

Section 1400 Environmental and Regulatory Permitting

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Section 1400 Environmental and Regulatory Permitting

1401 INTRODUCTION

Regulatory compliance and environmental permitting need to be considered for every project. Permits are required for most construction projects, regardless of whether a project is a large or small stream restoration project, or a public or private infrastructure project. This section lists the permits that may be required and the regulations that may apply when doing work within Boulder County. Table 1400-1 lists the most common potential permits, issuing agencies, and governing policies for projects in the county. This list may not be all-inclusive as a project may require an environmental permit that is not listed. It is important to note that the applicability and requirements of each permit can change over time. The text of this MANUAL may become outdated as governing policies are amended. Permitting professionals, developers, and design engineers are encouraged to consult the most current guidance available at the onset of each project to ensure compliance.

Table 1400-1. Summary of Environmental Permits

Permit Name	Issuing Agency	Governing Policy
404 Permit	USACE	Clean Water Act
ESA "No Effect" Determination	USFWS	Endangered Species Act
Categorical Exclusion	EPA	National Environmental Policy Act
Environmental Assessment	EPA	National Environmental Policy Act
Environmental Impact Statement	EPA	National Environmental Policy Act
401 Water Quality Certification	CDPHE	State Water Quality Permit
CDPS Construction Stormwater	CDPHE	State Stormwater Permit
CDPS Construction Dewatering	CDPHE	State Stormwater Permit
CDPS Industrial Stormwater	CDPHE	State Stormwater Permit
Stormwater Quality Permit	Boulder County	Local Permitting
Access, Building, Construction, Grading, Floodplain	Boulder County	Local Permitting

Detailed analysis of each project's characteristics is required to determine specific permit requirements and necessary compliance measures. Upfront coordination with each permitting agency is recommended to understand all current permit requirements and approval schedules as approvals can often take several months, depending on the permit. It is also important to note that incorporating ecological design components into a project may potentially minimize the number of environmental permits required or expedite the approval process.

1402 CLEAN WATER ACT 404 PERMIT

The Clean Water Act (CWA) provides the basic structure for regulating discharges of pollutants into waters of the United States and regulating quality standards for surface water. Section 404 of the CWA establishes a permitting process that regulates the discharge of dredged or fill materials into waters of the U.S., including rivers, lakes, streams, and most wetlands. Regulated activities include fills for development, water resource projects including dams and levees, channel restoration or improvements, infrastructure development, and conversion of wetlands to uplands for farming and forestry.

An individual permit is required for potentially significant impacts. Individual permits are reviewed by the U.S. Army Corps of Engineers (USACE), which evaluates applications under a public interest review, as well as the environmental criteria set forth in the CWA. For most discharges that will have only minimal adverse effects, a general permit may be suitable. General permits are issued on a nationwide, regional, or state basis for particular categories of activities. The general permit process eliminates individual review and allows certain activities to proceed with little or no delay, provided the conditions of the general permit are met. For example, minor road activities, utility line backfill, and bedding are all activities that can all be considered for a general permit.

When landowners apply for an individual 404 Permit, they must show that they have taken steps to minimize wetland and stream impacts, provide compensation for any unavoidable impacts, and engage in activities to restore or create wetlands and streams. Boulder County requires a 404 Permit, or a letter from the USACE stating that a 404 Permit is not needed, before a Floodplain Development Permit will be issued for work within the bed and banks of a waterway. Individual permits for projects in Boulder County are reviewed and approved by the Denver Regulatory Office of the Omaha District of the USACE. Additional details can be found via an internet search for “Section 404 Permit Program” or online (<http://www.epa.gov/cwa-404/section-404-permit-program>).

1403 ENDANGERED SPECIES ACT

The purpose of the Endangered Species Act (ESA) is to conserve threatened and endangered species and the ecosystems they depend on. It is administered by the U.S. Fish and Wildlife Service for terrestrial and freshwater organisms. ESA compliance was recently added to the list of documentation that must be provided to the Federal Emergency Management Agency (FEMA) before they will issue a Conditional Letter of Map Revision (CLOMR).

ESA compliance begins with one of three possible effect determinations: (1) no effect; (2) may affect, but is not likely to adversely affect; (3) and may affect, and is likely to adversely affect. The Colorado Ecological Service Field Office can be of service in completing an effect determination. If a no effect determination is made, ESA compliance is achieved. If a CLOMR application is being submitted as part of the project, documentation of the no effect determination must be submitted with the application. If any other determination is made, additional action may be required, such as completing a biological

assessment. The Colorado Ecological Service Field Office can provide guidance on additional steps that will be required.

1404 NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

The National Environmental Policy Act (NEPA) was signed into law on January 1, 1970. It establishes national policy and goals for the protection, maintenance, and enhancement of the environment. It also provides a process for implementing these goals within federal agencies. The NEPA process consists of an evaluation of the environmental effects of any federal undertaking, including its alternatives. A NEPA analysis is required if any federal permit is issued, including a 404 Individual Permit (general permits do not trigger the NEPA process), or if any federal funds are used to pay for any part of a project. There are three levels of analysis: categorical exclusion; preparation of an Environmental Assessment/Finding of No Significant Impact (EA/FONSI); and preparation of an environmental impact statement (EIS).

1404.1 Categorical Exclusion (CE)

A project or action may be categorically excluded from requiring a detailed environmental analysis if it has certain characteristics that a federal agency has previously determined will cause no significant environmental impact. A number of agencies have developed lists of actions that are typically categorically excluded from requiring any environmental evaluation under NEPA regulations.

Details on categorical exclusions can be found via an internet search for “NEPA Categorical Exclusion,” followed by an agency name (e.g., USACE). Guidance on categorical exclusions that are identified by the Federal Highway Administration (FHWA) can be found online (<https://www.environment.fhwa.dot.gov/projdev/docuce.asp>)

1404.2 Environmental Assessment

If a categorical exclusion does not apply, a written EA must be prepared to determine if a federal undertaking would significantly affect the environment. If it will not, the agency issues a FONSI. The FONSI may address measures an agency will take to mitigate potentially significant impacts.

When the significance of impacts of a project proposal is uncertain, an EA is prepared to assist in making this determination. If it is found that significant impacts will result, the preparation of the EIS should commence immediately.

A concise public document shall be prepared that addresses the following:

1. Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.
2. Aid an agency's compliance with NEPA when no environmental impact statement is necessary.
3. Facilitate preparation of a statement when one is necessary.

The EA shall include a brief discussion of the need for the proposed project, alternatives to the proposed project, environmental impacts of the proposed project and alternatives, and a listing of agencies and persons consulted. EAs do not need to be circulated, but they must be made available to the public

through notices of availability in local, state, or regional clearinghouses, newspapers, and other means. A public hearing may or may not be required. A 30-day review period is required but may be reduced in rare circumstances.

After public comments are received and considered, a determination of the significance of the impacts is made. If the project would result in significant impacts, an EIS must be prepared. However, if it is evident that there are no significant impacts associated with the project, a FONSI may be prepared.

Details on the EA can be found via an internet search of “NEPA Environmental Assessment” or online (<https://www.environment.fhwa.dot.gov/projdev/docuea.asp>).

1404.3 Environmental Impact Statement

An EIS is a more detailed evaluation of a proposed project and its alternatives. If the EA determines that the environmental consequences of a proposed federal undertaking may be significant, an EIS is required. A federal agency may also choose to prepare an EIS without first preparing an EA if it anticipates that a project may have significant environmental impact or if it is environmentally controversial. The public, other federal agencies, and outside parties may provide input during the preparation of an EIS and then comment on the draft EIS when it is completed.

After an EIS is prepared, a federal agency will prepare a public record of its decision that addresses how the EIS findings, including consideration of alternatives, were incorporated into the decision-making process. An EIS is completed in the following ordered steps: Notice of Intent (NOI), draft EIS, final EIS, and record of decision (ROD).

As an example, the EIS documentation process adopted by the FHWA can be found via an internet search for “FHWA NEPA EIS” or online (<https://www.environment.fhwa.dot.gov/projdev/docueis.asp>).

1405 STATE WATER QUALITY CLEARANCES

The Water Quality Control Division (WQCD) of the CDPHE reviews applications and issues Water Quality Certifications and other water quality permits, including the State Water Quality Certification, the Colorado Discharge Permit System (CDPS) Construction Stormwater Permit, the CDPS Construction Dewatering Permit, and the CDPS Industrial Stormwater Permit.

1405.1 Water Quality Certification

The WQCD reviews applications and issues the 401 Water Quality Certification for projects or actions that are applicable to the provisions of the Colorado 401 Certification Regulation (No. 82: 5 CCR 1002-82). A 401 certification is required when any federal license or permit, such as an individual 404 permit, is issued to construct or operate a facility that may result in any fill or discharge into navigable waters of the U.S.

Details of the application process and the requirements of the application can be found via an internet search for “CDPHE 401 Water Quality Certification” or online (<https://www.colorado.gov/pacific/cdphe/wq-401-water-quality-certification>).

1405.2 CDPS Construction Stormwater Permit

The WQCD reviews applications for and issues the Construction Stormwater Permit. This permit is for the regulation of stormwater runoff from construction activities and specific allowable non-stormwater discharges that are identified in the permit. Construction activities include all activities that disturb the ground surface, including, but not limited to, clearing, grading, excavation, demolition, installation of new or improved haul and access roads, staging areas, stockpiling of fill materials, and borrow areas.

Process and application details can be found via an internet search for “CDPHE Construction General Permits” or online (<https://www.colorado.gov/pacific/cdphe/wq-construction-general-permits>).

1405.3 CDPS Construction Dewatering Permit

The WQCD reviews applications for and issues the Construction Dewatering Permit. This permit authorizes the discharge of construction dewatering source water throughout Colorado to waters of the state. Construction dewatering source water includes surface water or stormwater that has mixed with groundwater and been exposed to construction activities. This permit only authorizes discharges for which the source water is drawn from specific areas identified in the application.

Process and application details can be found via an internet search for “CDPHE Construction General Permits” or online (<https://www.colorado.gov/pacific/cdphe/wq-construction-general-permits>).

1405.4 CDPS Industrial Stormwater Permit

The WQCD reviews applications for and issues the Industrial Stormwater Permit. This permit is for individual discharges of industrial process water to surface water, groundwater, or stormwater facilities. Discharges to groundwater may occur via impoundments, whether or not they discharge to surface water, land application, and septic systems whose design capacity is greater than 2,000 gallons per day.

Process and application details can be found via an internet search for “CDPHE Commerce and Industry Permitting” or online (<https://www.colorado.gov/pacific/cdphe/clean-water-commerce-and-industry-permitting>).

1406 FLOODPLAIN REGULATIONS AND PERMITTING

FEMA and Boulder County both maintain regulatory floodplains within the county. While most of the county’s regulated floodplains are also regulated by FEMA, some are not. Additionally, the Colorado Water Conservation Board (CWCB) has established regulations that govern all floodplains in Colorado. The three sets of regulations and requirements are discussed briefly below, and references are included that will provide additional information. If more than one set of regulations applies to a regulatory floodplain, the more stringent set of regulations will govern.

1406.1 Boulder County Floodplain Regulations

Boulder County floodplain regulations will govern when it comes to complying with development standards, changes to the floodplain extents or elevations, and permitting issues within a designated floodplain. A Floodplain Overlay (FO) Zoning District is established by the CODE. The CODE also offers detailed information on the restrictions and requirements associated with various portions of the FO district and the definitions of several relevant terms, including “floodway” and “floodfringe.” The restrictions and requirements in the CODE are intended to provide a reasonable degree of flood protection to the county. The CODE can be found via an internet search for “Boulder County Land Use Code” or online (<http://www.bouldercounty.org/property/build/pages/lucode.aspx>).

Development within the floodway and floodfringe is discouraged. Restrictions on development in the floodway or floodfringe are nuanced and should be reviewed carefully. Floodway delineations adopted by Boulder County that are more restrictive than those adopted by FEMA shall govern. A floodplain development permit is required for all development within the FO district or regulatory floodplain, regardless of whether or not there is a change in the 100-year water surface elevation. The CODE includes the submittal requirements for the floodplain development permit. Additional information on this permit can be found via an internet search for “Boulder County floodplain development permit” or online (<http://www.bouldercounty.org/roads/permits/pages/floodcontrol.aspx>).

1406.2 Colorado Water Conservation Board Floodplain Regulations

Floodplains in Colorado are regulated by the Colorado Water Conservation Board (CWCB) in accordance with *Rules and Regulations for Regulatory Floodplains in Colorado* (CWCB, 2010), which were developed to limit the impacts of floods and to preserve health, safety, welfare, and property by limiting development in floodplains. These rules and regulations can be found via an internet search for “CWCB floodplain regulations” or online (http://cwcb.state.co.us/Documents/FloodplainRulesRegsUpdate/CWCB_Adptd_FP_Rules_BasisPurp_%2011172010.pdf). State regulations are subject to change and should be evaluated at the beginning of each project.

1406.3 Federal Emergency Management Agency Floodplain Requirements

Communities that participate in the National Flood Insurance Program (NFIP) must meet FEMA minimum requirements. Boulder County is one such community. Any development within a FEMA-regulated floodplain that results in a change to the existing regulatory floodway, the effective base flood elevation (BFE), or the lateral extents of the 100-year floodplain requires a CLOMR before construction. A Letter of Map Revision (LOMR) is then required once construction is complete. Regardless of which floodplain regulations govern, applications for all CLOMRs and LOMRs are made to and issued by FEMA. The requirements of the CLOMR and LOMR process, along with associated fees, may be found by searching the FEMA website (www.fema.gov).

1407 COUNTY PERMITTING

All projects must adhere to and comply with the codes, permitting requirements, and regulations specific to the jurisdictions in which they are located, in this case Boulder County. Detailed analysis at the beginning of each project will be required to determine specific permit requirements and necessary

compliance measures. At the discretion of the county, maintenance eligibility guidelines published by the UDFCD should also be adhered to when deciding what improvements to natural channels will be included, provided the county wishes a project to be qualified by the UDFCD as maintenance eligible.

1407.1 Boulder County Stormwater Quality Permit

The CODE specifies when a stormwater quality permit is required and provides for limited exemptions. A stormwater quality permit will be required for all work in an active waterway. Allowable changes and required amendments to the issued county stormwater quality permit are included in the CODE. Compliance with the county permit once construction is complete is also discussed in the CODE.

The CODE also includes information on the application approval process, enforcement and penalties, administrative appeals, and related provisions. Standard operating procedures for many of the aspects of the stormwater quality permit have been developed by the county and are subject to revision. The county should be contacted at the beginning of any project to determine applicable procedures.

1407.2 Additional Boulder County Permits

In addition to the floodplain development permit discussed in 1406, the county also requires and issues building, construction, grading, and access permits.

A building permit is required for any construction that physically changes or adds structures to a property, or for work regulated by county codes. Information regarding building permits can be found online (<http://www.bouldercounty.org/property/build/pages/buildingpermitreqs.aspx>) or via an internet search for “Boulder County building permits.”

A construction permit is needed to construct or maintain any road, drainage, or other improvement within county right-of-way. Additional information on construction permits can be found online (<http://www.bouldercounty.org/roads/permits/pages/constructpermit.aspx>) or via an internet search for “Boulder County construction permit.”

A grading permit is required for grading, excavation, or placement of fill in excess of 50 cubic yards, with certain exceptions. Information on grading permits can be found via an internet search for “Boulder County Grading Permit” or online (<http://www.bouldercounty.org/doc/landuse/b17gradingpermitreqs.pdf>). A grading permit typically requires a soil erosion and sedimentation plan in accordance with the CODE. The requirements of a soil erosion and sedimentation plan are currently included in the CODE.

An access permit is needed to construct any driveway providing vehicular access to or from any county right-of-way. Additional information on access permits can be found via an internet search for “Boulder County access permit” or online (<http://www.bouldercounty.org/roads/permits/pages/accesspermit.aspx>).

1408 MISCELLANEOUS PERMITTING CONSIDERATIONS

Preapplication meetings with the USACE and other regulatory agencies are encouraged by the USACE to facilitate the review of potentially complex or controversial projects, or projects that could have significant impacts on the human environment. Pre-application meetings can help streamline the permitting process by alerting the applicant to potentially time-consuming concerns that are likely to arise during the evaluation of their project.

Compliance with state or federal permitting requirements does not preclude the need to comply with county regulations, standards, or criteria. If necessary, joint discussions between all regulatory agencies should be initiated during the project planning stages and continued as needed.

1409 REFERENCES

Colorado Water Conservation Board, 2010. *Rules and Regulations for Regulatory Floodplains in Colorado*, prepared for the Colorado Department of Natural Resources, Colorado Water Conservation Board, Denver, CO.

Colorado Department of Transportation, 2002. *Erosion Control and Stormwater Quality Guide*, revised Chapter 5 EC 5&6 July 2014, prepared by the Colorado Department of Transportation, Denver, CO.

Urban Drainage and Flood Control District, 2016. *Urban Storm Drainage Criteria Manual: Volume 3 Stormwater Quality*, prepared by the Urban Drainage and Flood Control District, Denver, CO.