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TITLE 9

LAND USE CODE

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Chapter 3 Overlay Districts¹

9-3-1 Purpose of Overlays and How to Use the Overlays.

(a) Overlay regulations provide restrictions or additional requirements for all development within a geographic area, irrespective of the basic zone standards. Because these regulations "overlay" basic zone standards, it is important to understand how these regulations affect a particular property before investigating the basic zone standards. Overlay district standards described in this chapter include:

- (1) Floodplains;
- (2) Wetlands;
- (3) Airport Influence Zone; and
- (4) Medium Density Overlay Zone.

(b) There are additional regulations that must also be considered, including historic preservation designations (chapter 9-11, "Historic Preservation," B.R.C. 1981), and the various street access and network plans, and sub-community, area, and sub-area plans adopted as part of the Boulder Valley Comprehensive Plan. All overlays and their requirements applicable to a specific property should be carefully considered before evaluating the basic zone standards or proceeding with conceptual design.

9-3-2 Floodplains.

(a) Legislative Intent: The purpose of this section is to regulate certain areas of the city subject to flooding in order to protect the public health, safety, and welfare by:

- (1) Restricting or prohibiting certain uses that are hazardous to life or property in time of flood;
- (2) Restricting the location of structures intended for human occupancy and regulating the manner in which such structures may be built in order to minimize danger to human life within and around such structures;
- (3) Requiring that those structures allowed in the floodplain be expanded or enlarged, and equipment and fixtures be installed or replaced, in a manner designed to prevent their being washed away and to assure their protection from severe damage;
- (4) Regulating the method of construction and replacement of water supply and sanitation systems in order to prevent disease, contamination, and unsanitary conditions;
- (5) Maintaining for public inspection available maps delineating areas subject to such provisions in order to protect individuals from purchasing or using lands for purposes that are not suitable;
- (6) Protecting and preserving the water-carrying and water-retention characteristics and capacities of watercourses used for conveying and retaining floodwaters; and
- (7) Obtaining and maintaining the benefits to the community of participating in the National Flood Insurance Program.

(b) Flooding May Occur: The degree of flood protection provided by the terms of this section has been determined to be reasonable for regulatory purposes. Floods of greater magnitude will occur, and flood heights may be increased as a result of natural or human-made causes. The provisions of this section do not imply that areas outside of the floodplain or land uses permitted within the floodplain are free from flooding, flood hazard, or flood damages. A grant or approval by the city under the requirements of this section does not constitute a representation, guarantee, or warranty of any kind or nature by the city or any city official or employee of the practicability or safety of any structure or proposed use, and it creates no liability to or cause of action against the city or any city official or employee for any damages from flood or otherwise that may result from such structure or use.

(c) Scope and Application:

- (1) The requirements of this section supplement those imposed on the same lands by any underlying zoning provisions of this code or other ordinance of the city. If there is a conflict between such requirements, the more restrictive controls.

(2) If a lot or parcel of land lies partly within the high hazard zone or the conveyance zone or the flood fringe area, the part(s) of such lot or parcel lying within such area or areas shall meet all the standards and requirements of such respective area as prescribed by this section. For the purposes of new construction, if any portion of a structure lies partly within the high hazard zone or the conveyance zone or the flood fringe area, all the standards and requirements of this section shall apply to the entire structure.

(3) If lands located outside the city limits are included within the floodplain, the flood fringe, the conveyance zone or the high hazard zone, the requirements of this section shall apply to such lands upon annexation.

(d) Administration: The city manager shall administer the requirements of this section and shall:

(1) Determine that the requirements of this section have been met before issuing any permit for development in the floodplain;

(2) Obtain and maintain for public inspection any certificates of floodproofing required by this section, and any information on the elevation (in relation to mean sea level) of the level of the lowest floor (including basement) of all new or substantially improved structures, and information specifying whether or not such structures contain a basement, and if the structure has been floodproofed, the elevation (in relation to mean sea level) to which the structure was floodproofed;

(3) Notify Boulder County and the Colorado Water Conservation Board before permitting any change in a watercourse and submit evidence of such notice to FEMA;

(4) Adopt rules interpreting and implementing the requirements of this section including, without limitation, application procedures for floodplain development permits and specifications for the floodproofing of structures, substantial improvements, and utilities;

(5) Assure that the Boulder Valley Comprehensive Plan is consistent with the floodplain management objectives of this section and the regulations of FEMA;

(6) Make necessary interpretations of the exact location of the boundaries of the floodplain, the flood fringe, the conveyance zone and the high hazard zone;

(7) Amend the boundaries of the high hazard zone and the conveyance zone pursuant to subsection (f) of this section;

(8) Determine that all necessary permits have been obtained from state, federal, or local agencies the approval of which is required before issuing any permit for development in the floodplain;

(9) Require that persons changing a watercourse maintain the watercourse so that its flood carrying capacity is not diminished;

(10) Require that new and replacement water supply systems in the floodplain be designed to minimize or eliminate infiltration of floodwaters into the systems;

(11) Require that new and replacement sanitary sewage systems within the floodplain be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters;

(12) Require that on-site waste disposal systems be located to avoid impairment to them or contamination from them during flooding; and

(13) Obtain, review, and reasonably utilize any base flood elevation and floodway data available from federal, state, and other sources, including data developed pursuant to chapter 9-12, "Subdivision," B.R.C. 1981, as criteria for requiring that all new development meet the requirements of this section.

(e) Appeals: Any person contesting the city manager's interpretation of a boundary location under paragraph (d)(6) of this section, or any person aggrieved by the granting or denial of a floodplain development permit, may appeal such determination to the planning board through the process described in section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981. The request shall set forth the reason and basis for the appeal and such other information as the manager may prescribe by rule.

(f) Map Amendments: As watercourse or flood channel improvements or mapping corrections are made, the city manager may amend the flood regulatory area maps to recognize the changed conditions produced by such improvements or corrections provided that no such amendments or corrections may change a FEMA "area of special flood hazard" or "regulatory floodway" unless the city is in receipt of a letter of map amendment or a letter of map revision issued by FEMA.

(g) Flood Regulatory Areas:

(1) The provisions of this section apply to the area shown as floodplain on the most recent maps adopted by the city council, as amended from time to time by the city manager pursuant to subsections (d), (e), and (f) of this section. The regulatory floodplain encompasses the one hundred-year floodplain, the flood fringe, the conveyance zone, and the high hazard zone. The following regulations governing each portion of the floodplain are cumulative and not exclusive.

(2) In addition to the regulatory areas identified in paragraph (g)(1) of this section, the city has adopted the areas of special flood hazard identified in the Flood Insurance Study for Boulder County, effective October 4, 2002, and delineated on the Flood Insurance Rate Map for Boulder County and the City of Boulder as adopted by the city in compliance with 44 C.F.R. section 1. In no event will the regulations contained in this section be interpreted to permit any action not permitted under those regulations promulgated by FEMA for the regulation of areas of special flood hazard and regulatory floodways.

Ordinance Nos. 6034 (1998; 7522 (2007))

9-3-3 Regulations Governing the Floodplain.

(a) General Provisions: In the entire floodplain, the following standards apply:

(1) Floodplain Development Permit: No development in the floodplain may occur prior to the issuance of a floodplain development permit pursuant to section 9-3-6, "Floodplain Development Permits," B.R.C. 1981.

(2) Anchoring:

(A) All new construction and substantial improvements or substantial modifications shall be anchored to prevent flotation, collapse, or lateral movement of the structure and be capable of resisting the hydrostatic and hydrodynamic loads.

(B) All manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement and capable of resisting the hydrostatic and hydrodynamic loads. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties connecting to permanent ground anchors, in addition to any anchoring requirements for resisting wind forces and any tie-down requirements of chapter 10-12, "Mobile Homes," B.R.C. 1981. Requirements shall include, without limitation, the following:

(i) Over-the-top ties shall be provided at each of the four corners of the manufactured homes. For manufactured homes fifty feet or longer, two additional ties per side are required at intermediate locations. For manufactured homes less than fifty feet long, one additional tie per side is required;

(ii) Frame ties shall be provided at each of the four corners of the manufactured homes. For manufactured homes fifty feet or longer, five additional ties per side are required at intermediate points. For manufactured homes less than fifty feet long, four additional ties per side are required;

(iii) All components of the anchoring system shall be capable of carrying a force of four thousand eight hundred pounds; and

(iv) Any additions to manufactured homes shall be similarly anchored.

(3) Construction Materials and Methods:

(A) All new construction, substantial improvements, and substantial modifications shall be constructed with materials and utility equipment resistant to flood damage as outlined in FEMA Technical Document 2-93, Flood-Resistant Materials Requirements.

(B) All new construction, substantial improvements, and substantial modifications shall be constructed using methods and practices that minimize flood damage.

(C) All new construction, substantial improvements and substantial modifications shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and located (by elevating or floodproofing the components) so as to prevent water from entering or accumulating within the components during flooding conditions.

(4) Utilities:

(A) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems.

(B) All new and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters.

(C) On-site waste disposal systems shall be located to avoid impairment or contamination during flooding.

(5) Subdivision Proposals:

(A) All subdivision proposals shall demonstrate efforts to minimize flood damage.

(B) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

(C) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.

(D) Base flood elevation data shall be provided for subdivision proposals and other proposed development.

(E) No subdivision proposal shall create a lot which is unbuildable pursuant to this section.

(6) Floodproofing: Whenever this section requires a building or structure to be floodproofed, the following standards shall be met:

(A) Such building or structure shall be floodproofed in accordance with any rules for floodproofing promulgated by the city manager pursuant to chapter 1-4, "Rulemaking," B.R.C. 1981, and with FEMA Technical Bulletins 2-93, Flood-Resistant Materials Requirements, 3-93, Non-residential Floodproofing-Requirements and Certification, 4-93, Elevator Installation, 6-93, Below-grade Parking Requirements, and 7-93, Wet Floodproofing Requirements;

(B) Such building or structure shall be floodproofed to the flood protection elevation in such a manner that the building or structure is watertight with walls substantially impermeable to the passage of water;

(C) Such building or structure shall have structural components capable of resisting projected hydrostatic and hydrodynamic loads and the effects of buoyancy; and

(D) Such floodproofing shall be certified by a Colorado registered professional engineer or registered architect to comply with this paragraph. Such certifications shall be provided to the city manager as set forth in paragraph 9-3-2(d)(2), B.R.C. 1981.

(7) Hazardous Materials: No person shall store a hazardous substance at or below the flood protection elevation for the area of the floodplain in which it is located, except for the storage of gasoline in existing and replacement underground tanks in existing gasoline service stations and service garages, which tanks are designed to prevent infiltration and discharge into floodwaters and which are adequately anchored and shielded against rupture. For purposes of this paragraph, "existing" means in place and in use on January 1, 1989.

(8) Automobile Parking: Notwithstanding other provisions of this title, no person shall establish an area for automobile parking in any portion of the floodplain where flood depths exceed eighteen inches.

(9) Flood Warning System: No owner of a hotel, a motel, a dormitory, a rooming house, a hostel, a school, a bed and breakfast, a daycare center, a group home, or a residential or congregate care facility located in the Boulder Creek floodplain shall fail to provide a flood warning system approved by the city manager that is connected to a point of central communication in the building with twenty-four-hour monitoring. No such person shall fail to maintain such a flood warning system.

(10) Rental Property: No owner of property that is located in a floodplain and subject to a city rental license under chapter 10-3, "Rental Licenses," B.R.C. 1981, shall fail to post on the exterior of the premises at the entrance a sign approved by the city manager stating that the property is subject to flood hazard and containing such further information and posted at such other locations inside the building as the city manager may require.

(11) Manufactured Housing: All manufactured homes placed in the city after July 1, 1989, and all manufactured homes which are substantially improved or substantially modified shall be elevated on a permanent foundation so that the lowest floor of the manufactured home is at or above the flood protection elevation and is securely anchored to an adequately anchored foundation system, and shall meet the anchorage and tie-down requirements of paragraph (a)(2) of this section.

(12) Recreational Vehicles: In order to reduce debris and hazard potential, recreational vehicles shall either: a) be in the floodplain for fewer than one hundred eighty consecutive days, b) be fully licensed and ready for highway use, or c) meet the permit requirements and elevation and anchoring requirements for manufactured homes.

(13) Structure Orientation: In order to minimize the obstruction to flow caused by buildings, to the extent consistent with other city policies regarding solar access, new structures shall be placed with their longitudinal axes parallel to the predicted direction of flow of floodwaters or be placed so that their longitudinal axes are on lines parallel to those of adjoining structures.

(14) Existing Uses: The use of any land or structure that was lawful before the application of this section or any amendment thereto but that does not conform to the requirements of this section may be continued subject to the requirements of this section. If such a use not conforming to the requirements of this section is discontinued for twelve consecutive months, no person shall use the land or structure thereafter unless such use conforms to the requirements of this section.

(15) New Uses: All uses allowed by the underlying zoning district may be established, subject to the requirements of this section, except for the outdoor or uncontained storage of moveable objects below the flood protection elevation.

(16) Existing Structures: Any structure in existence before the enactment of this section or any amendment thereto that does not conform to the requirements of this section may remain or may undergo rehabilitation subject to the requirements of this section. Further, any such structure may be otherwise improved as follows:

(A) Any person making an expansion or an enlargement to an existing residential structure shall elevate the lowest floor, including the basement, of the expanded or enlarged portion to or above the flood protection elevation.

(B) Any person making an expansion or an enlargement to an existing nonresidential structure shall floodproof or elevate the lowest floor, including the basement, of the expanded or enlarged portion to or above the flood protection elevation.

(C) Any person making a substantial modification or a substantial improvement to any existing nonresidential structure shall floodproof or elevate the lowest floor, including the basement, of the substantially modified or improved portion to or above the flood protection elevation and shall floodproof the remainder of the existing structure.

(D) Any person making a substantial modification or a substantial improvement to any existing residential structure shall elevate the lowest floor, including the basement, of the entire residential structure to or above the flood protection elevation.

(17) New Structures: Construction of new structures shall meet the following requirements:

(A) Any person constructing a new residential structure shall elevate the lowest floor, including the basement, to or above the flood protection elevation;

(B) Any person constructing a new nonresidential structure shall floodproof in a manner requiring no human intervention or elevate the lowest floor, including the basement, to or above the flood protection elevation with the following exceptions:

(i) Open air carwashes;

- (ii) Unheated pavilions;
- (iii) Unfinished or flood resistant building entryways or access areas;
- (iv) Garden storage sheds;
- (v) Sidewalks, paving, or asphalt, concrete, or stone flatwork;
- (vi) Fences; and
- (vii) Poles, lines, cables, or other transmission or distribution facilities of public utilities.

(18) Enclosures: Enclosures below the lowest floor that are unfinished or flood resistant, usable solely for parking of vehicles, crawl spaces, building access or storage, in an area that is not a basement, and that are not floodproofed as set forth in this section shall meet the following requirements:

(A) Compliance with the provisions of paragraphs (a)(2), (a)(3), and (a)(4) of this section; and

(B) Design and construction that automatically equalizes hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.

(i) Designs for meeting this requirement shall meet or exceed the following minimum criteria: a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(ii) Any designs not in conformance with subparagraph (a)(18)(B)(i) of this section, shall be certified by a registered professional engineer or architect and shall conform with FEMA Technical Bulletin 1-93, Openings in Foundation Walls.

(C) Fully enclosed areas below the lowest floor subject to this provision, include the following:

(i) Residential garages placed at or above grade;

(ii) Enclosures or vestibules that are attached to structures and that are utilized for storage or entryways;

(iii) Crawl spaces; and

(iv) Outdoor pavilions and patio enclosures with removable walls not located in the high hazard zone.

(19) Below Grade Crawl Space Construction: New construction, expansion or enlargement, substantial improvement and substantial modification of any below grade crawl space shall meet the following requirements:

(A) Interior grade elevation that is below the base flood elevation shall be no lower than two feet below the lowest adjacent grade;

(B) The height of the below grade crawl space measured from the interior grade of the crawl space to the top of the foundation wall shall not exceed four feet at any point;

(C) Adequate drainage systems shall allow floodwaters to drain from the interior area of the crawl space following a flood; and

(D) The provisions of paragraphs (a)(2), (a)(3), (a)(4) and (a)(18) of this section shall be complied with.

Ordinance No. 6034 (1998)

9-3-4 Regulations Governing the Conveyance Zone.

In the conveyance zone, the following standards apply:

- (a) The provisions of section 9-3-3, "Regulations Governing the Floodplain," B.R.C. 1981.

(b) The provisions of section 9-3-5, "Regulations Governing the High Hazard Zone," B.R.C. 1981, if the land is also located in the high hazard zone.

(c) All uses allowed under the provisions of section 9-3-3, "Regulations Governing the Floodplain," B.R.C. 1981, if they are not prohibited by the underlying zoning district or any ordinance of this city, may be established except that no person shall establish or change any use that results in any rise in the elevation of the one hundred-year flood.

(d) All structures allowed under section 9-3-3, "Regulations Governing the Floodplain," B.R.C. 1981, may be established except that no person shall:

(1) Place any structure in the conveyance zone that will result in any rise in the elevation of the one hundred-year flood; or

(2) Place any obstruction in the conveyance zone, except a device reasonably necessary for flood management if the device is designed and constructed to minimize the potential hazards to life and property.

(e) No person shall carry out any other development that results in any rise in the elevation of the one hundred-year flood.

9-3-5 Regulations Governing the High Hazard Zone.

In the high hazard zone of the floodplain, the following standards apply:

(a) The provisions of section 9-3-3, "Regulations Governing the Floodplain," B.R.C. 1981.

(b) The provisions of section 9-3-4, "Regulations Governing the Conveyance Zone," B.R.C. 1981, if the land is also located in the conveyance zone.

(c) All uses allowed under the provisions of section 9-3-3, "Regulations Governing the Floodplain," B.R.C. 1981, if they are not prohibited by the underlying zoning district or any other ordinance of the city, may be established, except that no person shall:

(1) Change the use of an existing structure intended for human occupancy from a nonresidential use to a residential use or use as a school, daycare center, group home, residential care facility, or congregate care facility.

(2) Establish any new parking lot for motor vehicles.

(3) Establish any campground.

(d) All structures allowed under the provisions of section 9-3-3, "Regulations Governing the Floodplain," B.R.C. 1981, may be established, except that no person shall:

(1) Construct or place any new structure intended for human occupancy.

(2) Expand, enlarge, or make a substantial modification or substantial improvement to any existing structure intended for human occupancy. Notwithstanding this provision, a person may reconstruct a non-flood-damaged structure or portion thereof, which otherwise does constitute a substantial improvement, under the provisions of subparagraphs 9-3-3(a)(16)(C) and (a)(16)(D), B.R.C. 1981.

9-3-6 Floodplain Development Permits.

(a) An applicant for a floodplain development permit shall pay the fee prescribed by section 4-20-44, "Floodplain Development Permits and Flood Control Variance Fees," B.R.C. 1981, and shall complete an application form provided by the city manager that shall include, without limitation, the following:

(1) The written consent of the owners of all property subject to the development request;

(2) A written statement addressing the criteria for approval;

(3) A surface view plan showing elevations and contours of the ground; pertinent structures, fill, and storage elevations; sizes, locations, and spatial arrangements of all proposed, anticipated, and existing structures on the site; location and elevations of streets, water supplies and sanitary facilities; and soil types; and

(4) Specifications for building construction and materials, filling, dredging, grading, channel improvements and changes, storage of materials, water supply, and sanitary facilities.

(b) The manager may require the applicant to furnish additional information and details deemed necessary to evaluate the effects of the proposed construction upon the floodplain, including, without limitation:

(1) Valley cross sections showing the floodplain surrounding the watercourse, cross sections of the area to be occupied by the proposed development, and one hundred-year flood maximum water surface elevation information;

(2) A profile showing the slope of the bottom of the channel or thalweg of the watercourse;

(3) A floodplain analysis by a Colorado registered professional engineer of the flood profile, elevation, and velocity, using methodology acceptable to FEMA, including existing and anticipated uses and making a determination that the proposed construction or development will not cause a rise in the elevation of the water surface of a one hundred-year flood;

(4) A structural analysis by a Colorado registered professional engineer showing that any proposed structures will be adequately designed and constructed to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy and scouring.

(c) When reviewing an application for a permit, the city manager shall determine which portion or portions of the floodplain are affected by the particular development request and shall then apply the provisions of sections 9-3-3, "Regulations Governing the Floodplain," 9-3-4, "Regulations Governing the Conveyance Zone," and 9-3-5, "Regulations Governing the High Hazard Zone," B.R.C. 1981, as applicable. The manager also shall determine whether the application meets the intent of this chapter prescribed by subsection 9-3-2(a), B.R.C. 1981, after considering the following factors:

(1) The effects upon the efficiency or capacity of the conveyance zone and high hazard zone;

(2) The effects upon lands upstream, downstream, and in the immediate vicinity;

(3) The effects upon the one hundred-year flood profile;

(4) The effects upon any tributaries to the main stream, drainage ditches, and any other drainage facilities or systems;

(5) Whether additional public expenditures for flood protection or prevention will be required;

(6) Whether the proposed use is for human occupancy;

(7) The potential danger to persons upstream, downstream, and in the immediate vicinity;

(8) Whether any proposed changes in a watercourse will have an adverse environmental effect on the watercourse, including, without limitation, stream banks and streamside trees and vegetation;

(9) Whether any proposed water supply and sanitation systems and other utility systems can prevent disease, contamination, and unsanitary or hazardous conditions during a flood;

(10) Whether any proposed facility and its contents will be susceptible to flood damage and the effect of such damage;

(11) The relationship of the proposed development to the Boulder Valley Comprehensive Plan and any applicable floodplain management programs;

(12) Whether safe access is available to the property in times of flood for ordinary and emergency vehicles;

(13) Whether the applicant will provide flood warning systems to notify floodplain occupants of impending floods;

(14) Whether the cumulative effect of the proposed development with other existing and anticipated uses will increase flood heights; and

(15) Whether the expected heights, velocities, duration, rate of rise, and sediment transport of the floodwaters expected at the site will adversely affect the development or surrounding property.

(d) If the city manager determines that the applicant meets the purposes and requirements of this chapter, the manager shall issue the permit and may attach such conditions as deemed necessary to further the purposes of this chapter. However, any application involving a change of watercourse shall be referred to the planning board for public hearing and decision, with call-up potential by the city council, subject to the procedures in section 9-4-2, "Development Review Procedures," B.R.C. 1981.

(e) A permit issued on or after April 7, 1985, expires three years after its date of issuance, if the permittee has not commenced construction under the permit. The term "commenced construction" shall mean the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation; but does not include land preparation, grading and filling, or installation of streets or sidewalks.

(f) No person who has obtained a permit shall fail to construct in accordance with their approved application and design.

(g) Floodplain development permits that allow for development in the conveyance zone or the high hazard zone, or which will involve a change of watercourse, shall be decided by the city manager. The decision of the city manager shall be subject to call-up by the planning board, or appeal by any aggrieved party to the planning board, subject to the call-up and appeal procedure of section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981.

(h) A floodplain development permit for any of the following items is effective upon the date of its issuance:

(1) Sidewalks, parking lots, or other concrete, asphalt, or stone flatwork that do not modify existing grade;

(2) Underground utility facilities that do not modify existing grade;

(3) Uninhabited overhead structural projections, no portion of which extends below the flood protection elevation; or

(4) Rehabilitation of an existing structure in accordance with the definitions in chapter 9-16, "Definitions," B.R.C. 1981. In addition, for properties in the high hazard zone, the rehabilitation shall not result in a prohibited change in use as set forth in subsection 9-3-5(c), B.R.C. 1981.

(i) No person shall initiate any use after obtaining a permit under this section without first submitting to the city manager a certification by a Colorado registered professional engineer that the development has been completed in compliance with the approved permit application and that all conditions have been fulfilled.

Ordinance No. 6034 (1998)

9-3-7 Variances.

(a) A person wishing to expand or enlarge an existing structure that does not conform to the requirements of this chapter and cannot be made to conform without unreasonable expense or unreasonable impact on the existing structure may apply to the city manager for a variance from the requirements of subparagraphs 9-3-3(a)(16)(C) and (a)(16)(D), B.R.C. 1981, except that no variance shall be granted for expansion or enlargement of any structure constructed after July 12, 1978, unless such expansion or enlargement conforms to the flood protection elevation requirement in effect at the time of the original construction.

(b) The city manager shall not grant a variance under this section unless the manager determines that:

(1) Considering the flood hazard, the variance is the minimum necessary to afford relief;

(2) To do so would not result in additional threats to public safety, extraordinary public expense, nuisance, fraud, victimization of the public, or for variances in the conveyance zone a rise in the elevation of the water surface of a one hundred-year flood, or be in conflict with existing provisions of this code or any ordinance of the city; and

(3) Failure to grant the variance would result in exceptional hardship to the applicant.

(c) The manager shall examine the following factors in determining whether or not to grant a variance under this section:

- (1) The danger to life and property due to flooding or erosion damage;
 - (2) The likelihood that the proposed development, in conjunction with existing and anticipated development, may increase flood hazards;
 - (3) The relationship of the proposed development to the Boulder Valley Comprehensive Plan and any applicable floodplain management programs; and
 - (4) The cost of providing essential services such as maintaining and protecting public utility systems, roads, and bridges during and after floods.
- (d) The city manager shall not grant a cumulative total of variances that increases a structure's floor area by more than ten percent of the structure throughout the life of the structure.
- (e) An applicant for a variance shall apply on forms provided by the city manager and pay the fee prescribed by section 4-20-44, "Floodplain Development Permits and Flood Control Variance Fees," B.R.C. 1981, unless a floodplain development permit is required as well, in which case no fee is required for the variance.
- (f) Any decision by the city manager to approve a variance is subject to call-up by the planning board or appeal by any aggrieved party to the planning board as described by section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981.
- (g) When granting any variance that allows for construction below FEMA's one hundred-year flood protection elevation, the city manager shall provide to the recipient of the variance written notice that the proposed construction does not conform with FEMA guidelines and that the proposed construction and the original structure may be subject to increased flood insurance premiums.

9-3-8 Development Violating Chapter Is Nuisance.

- (a) Every development placed or maintained in the floodplain contrary to the terms of this chapter constitutes a public nuisance that may be enjoined and abated by suit or action by the city or any resident of the city.
- (b) In the event of a flood, when a structure intended for human occupancy located within a high hazard zone is damaged to an extent exceeding fifty percent of its market value before the flood damage occurred, it may not be repaired or replaced, and use of the structure for human occupancy shall cease. After written request of the property owner within ninety days after the date on which the damage occurred, subject to appropriation by the city council of sufficient funds therefore, the city manager shall agree to contract or purchase the land upon which the structure was located at its fair market value after the damage occurred.
- (c) When this section provides for acquisition of a structure and the city manager does not accept as reasonable the values submitted by an applicant, the fair market value shall be determined by an appraiser acceptable to the applicant and the manager, whose cost shall be borne equally by the city and the applicant. If the applicant and the manager are unable to agree upon an appraiser, each shall select an appraiser, whose cost shall be borne by each respective selector, and the two appraisers shall select a third appraiser, whose cost shall be borne equally by the city and the applicant. The value shall be the average of the values determined by the three appraisers.

9-3-9 Wetlands Protection.

- (a) Legislative Intent:

(1) It is the intent of the city council in enacting this section to preserve, protect and enhance wetlands. The council finds that wetlands are indispensable and fragile natural resources with significant development constraints due to high groundwater, flooding, erosion, and soil limitations, and that development activities may threaten wetlands. The preservation of wetlands under this section is consistent with the goal of wetland protection set forth in the Boulder Valley Comprehensive Plan.

(2) The city council finds that many wetlands have been lost or impaired by draining, dredging, filling, excavating, building, polluting, and other acts. Piecemeal and cumulative losses destroy or diminish the functions of the remaining wetlands.

(3) The city council finds that it is necessary for the city to ensure protection for wetlands by discouraging development activities in wetlands and those activities at adjacent sites that may adversely affect wetlands. When

development is permitted and the destruction of wetlands cannot be avoided, the city council finds that impacts on wetlands should be minimized and mitigation provided for unavoidable losses.

(4) Nothing in this section shall be construed to prevent irrigation companies from diverting and carrying water under their historic water rights or owners of such rights from exercising those historic rights.

(5) Nothing in this section shall be construed to prevent compliance with applicable state or federal statutes and regulations.

(b) Scope and Application: It is not the intent of this section to prohibit all activities within the regulated areas, but rather to encourage avoidance of regulated activities within the regulated area and to require a permit or best management practices in regulated areas.

(1) Regulated Area: This section applies to the following:

(A) Areas within the city shown on the wetlands maps adopted pursuant to subsection (c) of this section, as amended;

(B) All wetlands on city owned or managed lands inside or outside the city limits;

(C) All city activities affecting wetlands inside or outside of the city limits;

(D) Buffer areas associated with all of the above.

(2) Exempt Wetlands: Isolated wetlands with a size of less than four hundred square feet, regardless of property boundaries, are exempt from this section unless the wetland site provides habitat for the following species:

(A) Plant, animal, or other wildlife species listed as threatened or endangered by the United States Fish and Wildlife Service;

(B) Plant, animal, or other wildlife species listed by the State of Colorado as rare, threatened or endangered, species of special concern, or species of undetermined status; or

(C) Plant, animal, or other wildlife species listed in the Boulder County Comprehensive Plan as critical; and

(D) Plant, animal, or other wildlife species listed in the Boulder Valley Comprehensive Plan as a species of local concern.

(3) Most Stringent Restrictions Prevail: It is not intended that this section repeal, abrogate, supersede, or impair any existing federal, state, or local law, easement, covenant, or deed restriction. However, if this section imposes greater or more stringent restrictions, the provisions of this section shall prevail. Specifically, if an applicant for a wetlands permit pursuant to this section also acquires authorization under section 404 of the Clean Water Act from the United States Army Corps of Engineers, the applicant shall meet any greater or more stringent restrictions set forth in this section in addition to and independent of the restrictions of such permit.

(c) Wetlands Mapping and Evaluation:

(1) Wetlands Maps: The wetlands maps and wetlands evaluations are hereby adopted and will be maintained on file in the planning department.²

(2) Significant Wetlands: Significant wetlands are designated on the adopted wetlands maps. Wetlands are defined as significant according to the definition set forth in chapter 9-16, "Definitions," B.R.C. 1981.

(3) Wetland Functional Equivalents: At the request of the applicant or an interested party and after payment of the fee, if any, prescribed in section 4-20-53, "Wetland Permit and Map Revision Fees," B.R.C. 1981, by the party initiating the request, or at the city manager's initiative, the city manager will perform a wetland functional evaluation. Functional evaluations shall be determined or modified in accordance with the description of wetland functions in the report entitled: Advanced Identification of Wetlands in the City of Boulder Comprehensive Planning Area (1988), by D. Cooper, Ph.D.

(4) Wetland Boundary Determination:

(A) Wetland boundaries may be modified by ordinance by means of the performance of a wetland boundary determination. Wetland boundary determinations shall be performed in accordance with the procedures specified in the Federal Manual For Identifying and Delineating Jurisdictional Wetlands (January, 1989) Interagency Cooperative Publication, Fish and Wildlife Service, Environmental Protection Agency, and Department of Army, Soil Conservation Service or defined in chapter 9-16, "Definitions," B.R.C. 1981. The methodology for a "comprehensive" wetland boundary determination shall be used for all wetlands under this section.

(B) At the request of the applicant or an interested party and after payment of the fee, if any, prescribed in section 4-20-53, "Wetland Permit and Map Revision Fees," B.R.C. 1981, by the party initiating the request, or at the city manager's initiative, the city manager will perform a wetland boundary determination.

(5) Wetland Buffer Area Determination: The extent of wetland buffer areas shall vary according to wetland function and shall include areas adjacent to the wetland that are necessary to preserve the natural water source of the wetland, or necessary for the protection of animal and plant habitat associated with the wetland. In the absence of a specific buffer area determination, the buffer area for significant wetlands shall be fifty feet from each point on the wetland boundary, and the buffer area for all other wetlands shall be twenty-five feet from each point on the wetland boundary.

(6) Annexation: Prior to annexation, all wetlands and buffer areas on the property to be annexed shall be mapped by the city after the fee prescribed in section 4-20-53, "Wetland Permit and Map Revision Fees," B.R.C. 1981, is paid and according to the procedures set forth in this section. This mapping shall include a functional evaluation of the wetlands performed by the city. The approved mapping and evaluation shall be adopted as an update to the wetlands maps as a part of the annexation ordinance.

(d) Regulated Activities:

(1) All Activities Are Regulated: No person shall conduct any regulated activity within a regulated area without first obtaining a wetland permit or meeting the requirements of this section. No person shall violate any provision of this section or any requirement of any wetland permit.

(2) Activities Requiring a Wetland Permit: Except as provided in paragraphs (d)(3) and (d)(4) of this section, any activity in a regulated area requires a wetland permit. The application requirements, process, standards, and conditions for all types of wetland permits are provided in section 9-2-6, "Development Review Application," B.R.C. 1981. Activities that require a wetland permit include, without limitation:

(A) Placement, removal, excavation, or dredging of any material, including, without limitation, any soil, sand, gravel, mineral, aggregate, or organic material;

(B) Construction, total reconstruction or replacement, installation, erection, expansion, enlargement, or placement of any obstruction, development, facility, utility, road, surface improvement, public infrastructure, building, or structure;

(C) Removal of any existing vegetation or any activity which may cause any damage, deterioration, or loss of vegetation in a wetland;

(D) Alteration of the surface and subsurface hydrology, water table, or water quality by any means, including, without limitation, draining, ditching, trenching, impounding, flooding, or pumping; and

(E) Disturbance of existing surface drainage characteristics, sedimentation patterns, flow patterns, or flood retention characteristics by any means, including, without limitation, grading and alteration of existing topography.

(3) Activities Exempt From a Wetland Permit Requiring Best Management Practices and Notification: Subject to the application of best management practices as set forth in paragraph (d)(5) of this section and provision of notice as set forth in paragraph (d)(6) of this section, the activities listed in this paragraph are permissible in a regulated area as long as such activity does not significantly alter the function of the wetland:

(A) "Maintenance" as defined in chapter 9-16, "Definitions," B.R.C. 1981;

(B) Ongoing or periodic activities impacting created or recreated wetlands as authorized pursuant to the issuance of a wetlands permit under this section, including, without limitation, the removal of silt and sediment from water quality facilities;

(C) Maintenance of an existing farm or stock pond, irrigation ditch, fence, or drainage system;

(D) Weed control consistent with state and county laws;

(E) Continuation of existing agricultural practices such as the cultivation and harvesting of hay or pasturing of livestock, or a change of agricultural practices which does not result in an increase in impact to the wetland function; and

(F) Revegetation of wetlands or buffer areas consistent with the city's revegetation rules.

(4) Activities Exempt From a Wetland Permit: The following activities are allowed within a regulated area and do not require a permit if they do not reduce the extent of a wetland or significantly reduce the degree to which a wetland performs any function:

(A) Outdoor recreation, such as fishing, birdwatching, hiking, boating, and swimming, so long as they do not harm or disturb the wetland;

(B) Education, scientific research, or field surveying;

(C) Minor improvements and landscape maintenance within a buffer area but outside the boundaries of a wetland, including, without limitation, the pruning of trees, mowing of grass, and removal of dead vegetation and debris; and

(D) Removal of debris and maintenance of vegetation and wildlife habitat subject to the application of best management practices as set forth in paragraph (d)(5) of this section.

(5) Application of Best Management Practices: Where required under the provisions of any wetland permit or as set forth in paragraphs (d)(3) and (d)(4) of this section, the application of best management practices shall comply, at a minimum, with all applicable city rules concerning best management practices as described in chapter 9-16, "Definitions," B.R.C. 1981.

(6) Notice of Regulated Activities: Except for emergency maintenance activities required for the immediate protection of life, safety, or property, or to restore essential public services, written notice of activities listed in paragraph (d)(3) of this section, shall be provided to the city manager at least two weeks prior to the commencement of work. The written notice shall include a full description of the activity, including duration and extent of impacts, and confirmation from a qualified wetland biologist that the activity will not significantly alter the function of the wetland. Work may commence only after the city manager has given written clearance for the activity. Written notice of any emergency maintenance activity shall be provided immediately following the activity.

(e) Wetland Permit and Wetland Boundary Determination Applications:

(1) Information Required: An applicant shall file a complete application for a simple wetland permit, a standard permit, or a wetland boundary determination on a form provided by the city manager. The application shall include, at a minimum, the following information:

(A) Payment of the required application fees as set forth in section 4-20-53, "Wetland Permit and Map Revision Fees," B.R.C. 1981;

(B) The name, address, and phone number of the applicant; and

(C) The location of the proposed activity and the address or legal description of the affected property.

(2) Simple or Standard Wetland Permit Application: An application for a simple or standard wetland permit shall include the following information in addition to that listed in paragraph (e)(1) of this section:

(A) A detailed description of the proposed activity and how the application meets all applicable review criteria;

(B) A site plan which illustrates the regulatory wetland boundary and wetland buffer area as set forth in subsection (b) of this section; the property boundary and the proposed area of impact; and all existing and proposed structures, roads, improvements, watercourses, and drainageways on and adjacent to the property; and

(C) A report prepared by a qualified wetland biologist, which includes:

- (i) Identification of the exact locations and specifications of all regulated activities;
- (ii) An evaluation of the direct and indirect impacts of such activities;
- (iii) A description of the types and sizes of wetlands and buffer areas that will be impacted by the regulated activities;
- (iv) An evaluation and analysis of the proposed activities and all alternatives considered with respect to wetland protection standards as set forth in subsection (g) of this section, including a description of why avoidance of regulatory wetland areas and less damaging alternatives have been rejected by the applicant;
- (v) Any applicable field investigation, monitoring, and clearances for critical species which may be impacted by the proposed activities;
- (vi) A description and specifications for best management practices to be applied as part of the proposed activities;
- (vii) The source, type, and method of transport and disposal of any fill material to be used. Certification that placement of the fill material will not violate applicable state and federal statutes and regulations also shall be required; and
- (viii) A mitigation plan as set forth in subsection (i) of this section, prepared by a qualified wetland biologist where required to mitigate direct or indirect impacts to wetland areas as a result of the proposed activities.

(3) Wetland Boundary Determination: An application for a wetland boundary determination shall include the following information in addition to that listed in paragraph (e)(1) of this section:

(A) A site plan showing the exact location of the current regulatory wetland and buffer areas; and

(B) A wetland boundary determination performed by a qualified wetland biologist in accordance with the procedures specified in the Federal Manual For Identifying and Delineating Jurisdictional Wetlands (January, 1989), Interagency Cooperative Publication: Fish and Wildlife Service, Environmental Protection Agency, and Department of the Army, Soil Conservation Service or a request to the city for a wetland boundary determination.

(4) Simple Wetland Permits:

(A) In determining whether a proposed activity is eligible for a simple wetland permit, one of the following shall apply to the activity:

(i) The activity will occur only in the wetland buffer;

(ii) The activity will permanently impact no more than four hundred square feet of the mapped wetland area; or

(iii) The activity will temporarily impact no more than ten thousand square feet of a mapped wetland area, not including the buffer.

(B) If the proposed activity involves total replacement of an existing improvement, the footprint of the existing structure is not included in the four hundred square feet of the calculated area of disturbance.

(f) Process For Simple Wetland Permits, Standard Wetland Permits and Wetland Boundary Determinations:

(1) Acceptance of Application: Applicants for simple wetland permits or standard wetland permits shall submit an application as set forth in subsection (e) of this section. Upon receipt of an application, the city manager will review the application for completeness. A wetland permit application will be accepted when the city manager determines that it is complete. Such determination shall be made within five to ten days of the submission of the application.

(2) Notification: Upon acceptance of a complete application, public notice will be provided according to the requirements shown in section 9-4-3, "Public Notice Requirements," B.R.C. 1981, using Public Notice Type 5.

(3) Simple Wetland Permit Review: The city manager will consider all comments on a simple wetland permit application and may require the applicant to resubmit for a standard wetland permit based on the nature and extent of public input.

(4) Permit Decision: The city manager will review all simple permit and standard permit applications in accordance with subsections (g), (h), and (i) of this section, and shall approve a permit, approve a permit with conditions or deny the application. Standard permits shall be final fourteen days after issuance. Simple permits shall be final upon issuance.

(5) Referrals, Call-Up or Appeal:

(A) Simple Wetland Permits: For simple wetland permits, there shall be no referrals, call-ups or appeals. An aggrieved party may resubmit an application for a standard wetland permit and proceed pursuant to that process.

(B) Standard Wetland Application: The city manager may refer any standard wetland application directly to the planning board for a decision.

(C) Permit Decisions: The city manager shall forward all standard wetland permit decisions to the planning board. Within fourteen days of the decision, the planning board may call-up, or any aggrieved party may appeal, the city manager decision. Procedures for call-up and appeal shall follow the requirements of section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981.

(6) Wetland Boundary Determination Process:

(A) The city manager shall review the application in accordance with subsection (c) of this section, and may recommend to the planning board the proposed boundary change, recommend the proposed boundary change with modifications, or not recommend the proposed boundary change.

(B) Proposed wetland boundary changes shall be referred to the planning board for public hearing and recommendation to city council. Wetland boundary changes are final after the effective date of an ordinance passed by city council.

(7) Coordination With Other Development Reviews: The city manager may coordinate the application review process with other development review processes.

(8) Amendment Procedures:

(A) Changes to conditions of an approved permit or changes to an approved mitigation plan may be approved by the city manager without submittal of a new application if such changes are minor. Applicants for a minor change to a wetland permit must pay the fee for a simple wetland permit as prescribed in section 4-20-53, "Wetland Permit and Map Revision Fees," B.R.C. 1981. All minor changes to the permit shall be noted, signed, and dated on the approved permit.

(B) If an applicant proposes to amend an approved permit and the proposed amendment is not considered minor under subparagraph (f)(8)(A) of this section, the applicant must submit a complete application and pay the fee for a standard wetland permit as prescribed in section 4-20-53, "Wetland Permit and Map Revision Fees," B.R.C. 1981.

(g) Standards For Wetland Permits: The city manager, the planning board, or the city council shall evaluate a wetland permit application based on the following standards:

(1) Avoidance: The applicant has demonstrated that all adverse impacts on a wetland, either directly or through its associated buffer area, have been avoided through a reduction in the size, scope, or density of the project or a change of project configuration or design;

(2) Unavoidable Impacts: If avoidance is not feasible, then the applicant has demonstrated all of the following:

(A) Minimization: The applicant has demonstrated that any direct or indirect adverse impact on a wetland or its associated buffer area has been minimized to the maximum extent feasible, the activity will result in minimal impact or impairment to any wetland function, and the activity will not jeopardize the continued existence of habitat for the following species:

(i) Plant, animal, or other wildlife species listed as threatened or endangered by the United States Fish and Wildlife Service;

(ii) Plant, animal, or other wildlife species listed by the State of Colorado as rare, threatened or endangered, species of special concern, or species of undetermined status;

(iii) Plant, animal, or other wildlife species listed in the Boulder County Comprehensive Plan as critical; and

(iv) Plant, animal, or other wildlife species listed in the Boulder Valley Comprehensive Plan as a Species of Local Concern.

(B) Public Interest Review: The applicant has demonstrated that the project is in the public interest, considering:

(i) The extent of the public need for the proposed regulated activity;

(ii) The functional values of the wetland that may be affected by the proposed regulated activity;

(iii) The extent and permanence of the adverse effects of the regulated activity on the wetland, either directly or through its associated buffer area;

(iv) The cumulative adverse effects of past activities on the wetland, either directly or through its associated buffer area; and

(v) The uniqueness or scarcity of the wetland that may be affected.

(C) Mitigation Demonstration: The applicant has demonstrated that unavoidable direct and indirect impacts can be successfully mitigated based on the submission of a mitigation plan in conformance with the standards outlined in subsection (i) of this section.

(h) Wetland Permit Conditions:

(1) Permit Conditions: The city manager, the planning board, or the city council may attach such conditions to the granting of a wetland permit as are reasonably necessary to carry out the purposes of this section. To the extent necessary for the regulated activity to take place without adverse impact on the wetland, such conditions may include, without limitation:

(A) Requiring that structures be elevated on piles and otherwise protected against natural or man-made hazards;

(B) Modifying waste disposal and water supply facilities;

(C) Requiring deed restrictions concerning future use and subdivision of lands, including, without limitation, preservation of undeveloped areas as open space and restrictions on vegetation removal;

(D) Restricting the use of an area, which may be greater than the regulated area;

(E) Requiring erosion control and storm water management measures;

(F) Clustering structures;

(G) Restricting fill, deposit of soil, and other activities which may be detrimental to a wetland;

(H) Modifying the project design to ensure continued water supply or other necessary protections for the purpose of maintaining wetland functions;

(I) Requiring or restricting maintenance of a regulated area for the purpose of maintaining wetland functions; and

(J) Requiring submission and approval of a mitigation plan as set forth in subsection (i) of this section.

(2) Financial Guarantee: The city manager will require a financial guarantee in an amount, and with surety and conditions, sufficient to secure compliance with the conditions and limitations set forth in the permit. The

financial guarantee may be any of the options set forth in sections 9-2-20, "Required Improvements and Financial Guarantees," and 9-12-13, "Subdivider Financial Guarantees," B.R.C. 1981.

(i) Mitigation Plan:

(1) Mitigation Plan Required: As a condition of a wetland permit issued under this section, the city manager, the planning board or the city council may require a mitigation plan. A mitigation plan requires the applicant to engage in the restoration or creation of wetlands in order to offset, in whole or in part, the losses resulting from that applicant's actions. This mitigation plan shall not be an alternative to the standards set forth in subsection (g) of this section, but shall be used only to compensate for unavoidable losses. In making a determination of whether a mitigation plan will be required, and the degree to which it is required, the following factors will be considered:

(A) The type and value of the altered wetland's functions, the functions and associated resources to be impaired or destroyed as a result of the proposed regulated activity, and the ecological equivalency of the restored or created wetland. In considering whether the restored or created wetland is the ecological equivalent to the wetland impaired or destroyed, the city manager will accept an evaluation of functional values comparing the wetland impaired or destroyed and the proposed restored or created wetland using the Advanced Identification of Wetlands in the City of Boulder Comprehensive Planning Area (1988), by D. Cooper, Ph.D., or the Wetlands Replacement Evaluation Procedure (1992), by Environmental Concern Inc., or the Wetlands Evaluation Technique (1987), issued by the United States Department of the Army, or similar techniques. In interpreting the provisions of this section, the planning board may adopt design standards;

(B) The type, size, and location of the altered wetland and gains or losses of this particular type of wetland in the Boulder Valley planning area and in the area of the altered wetland; and

(C) The cost and probability of success of the mitigation measures.

(2) Mitigation Plan Requirements:

(A) A mitigation plan shall contain:

(i) An evaluation of all of the factors set forth in paragraph (i)(1) of this section;

(ii) The location and ownership of the proposed mitigation site;

(iii) An evaluation of the suitability of the proposed mitigation site for establishing the restored or created wetland;

(iv) The source and ownership of any water to be used for establishing or maintaining the restored or created wetland;

(v) A description of the sizes and types of wetlands to be impaired or destroyed and restored or created;

(vi) The site hydrology of the restoration or creation area;

(vii) A maintenance program for a period of not less than five years, including, without limitation, weed control, litter and debris removal, watering, repair of water control structures, maintenance of vegetation and wildlife habitat, and clearing of culverts;

(viii) A description of any critical elements and possible problems that may influence the success of the project;

(ix) A timetable for construction and monitoring;

(x) A monitoring program; and

(xi) A demonstration of fiscal, administrative, and technical competence to successfully execute the overall project.

(B) The guidelines for the selection of a location for a wetland restoration or creation project will consider the following order of geographic preferences in the context of the goals of this section:

- (i) On-site;
- (ii) Adjacent to the site;
- (iii) Within the watershed of the existing wetland;
- (iv) Within the Boulder Valley planning area; or
- (v) In unusual cases, outside the Boulder Valley planning area.

(C) In a mitigation plan, replication of the same or greater wetland functional value is required, unless a wetland of a different type or in a different location is justified based on the functions and values of the wetland which is proposed to be altered.

(D) The guidelines for wetland compensation indicating the amount of wetland area to be restored or created compared to wetland area destroyed or impaired are as in table 3-1 of this section.

TABLE 3-1: WETLAND COMPENSATION

	Significant Wetlands	Other Wetlands
Creation	2:1	1.5:1
Restoration	1.5:1	1:1

Lower or higher ratios may be considered if justified. For example, lower ratios may be considered for the following:

- (i) Demonstrated long-term success of similar restoration or creation plans;
- (ii) In-kind restoration or creation rather than out-of-kind;
- (iii) On-site mitigation rather than off-site;
- (iv) Similarity of functions in the restored or created wetland compared to the wetland functions destroyed or impaired; and
- (v) Prompt replacement of wetland functions.

(3) Mitigation Banking Program: Upon adoption of a wetland mitigation banking program by the city council, if the city manager, the planning board or the city council determines that the public interest is better served, a fee may be accepted in lieu of direct action on the part of the applicant to initiate a wetland restoration or wetland creation project to offset wetland destruction or impairment from the permitted activity. Fees for compensation of wetland destruction or impairment will be set based upon the amount that would be required to perform equivalent wetland restoration or creation. Such fees shall be held for the express use of wetland restoration and creation projects, including, without limitation, the acquisition of water rights for the use of compensatory mitigation.

(4) Financial Guarantee: Prior to receiving a final certificate of occupancy, the applicant and any successor owner of any portion of the property subject to a wetland permit shall either complete the mitigation or provide a financial guarantee in an amount sufficient to guarantee the performance of the mitigation plan. If a building permit is not required for a proposed activity, a financial guarantee is required prior to issuance of a wetland permit. The guarantee shall be in an amount necessary to secure the full costs, as determined by the city manager, of construction and monitoring as described in the approved mitigation plan. The city manager will annually review the guarantee to assure that it meets the full current cost of constructing the improvements whose installation it secures. The manager may require the applicant to amend the guarantee to meet such current costs. The financial guarantee may be in any of the forms as described in subsection 9-12-13(f), B.R.C. 1981. If the financial guarantee is in the form of the escrow of funds, the city manager will take the measures described in subsection 9-12-13(g), B.R.C. 1981, to ensure that the funds are maintained in an appropriate manner.

(j) Mitigation Monitoring and Release of Mitigation Plan Responsibilities:

(1) The applicant and any successor owner of any portion of any property subject to a wetland permit is responsible for the implementation of any related wetland mitigation plan for up to five years from the date of completion of construction and planting of all vegetation required by the plan and acceptance of such construction and planting by the city manager.

(2) Any failure of a mitigation plan during the five-year monitoring period shall be remedied by the applicant and any successor owner of any portion of the property, who shall be jointly and severally liable to the city for the costs of such remedy. Any such failure shall trigger a new guarantee period of equivalent length. The city manager will release the financial guarantee at the end of the monitoring period if the original goals of the plan have been achieved.

(k) Expiration of Wetland Permit:

(1) A wetland permit expires three years after the date of final approval, if:

(A) A building permit has not been issued and construction has not commenced; or

(B) No building permit is required and construction has not commenced.

(2) For good cause, an applicant or any successor owner of any portion of land subject to a wetland permit may request an extension of an original permit by filing an application with the city manager prior to the expiration date of the permit, for up to an additional three year period. The city manager may deny the request if good cause is not shown, if the original intent of the permit is altered or extended by the renewal, or if the applicant failed to abide by the terms of the original permit.

(l) Enforcement:

(1) In order to carry out the provisions of this section, the city manager may enter upon private land not otherwise open to the public in a reasonable and lawful manner, with reasonable notice to the owner or manager of the property during reasonable business hours for the purposes of inspection and observation.

(2) If denied access to any property or building, the city manager may apply to the municipal court for a search warrant or administrative inspection warrant.

(3) The city manager may suspend or revoke a wetland permit pursuant to the procedures set forth in sections 4-1-10, "Revocation of Licenses," and 4-1-11, "Revocation Not Exclusive Penalty," B.R.C. 1981. Permits may be suspended or revoked for a failure to comply with the provisions of the permit.

(4) In addition to other remedies, the city manager will have the following powers:

(A) In the event of a violation, the city manager will have the power to issue an appropriate order to any person responsible for a violation of this section and to the property owner. In the order, the manager may specify the initial corrective measures required, including, without limitation, wetland restoration and creation measures for the destroyed or impaired wetland. If the responsible person or property owner does not complete such measures within the time required by the order, or request an administrative hearing by the city manager within seven days of the issuance of such order, the city may restore the affected wetland to its prior condition and restore or create other wetlands for the purpose of offsetting losses sustained as a result of the violation. The person responsible for the original violation and the property owner shall be liable to the city for the cost of such actions in addition to any fines that may be levied by the municipal court for violating this section.

(B) If any property owner fails or refuses to pay, when due, any charges imposed pursuant to this section, the city manager may charge the costs against the financial guarantee, pursue other collection remedies, and certify due and unpaid charges, including interest, to the Boulder County Treasurer to be levied against the person's property for collection by the county in the same manner as delinquent general taxes upon such property are collected, as provided by section 2-2-12, "City Manager May Certify Taxes, Charges, and Assessments to County Treasurer For Collection," B.R.C. 1981.

(C) To guide wetland restoration and wetland creation actions, the city manager may order the violator to develop and amend a plan as described in subsection (h) of this section.

(m) Emergency Exemption: The city manager may suspend any portion of this section in the event of an emergency situation which threatens irreparable harm to the health, safety or welfare of the inhabitants of the city or the city's planning area or to the city's environment.

(n) Regulations: The city manager may adopt rules and regulations that the manager determines are reasonably necessary to implement the requirements of this section.

Ordinance Nos. 5562 (1993); 5604 (1993); 5725 (1995); 5788 (1996); 7182 (2002); 7373 (2004); 7366 (2004); 7522 (2007)

9-3-10 Airport Influence Zone.

(a) Legislative Intent: The purpose of this section is to enact an airport influence overlay zone map and associated regulations, providing for certain land development controls on the area surrounding the airport which may be affected by aircraft accidents and by noise, vibrations, fumes, dust, smoke, fuel particles, and other annoyances and influences from airport operations. Further, the use of land within the airport influence overlay zone affects the safe and efficient operation of the airport and aircraft using the airport, and this section is intended to minimize risks to public safety and hazards to aircraft users, and to protect the capacity of the airport to serve the city's air transportation needs. Finally, this section is intended to promote sound land use planning in the airport influence overlay zone.

(b) Applicability of Section: The requirements of this section supplement those imposed on the same lands by any underlying zoning provision of this code or any other ordinance of the city. If there is a conflict between such requirements, the more restrictive controls.

(c) City-Wide Restrictions:

(1) Prohibitions: No person shall establish or maintain any structure or use which:

- (A) Creates any electrical interference with navigational signals or radio communications at the airport;
- (B) Mimics airport lights; or
- (C) Results in glare affecting aircraft using the airport.

(2) Hazards: No person shall establish or maintain any hazard.

(3) Development Permits: No development permit shall be granted or approved that would create a hazard or that would allow an existing structure or use to become a greater hazard. Notwithstanding the provisions of this paragraph and subsection 9-6-9(c), B.R.C. 1981, no person shall, on or after July 1, 1989, acquire any vested right to maintain any hazard which the city manager may subsequently determine to exist, nor shall the city be estopped from proceeding to remove such hazard, under the procedure set forth in paragraph (c)(4) of this section.

(4) Abatement: Any use or structure which the city manager determines to violate any provision of this subsection shall be discontinued upon order of the manager, subject to the procedures set forth in chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, concerning quasi-judicial hearings.

(d) Zones: In order to carry out the purposes of this section, overlay zones one through four are established as shown on the "Airport Influence Overlay Zone Map," which shall be an attachment to the Zoning District Map of the City of Boulder, Colorado, adopted by section 9-5-3, "Zoning Map," B.R.C. 1981, and on file with the City Planning Department, as amended.

(e) Zone Regulations: The zones shall be regulated as follows:

(1) Zone Four:

(A) A person annexing to the city and thereafter constructing a new principal structure in the city shall be required to sign an avigation easement as a condition of obtaining a building permit, and the easement shall be recorded. An applicant for a development permit pursuant to chapter 9-2, "Review Processes," B.R.C. 1981, may be required to sign an avigation easement as a condition of obtaining a building permit, and the easement shall be recorded.

(B) All new utility lines shall be placed underground.

(2) Zone Three:

(A) An avigation easement may be required as set forth in subparagraph (e)(1)(A) of this section.

(B) All new utility lines shall be placed underground.

(C) Applications for development shall be referred to the Airport Manager for review and comment.

(3) Zone Two:

(A) An avigation easement may be required as set forth in subparagraph (e)(1)(A) of this section.

(B) All new utility lines shall be placed underground.

(C) No new residential use, including, without limitation, nursing homes, group homes, congregate care facilities, group care facilities, and residential care facilities, is permitted.

(D) Schools, hospitals, churches, libraries, hotels and motels, and daycare facilities are permitted only if permitted by the underlying zoning and determined to be sited and designed in a manner which substantially alleviates the concerns set forth in subsection (a) of this section. Such determination shall be made by the city manager, subject to a call-up by the planning board pursuant to section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981. No hearing shall be required for such review, but adjacent property owners shall be notified by first class mail at least fourteen days prior to approval by the city manager.

(E) Nonconforming uses are not permitted if discontinued for one year.

(F) Applications for development shall be referred to the Airport Manager for review and comment.

(4) Zone One: Other than airport construction, no new construction is permitted. All new utility lines shall be placed underground. Nonconforming uses are not permitted if discontinued for one year.

(f) Federal Regulations: In addition to the other provisions of this section, the city manager shall enforce all applicable federal regulations, including, without limitation, those contained at Federal Aviation Regulation Part 77, Objects Affecting Navigable Airspace, U.S. Department of Transportation, Federal Aviation Administration, January 1975, as amended, for the purpose of controlling heights of objects in the airport vicinity, as codified under subsection E, Airspace, of title 14 of the Code of Federal Regulations, incorporated herein by this reference. As of the date of adoption of this subsection, federal regulations require a clear area five hundred feet in width, centered on the centerline of the runway, and extending outward from such point at a 7:1 slope.

(g) Violations: No person shall violate any provision of any avigation easement or violate any prohibition relating to any zone. No variance shall be permitted of any of the requirements of this section.

Ordinance Nos. 5200 (1991); 5562 (1993)

9-3-11 Medium Density Overlay Zone.

(a) Purpose and Scope: Medium density residential areas adjacent to the downtown central business district originally developed with a predominantly single-family character and are now redeveloping with higher densities. Development and redevelopment in certain RM-2 and RM-3 zoning districts has been very disruptive of the existing residential character of those areas, has failed to preserve certain historic structures, has led to many inappropriate structures being erected and thus has negatively affected the value of adjoining properties. The medium density overlay zone map which designates those portions of the medium density areas to which this section applies is set forth as appendix D, "Medium Density Overlay Zone," of this title.

(b) Additional Regulations: The following additional regulations shall apply in the medium density residential overlay zone:

(1) No person shall construct a second detached dwelling on a lot as set forth in section 9-7-9, "Two Detached Dwellings on a Single Lot," B.R.C. 1981.

(2) No person shall create additional multiple-dwelling units except that one additional dwelling unit per lot may be created by internal conversions of existing principal structures that are not enlarged in size subsequent to September 2, 1993, and provided that such conversions do not involve exterior modifications other than for access, including, without limitation, doors, windows, and stairways.

¹ Adopted by Ordinance No. 7476.

² The interim development regulations adopted by Ordinance No. 7558 also apply to Wetlands Mapping.