period").
2. During the Post-Event Rebuilding Period, this Article 19-300 shall apply to any work for which a County building permit is required to rebuild or restore a legally existing structure damaged or destroyed by the 2013 Extreme Rain and Flood Event and its associated natural forces (unless the work is excluded from this Article 19-300 under Subsection C.2, below), and which the owner wishes to be exempt from Site Plan Review.



3. During the Post-Event Rebuilding Period, this Article 19-300 shall apply to any work for which a County grading permit for earthwork between 50-500 cubic yards, and/or a floodplain development permit, is required to repair or restore property damaged by the 2013 Extreme Rain and Flood Event and its associated natural forces (unless the work is excluded from this Article 19-300 under Subsection C.2, below), and which the owner wishes to be exempt from Site Plan Review.
    - a. This Article 19-300 may apply instead of Site Plan Review so long as the proposal is to rebuild or restore no more than the structure's original, legally preexisting floor area.
      - (i) The applicability of Article 4-1002.D, which allows rebuilding of Nonconforming Structures, shall be extended through September 30, 2016.
    - b. The structure's location may be changed, provided the change in location significantly reduces the potential risks associated with future extreme rain and flood events or other known natural hazard areas or incidents (such as by moving the structure out of the mapped floodway or floodplain, or otherwise to a less hazardous location on the property). The relocation is subject to other provisions of this Code including but not limited to setback and floodplain requirements.
    - c. The structure's height must remain the same, unless the Director (under Subsection 9 below) allows a reasonable height increase to accommodate a specific hazard mitigation requirement.
    - d. The Director must confirm that the subject property is a legal building lot. If the property is not a legal building lot due to a lot creation or boundary line adjustment that did not increase allowable zoning density, the Director may approve the lot subject to the applicable criteria of Section 9-102 of this Code, without a subdivision exemption approval under Article 9-100. The Director may impose reasonable conditions in any such approval to allow the applicable criteria to be met. If the property is not a legal building lot due to a lot creation or boundary line adjustment that did increase allowable zoning density, then a subdivision exemption to recognize the lot under Article 9-100 of this Code is required.
  4. All requirements in Article 4-400 of this Code governing the Floodplain Overlay District shall continue to apply under this Article 19-300, though Site Plan Review for a floodplain development permit (as otherwise required under Subsection 4-802.A.8. of this Code) shall not be necessary, so long as the proposed work falls within the specifications of Subsection 2 and 3, above.
  5. Legal structures proposed to be restored as provided in Subsection 2, above, are hereafter referred to as "Eligible Structures." Structures proposed for rebuilding or restoration that are not Eligible Structures, shall be subject to the usual provisions of the Land Use Code, including the Nonconforming regulations in Article 4-1000, which allow a damaged structure containing a nonconforming use to be restored, and the nonconforming use to be reestablished within six months after the date on which the nonconforming structure was damaged, unless that deadline is extended by the Board of County Commissioners at a public hearing upon a showing of extraordinary circumstances by the property owner or their agent; however, if the proposed work does not otherwise trigger Site Plan Review, and is not excluded work under Subsection C.2, below, a Hazard Mitigation Review shall be performed under this Article 19-300.
- C. Hazard Mitigation Review Process
1. Before a building permit can be applied for to rebuild or restore any Eligible Structure within the Post-Event Rebuilding Period, the Director must first conduct a Hazard Mitigation Review ("HMR").
  2. The following building permits are excluded from the HMR requirement:
    - a. "Flood Recovery, Restoration, and Repair Permits" issued by the Building Division for disaster-related restoration or clean-up work in the aftermath of the 2013 Extreme Rain and Flood Event, involving minor projects related to basement finishing, interior remodels, electrical repairs, reroofing, siding repairs, gas line repairs, plumbing repairs, and replacement of windows, doors, furnaces, boilers, and water heaters.
    - b. A building permit which the Chief Building Official determines is necessary to rectify a hazardous health or safety situation including but not limited to structure stabilization, or to comply with the public health or safety requirements of another governmental entity having lawful jurisdiction over the structure, or to allow for the preservation of a significant historic structure.
    - c. Building permits for structures related to the restoration of utilities or infrastructure, or for small agricultural accessory structures such as loafing sheds or ditch head gates, which the Director determines have no potential to pose a hazard under this Article 19-300.
    - d. Any excluded building permit under Subsections a. through c. above, may be issued for a temporary period, may require further approval of permanent construction measures meeting other applicable code requirements, and may result in owners doing work on a temporary or emergency basis by their own choice and at their own financial risk.

3. The purposes of the HMR are for the Director (including the Chief Building Official), with the input of the County Engineer and County Public Health, to:
  - a. Assess the safety of the proposed restoration/construction in light of the actual damage caused by the 2013 Extreme Rain and Flood Event and related hazardous forces triggered by that disaster (such as flooding, debris flows, rockfalls, mudslides, topographic changes or instability, drainage channel shifts, area drainage system impairments or failures, and soil saturation), to the Eligible Structure, the subject property, surrounding properties, and public and private infrastructure serving the subject property; and
  - b. Assure that the proposal complies with the standards of this Article 19-300, so that any such future hazards can be reduced or avoided to the maximum extent practicable.
4. The Director shall administer the HMR process, aided by the County Engineer and County Public Health, with a focus on educating landowners concerning the risks related to extreme rain and flood events, and assisting owners in evaluating reasonable land redevelopment plans and associated hazard mitigation measures, while adequately protecting the public health, safety, and welfare with respect to future storm/water-related hazards.
5. Application for a HMR shall require an application submittal, as set forth in Section 4-804 of this Code. The HMR application shall include information demonstrating that the Eligible Structure to be rebuilt or restored is a legal structure that was damaged or destroyed by the 2013 Extreme Rain and Flood Event or its associated physical forces, and must set forth specific information regarding the extent of the damage which the Event caused to the Eligible Structure, to the subject property, to surrounding properties and drainages, and to infrastructure serving the subject property. The Director may waive application requirements deemed to be not relevant to evaluating the hazards related to any specific proposal, and also may request additional information considered necessary to enable a thorough evaluation of the application.
6. Once a complete application for a HMR is received, the Director shall forward the application to the County Engineer and to County Public Health for an assessment of the Extreme Rain and Flood Event and related hazards associated with the proposal. For any application involving property within the Floodplain Overlay District (Article 4-400 of this Code), the HMR application may be coordinated with the County Engineer's review of any required application for a Floodplain Development Permit.
7. Once the Director receives the referral comments of the County Engineer and County Public Health, and considers any other relevant information of record (including any additional information which the Director discovers through the process is necessary and reasonable to request to complete the review), the Director shall make a decision on the HMR application. The Director shall base the decision on the following standards:
  - a. The proposal shall not pose or create a significant potential safety hazard when evaluated against evidence of actual damage caused by the 2013 Extreme Rain and Flood Event (including by the Event's related hazardous forces such as flooding, debris flows, rockfalls, mudslides, topographic changes or instability, drainage channel shifts, area drainage system impairments or failures, and soil saturation) and best available information (including but not limited to hydrologic evaluations to determine peak flows, floodplain mapping studies, Colorado Geologic Survey landslide or earth/debris flow data, updated topographic data, and creek planning studies). Potential safety hazards to on the Eligible Structure being restored, on the subject property, on surrounding properties, and on public and private infrastructure serving the subject property or other affected infrastructure must be identified and avoided or satisfactorily mitigated. In particular, development shall avoid natural hazards, including those on the subject property and those originating off-site with a reasonable likelihood of affecting the subject property. Natural hazards include, without limitation, expansive soils or claystone, subsiding soils, soil creep areas, or questionable soils where the safe-sustaining power of the soils is in doubt; landslides, mudslides, mudfalls, debris fans, unstable slopes, and rockfalls; flash flooding corridors, alluvial fans, floodways, floodplains, and flood-prone areas; and avalanche corridors; all as identified in the Comprehensive Plan Geologic Hazard and Constraint Areas Map or through the HMR process using the best available information.
  - b. The proposal shall not alter historic drainage patterns and/or flow rates or shall include acceptable mitigation measures to compensate for anticipated drainage impacts.
  - c. If the Eligible Structure's location is proposed or required to be changed, the new location shall significantly reduce the potential risks associated with future extreme rain or flood events as identified by the best available information (including but not limited to hydrologic evaluations to determine peak flows, floodplain mapping studies, Colorado Geologic Survey landslide or earth/debris flow data, updated topographic data, and creek planning studies), or other known natural hazard areas or incidents; shall not create an unreasonable risk with respect to other natural hazards such as wildfire, subsidence, or erosion; and shall not cause unreasonable harm to significant historic structures or sites, or to significant natural ecosystems and environmental resources including but not necessarily limited to natural areas and natural landmarks, prominent topographic features and excessively steep slopes, riparian corridors and wetland areas, and significant plant communities, wildlife habitat, and wildlife migration corridors, as identified on the Comprehensive Plan or through the HMR process.

- d. If the Director finds that any of the foregoing standards conflict, the Director shall evaluate the applicability and importance of each of the conflicting standards under the facts of the specific HMR application, and make a reasonable attempt to balance the conflicting standards in reaching a decision, with appropriate priority being given to fulfilling the purposes of this Article 19-300.
8. If the Director determines that the HMR application complies with the foregoing standards, the Director in its discretion may approve the application without conditions. In the alternative, the Director may impose reasonable conditions allowing a determination that the application satisfies the standards.
9. Reasonable conditions may include, but are not limited to, moving the Eligible Structure outside of a mapped floodway or floodplain or known flood-prone area; reorienting the structure or reducing its massing to minimize the effects of hazards on the structure, the subject property, or surrounding properties and infrastructure; installing or arranging appropriate features or improvements to reroute excess waters or protect the Eligible Structure or affected properties from natural hazards; implementing floodproofing or other hazard mitigation measures recommended or required by the Director, the County Engineer, or County Public Health; performing additional hydrologic or technical studies on hazards that may result in additional conditions being added at the building permit stage; requiring reasonable measures in cases where an Eligible Structure's location is changed to significantly reduce the potential risks associated with future natural hazards; and providing that the proposed development comply with any other applicable permitting requirements, including but not limited to those related to access and sanitation. In addition, the Director may allow a reasonable increase in structure height, not to exceed zoning limits, if necessary to accommodate any elevation of the Eligible Structure for floodproofing purposes or to satisfy any other specific hazard mitigation requirement, provided any associated adverse visual impacts of the height increase are appropriately mitigated.
10. If the Director finds that the HMR application cannot comply with the applicable standards, the Director shall deny the application. The Director also may deny an application, or in the Director's discretion delay a decision on the application for further information, if the Director finds that insufficient information has been presented to allow a reasonable evaluation of the hazards associated with the proposed development, or of effective hazard mitigation measures. For applications in the Floodplain Overlay District (Article 4-400 of the Code), the Director may delay a decision until the County Engineer processes any required Floodplain Development Permit.
11. While the Director is not required to make a decision on a HMR application within a specified time, and may delay a decision on a reasonable basis as provided herein, the Director shall make a good-faith effort to process requests as soon as practicable after a complete application has been submitted.
12. The applicant may appeal the Director's final decision on a HMR application using the same process as appeals for Site Plan Review decisions under Article 4-808.
13. Any final HMR approval shall expire one calendar year after its date of issuance, unless within that year the applicant presents the Director with a written request for an extension. If a timely extension request is received, the Director may allow the HMR approval to be extended, upon a showing of good cause, and provided the circumstances surrounding the approval's issuance under this Article 19-300 have not substantially changed.

**D. Flood Recovery Access Permit (FRAP)**

**1. Purpose, Application, and Duration**

- a.** This Subsection 19-300.D. applies to the repair and restoration of accesses to private property that existed prior to the September 2013 flood in Boulder County and that were damaged as a result of that flood. The intent is to allow property owners to construct a temporary but safe access from public roads to private property as quickly as possible in locations where re-construction of a permanent access is not possible due to damaged waterways or public rights-of way. There may be circumstances where it is not possible to issue a FRAP.
- b.** The FRAP addresses access from maintained and unmaintained public roads, including access across regulated and unregulated waterways. Access from a private road or across a non-public easement is not addressed here, with the exception of crossing a regulated floodplain or major drainage.
- c.** The issuance of a FRAP is intended to recognize and accommodate the time needed to repair public infrastructure and regulated waterways following the September 2013 flood while enabling property owners to regain access to their property. FRAPs are temporary permits for accesses which are unable to meet the requirements of subsections 3-100.B.1.a, 4-400, and 19-200.D.1 and Multi-Modal Transportation Standards subsections 2.3.3.2, 5.5, and 5.10 due to the unrepaired damage to adjacent waterways and public rights-of-way. All FRAPs shall have an expiration date of six months from issuance, which may be extended at the discretion of the County Engineer if the adjacent public infrastructure has not been repaired such that a permanent access may be constructed.
- d.** FRAPs shall not be issued beyond September 30, 2016.

**2. Eligibility for a New or Extended FRAP**

- a.** An assessment of the access condition shall be performed by the Transportation Department within 10 business days of a new FRAP or FRAP extension request.
- b.** At least one of the following criteria must be met to apply for a FRAP:
  - (i)** the connecting public road is in need of major repair and reconstruction such that if a permanent private access were constructed, it would not be possible for the County to guarantee that it would physically connect with the final repaired or reconstructed public road; or
  - (ii)** there is an adopted public plan to adjust the course, size, or creek bed elevation for the adjacent waterway with funding available to implement that plan.
- c.** An expiring FRAP for a temporary structure, built and installed per the issued FRAP, may be extended consistent with 5(g) below, if:
  - (i)** At least one of the conditions in 2(b) above are met, or
  - (ii)** if the County Engineer determines both that the access does not or will not create an immediate hazard and that a temporary solution is preferable because there are unresolved issues such as waterway restoration and location, availability of funding assistance, or other outstanding issues which may impact the design and construction of a permanent solution.

**3. Submittal Requirements for FRAP application**

- a.** For an access that does not cross a waterway, the applicant must submit:
  - (i)** Description of damage to access;
  - (ii)** Verification of legal access; and
  - (iii)** Description of work and material to be used to repair or restore the access.
- b.** For a culvert installation, the applicant must submit:
  - (i)** Description of damage to culvert crossing;
  - (ii)** Verification of legal access;
  - (iii)** Culvert size, number and type;
  - (iv)** Storm size that installed culvert(s) shall accommodate;
  - (v)** Quantity and type of fill material; and
  - (vi)** Cross-section of location where culvert(s) shall be installed.
- c.** For the construction or repair of a bridge, the applicant must submit:
  - (i)** Description of damage to structure;
  - (ii)** Description of the size and materials of the pre-flood bridge;
  - (iii)** Verification of legal access;
  - (iv)** Hydraulic and hydrologic analysis provided by a licensed engineer;
  - (v)** Structure design provided by a licensed engineer; and
  - (vi)** Cross-section of location where bridge shall be installed.

4. FRAP Review Criteria
  - a. The County Engineer will review and evaluate FRAP applications for compliance with the following criteria and approve, conditionally approve, or deny the FRAP application as appropriate.
    - (i) Location. Accesses shall be located to align as close as possible with pre-flood positions. Any change to an access location shall be based on the recommendation by the inspector as determined during the initial assessment. Location changes that reduce potential hazards or negative environmental impacts may be permitted.
    - (ii) Culvert and Structure Design.
      - (1) An 18" (minimum) diameter culvert shall generally be required for accesses that do not cross a regulated waterway for the purpose of conveying storm drainage in the roadway consistent with the Boulder County Multimodal Transportation Standards.
      - (2) Where an access crosses a waterway, the crossing shall meet the following criteria:
        - (a) Where creek geometry allows, the capacity of a temporary crossing structure or culvert may not be less than that of the pre-flood structure;
        - (b) Where a damaged or destroyed structure across a regulated stream is replaced by a culvert, the culvert must be sized by the County Engineer.
      - (3) Based on data gathered by the inspector, the county shall perform the calculations and provide culvert or structure design information to the Applicant. The Applicant may retain a qualified, registered engineer to design and size structures to access property, if desired, at his/her own expense.
  - b. Risk to public health and safety. To the greatest extent possible, in the professional judgment of the County Engineer, the temporary culvert or structure must:
    - (i) Not be severely undersized;
    - (ii) Be constructed so as to minimize the risk of dislodging or breaking apart and entering the waterway during another high water event;
    - (iii) Be constructed so as to minimize adverse effects on the efficiency of the floodway, changes in the direction of flow, and increases in the base flood elevations;
    - (iv) Not threaten the integrity of adjacent or nearby public infrastructure during a high water event;
    - (v) Not increase the flood hazard risk on an insurable structure; and
    - (vi) Not pose significant risks to nearby accesses serving multiple residences or properties.
5. Conditions on FRAP Approvals
  - a. Any project to restore an access onto county rights-of-way must obtain all applicable local, state, and federal permits. Dependent upon the location and the specific nature of the activity or structure to be installed, building, grading, and floodplain development permits may be required in addition to a FRAP.
  - b. As applicable, the County Engineer may condition FRAP approval on compliance with design requirements, including without limitation:
    - (i) Site specific findings of the County inspector based on his or her assessment;
    - (ii) Structure design requirements determined by the County or by a licensed civil or structural engineer in the State of Colorado; and
    - (iii) Other access design conditions such as drainage, sight distance, and geometric needs.
  - c. The County Engineer will inspect completed temporary accesses upon notification by the Applicant or upon determination that an inspection is needed. This inspection shall ensure compliance with county requirements. Any work or material which does not conform to the conditions made as part of the issued permits shall be brought to the attention of the Applicant for immediate correction.
  - d. Once construction is complete and approved, the County Engineer will provide a final signed FRAP as proof of approval.
  - e. The Applicant shall be responsible for maintaining temporary accesses. Where applicable, the County Engineer may condition FRAP approval on restoration of the right-of-way once the FRAP has expired.
  - f. In the event the County realigns or widens the road in a manner that necessitates the removal or relocation of a temporary access or temporary work done by the property owner in the public right-of-way, the removal or relocation shall be at the Applicant's expense upon written notification by the County. The relocation or removal must be completed within 60 days after notification, unless the County Engineer in his sole discretion grants additional time. (As a separate matter, where the County requires new property rights to relocate a right-of-way or other transportation facility, the County will acquire such rights using standard procedures for determining compensation.)

- g. Prior to the date of expiration noted on the FRAP approval, the County Engineer will review the condition of the adjacent waterway, applicable state and federal regulatory requirements, and public rights-of-way to determine if a permanent access may be permitted. Upon application to and recommendation by the County Engineer, and based upon best available information at the time, the FRAP may be extended for up to six months at a time, for a combined total of no more than three years.
- 6. Permanent Access
  - a. Prior to the expiration of a FRAP or notification by the County that a permanent access may be permitted, whichever occurs first, FRAP recipients shall either (i) submit the appropriate applications to verify that the temporary access meets the criteria for a permanent access, or (ii) commence design and construction of a permanent access.
  - b. Prior to approval of a permanent access application, applicants with a substantially damaged dwelling in the floodplain must demonstrate that (i) the repaired or reconstructed building can comply with all county regulations, including those governing the floodplain, and (ii) a compliant onsite wastewater system is in place or is in the process of being repaired or replaced.
  - c. All permanent accesses must comply with Boulder County regulations including without limitation the Boulder County Land Use Code (including the floodplain regulations), the Boulder County Multimodal Transportation Standards, the Boulder County Building Code, and the Boulder County Storm Drainage Criteria Manual, as applicable.
  - d. Construction of a permanent access shall be completed within 6 months of whichever of the following occurs first: (i) the date the FRAP expires, (ii) the date the County notifies the property owner that a permanent access may be permitted, or (iii) the date of the sale of the property, per property transfer regulations adopted by the Board of County Commissioners under separate cover.
  - e. The County Engineer may provide an extension to the deadline to construct a permanent access upon finding in writing that there are design or other physical, regulatory, or programmatic constraints or opportunities beyond the Applicant's control which prevent completion of the construction of an approved permanent access and the Applicant has been working in good faith to design and construct a permanent access within the required timeframes set out in these regulations.
- 7. Removal of Unsafe Culverts and Structures
  - a. Where the Extreme Rain and Flood Event damaged a property access point, the property owner must undertake one of the following actions:
    - (i) Make permanent repairs to the access by obtaining all required permits
    - (ii) Make temporary repairs to the access by obtaining a FRAP and, as soon as possible thereafter, make permanent repairs by obtaining all required permits
    - (iii) Safely deconstruct the access point and remove all materials and debris from the floodplain, creek channel, and public right-of-way, as applicable.
  - b. Temporary culverts and structures must be removed at the property owner's expense within 14 days after written notification by the County that the culvert or structure poses a risk to public health and safety. Removal or replacement shall be required if, in the judgment of the County Engineer, the culvert or structure:
    - (i) Does not comply with the Culvert and Structure Design requirements identified in the FRAP Review Criteria above;
    - (ii) Is currently an obstruction in the waterway as determined by the County Engineer or the Office of Emergency Management;
    - (iii) Is constructed so as to be at risk of dislodging or breaking apart and entering the waterway during another high water event;
    - (iv) Is severely undersized;
    - (v) Threatens the integrity of adjacent or nearby public infrastructure during a high water event;
    - (vi) Increases the flood hazard risk on an insurable structure;
    - (vii) Creates a risk to nearby accesses serving multiple residences or properties; or
    - (viii) Presents additional risks or hazards not specified here in the professional judgment of the County Engineer, including situations where the County has previously issued a FRAP, and the County Engineer has received new information indicating the structure is a risk to public health and safety.
  - c. Any culvert or structure damaged in Extreme Rain and Flood Event and subsequently deemed a risk to public health and safety by the County Engineer and not timely abated by the property owner is subject to enforcement under the Multimodal Transportation Standards or the Land Use Code, as appropriate.

- E. Applicability of Other Regulations; Enforcement
1. Except as amended in this Article 19-300, all other applicable provisions of the Land Use Code and related County land development, access, Multimodal Transportation, and Public Health regulations shall be in full force and effect as stated therein. Of note, while this Article 19-300 amends Subsections a. and c. of Section 4-802.B.3., it does not amend Subsection 4-802.B.3.b. regarding the exemption from Site Plan Review for replacement of bridges, box culverts, low-water crossings to other structures spanning a creek or other drainage within a mapped floodplain, which remains in effect as provided therein. In the event of a conflict between this Article 19-300 and any other code provision, this Article shall control, unless the Director determines otherwise in order to better serve the purposes of this Article 19-300.
  2. Where the BOCC has provided specific approval of emergency response actions by the Director, the County Engineer/Transportation Department Director, or other County department heads, related to the need for immediate permitting of repairs to structures, access, and property damaged or destroyed by the 2013 Extreme Rain and Flood Event (including without limitation BOCC Declaration of Local Disaster Emergency Extension #1 adopted September 19, 2013, Extension #2 adopted September 24, 2013, and Extension #3 adopted October 1, 2013, and any further extensions thereof), those department heads, in their sound discretion, may continue, modify, or terminate those permitting practices as reasonably necessary to administratively handle the ongoing effects of the disaster recovery effort. Adoption of this Article 19-300 shall, however, immediately terminate the temporary cessation on the issuance of County building permits and floodplain development permits authorized in Paragraph 1 of the BOCC's Declaration of Local Disaster Emergency Extension #3 (October 1, 2013).
  3. The County may enforce this Article 19-300 through the provisions of Section 17-300 of this Code. Nothing in this Article shall limit the County's existing enforcement authority under Articles 14 or 17 of this Code, the Building Code, or other applicable law.

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