



# Land Use

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October 22, 2018

Jeff Martin  
Denver Water Program Manager  
1600 West 12 Ave  
Denver CO 80204-3412

Dear Mr. Martin:

On October 12, 2018, you requested that I determine the applicability of Boulder County Land Use Code Section 8-400 to Denver Water's proposed expansion of Gross Reservoir. Denver Water contends that, as of May 17, 1974, Boulder County zoned the land on which the Gross Reservoir expansion is located for this use and, therefore, the statutory exemption to the applicability of H.B. 1041 regulations in C.R.S. § 24-65.1-107(1)(c) (known as the "zoned land exemption") applies. I disagree with Denver Water's interpretation of the zoned land exemption and Boulder County Land Use Code, and I have determined that 8-400 applies to Denver Water's proposed expansion of Gross Reservoir.

The zoned land exemption is a narrow exception to a local government's otherwise broad authority to regulate the use of land within its jurisdiction. For the exemption to apply to the Gross Reservoir expansion, the County, as of May 17, 1974, would have had to have zoned the property in the area of the proposed expansion for use as a reservoir. The County did not have such zoning in place and, therefore, the zoned land exemption is inapplicable to the proposed reservoir expansion.

You indicate that the zoned land exemption would apply so long as a reservoir was a use by right as of May 17, 1974. Even under Denver's Water's interpretation of the exemption, the Gross Reservoir expansion is not exempt. As of May 17, 1974, the land on which the Reservoir is located was zoned Forestry. The applicable zoning regulations did not list reservoirs as a permitted use within the Forestry District and such a use would not have been allowed. Nonetheless, Denver Water asserts the Reservoir was located within the Flood Regulatory Area overlay and that reservoirs were allowed as a use by right within this overlay district. Both assertions are incorrect.

Although a portion of Gross Reservoir is within the 100-year floodplain under current County regulations and mapping, the property was not within a Flood Regulatory Area on May 17, 1974. Even if it were, the County did not permit reservoirs as a use by right within the flood regulatory area at that time. Instead, the County required Planning Commission review and approval prior to such development. No such Planning Commission review or approval has taken place as of May 17, 1974.

Finally, even assuming Flood Regulatory Area was in place over Gross Reservoir on May 17, 1974, only a small portion of the very large expansion project could have been within that area. Because most of the area to be inundated by the proposed reservoir expansion would have been located outside of the area, the zoned land exemption would also be inapplicable for that reason.

For the reasons above, I find that Section 8-400 of the Boulder County Land Use Code is applicable to the Gross Reservoir expansion project. Before undertaking any work on the project, Denver Water must obtain a permit under Section 8 of the Code. Denver Water may appeal my decision to the Board of County Commissioners as provided for under 8-406(B).

Sincerely,



Dale Case, AICP  
Land Use Director