

Agenda Item 21

Notice of Formal Rulemaking

Floodplain Rules and Regulations

January 26-27, 2010 CWCB Meeting
Denver, CO



Advantages of Revising the Rules

- Updates needed to supplement federal regulations and to stay in compliance with FEMA policies
- Encourage enrollment into, and increase the number of automatic “points” for communities already in the Community Rating System (CRS)
- Clarify unclear rules and modify them to remove known ambiguities
- Assist communities with managing for flood hazard reduction, property protection, and public safety

Rules and Regulations Advisory Committee (local, state, federal and private sector participation)

CWCB Flood Protection Staff

Brian Varrella– City of Fort Collins

Greg Schroeder– Eagle County

David Mallory– UD&FCD/CASFM

Barb Fitzpatrick– FEMA Region VIII

Alan Taylor – Private Consultant

Tim Feehan – CWCB Staff

Kevin Rein – DWR

Paul Perri - DWR

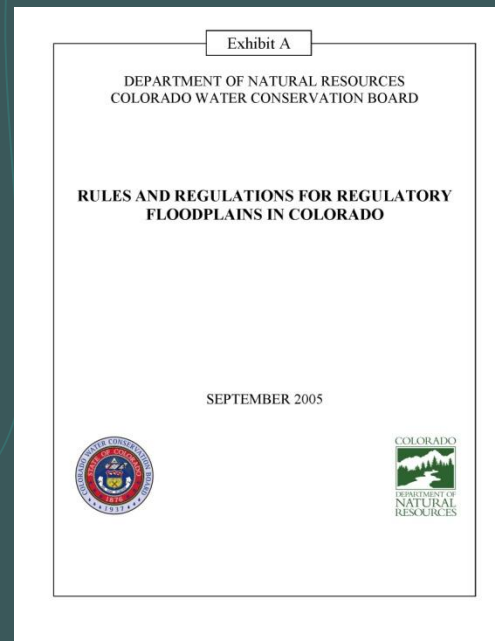
Susan Schneider - AG's Office



Floodplain Rules are based on Flood Section Staff development with significant input and guidance from the Advisory Committee.

Summary Statement Rule #1

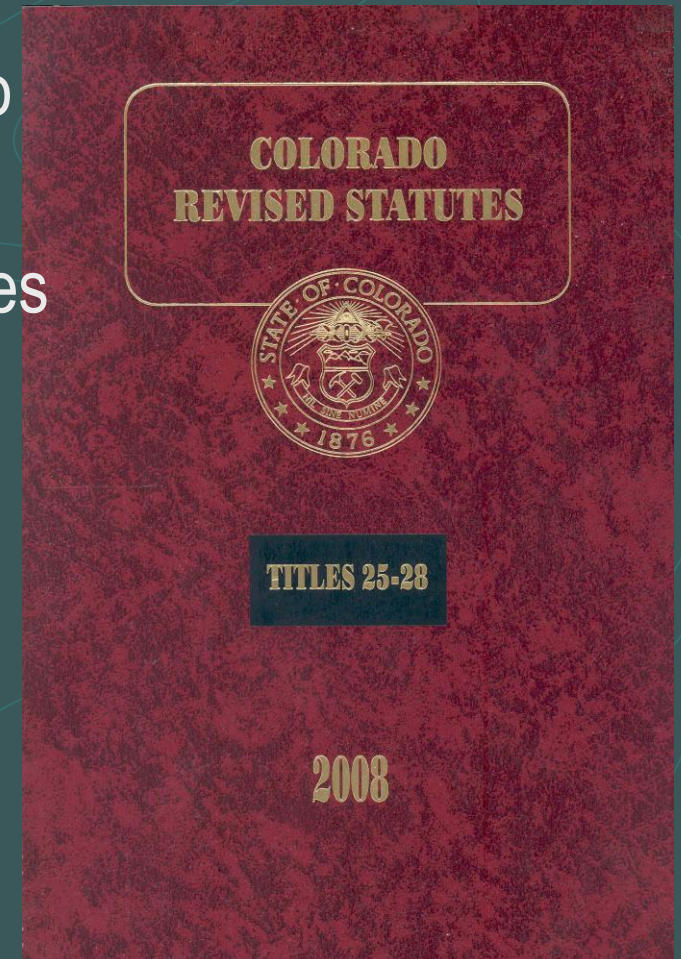
- **RULE 1** **TITLE**
- Intent: Title of Rule Set
- Modifications: Addresses new revision and new 2009 Date. 2005 Rules are superseded by this revision.



Summary Statement Rule #2

● RULE 2 AUTHORITY

- **Intent:** State authority of CWCB to promulgate rules
- **Modifications:** Statutory authorities were updated.



Summary Statement Rule #3

● RULE 3 PURPOSE AND SCOPE

● **Intent:** Statement of purpose and scope

● **Modifications:** Clarification of which entities must follow Rules. In particular, explicit statement regarding the following:

- ALL local communities, regardless of NFIP participation
- ALL state agencies
- Projects fully financed by federal government are exempt

Summary Statement Rule #4

● RULE 4 DEFINITIONS

● **Intent:** Provide definitions for terms used later in document.

● **Modifications:**

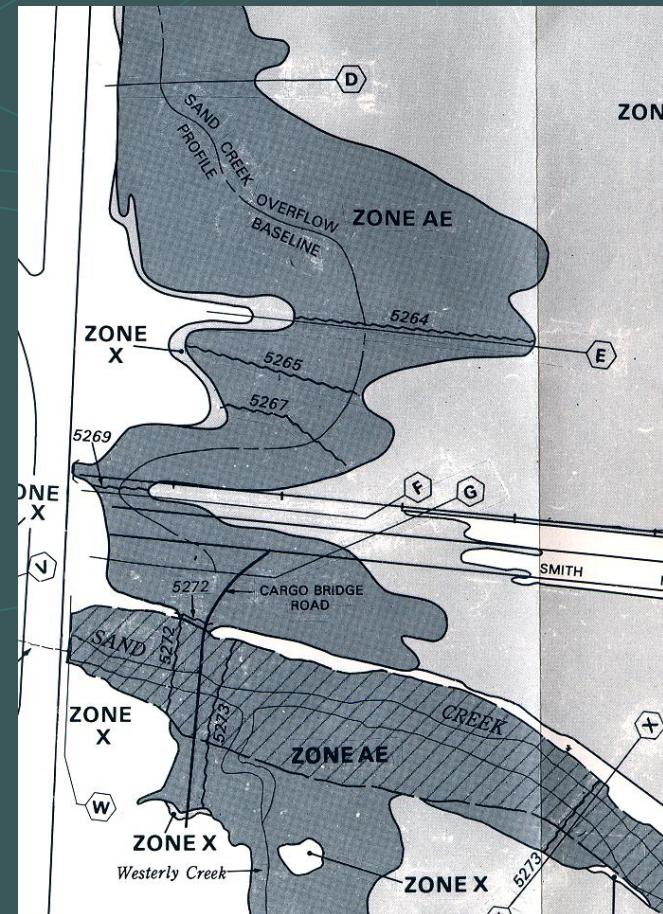
- Definitions added for Low Impact Development (LID), Colorado Floodplain and Stormwater Criteria Manual, Flood Control Structure, Letter of Map Revision Based on Fill (LOMR-F), Residual Risk, Substantial Change
- Definitions modified for Floodway, Foreseeable Development, Letter of Map Revision (LOMR), 100-Year Floodplain, FEMA Guidelines & Specifications for Flood Hazard Mapping Partners
- Definitions removed for Digital Terrain Model, Regulatory Floodplain (addressed in Rule 5), Hydrogeomorphology, Letter of Map Amendment (LOMA), Mudflow, North American Datums 1927 and 1983, National Geodetic Vertical Datum 1929, North American Vertical Datum 1988, Notification, Raster Images, Triangulated Irregular Network Model, Universal Transverse Mercator, Vector Images

Summary Statement Rule #5

● RULE 5 STATE REGULATORY FLOODPLAIN

● **Intent:** Clarify floodplain frequency used for regulation

● **Modifications:** 500-Year floodplain used for new Critical Facilities or changes to existing critical facilities;
100-Year floodplain used elsewhere



Summary Statement Rule #6

● RULE 6 CRITICAL FACILITIES

- **Intent:** Defines critical facilities and provides regulatory requirements for their development and use. 500-Year flood event defined as regulatory floodplain for these structures.
- **Modifications:** New Rule

Critical Facilities



Critical Facilities



Summary Statement Rule #7

● RULE 7 STANDARDS FOR DELINEATION OF REGULATORY FLOODLAIN INFORMATION

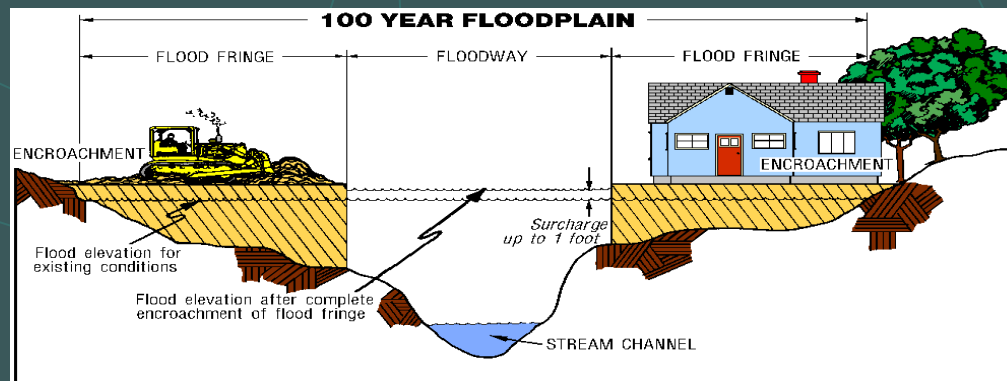
● **Intent:** Discuss technical criteria for floodplain mapping

● **Modifications:**

- Address 500-year floodplain mapping for critical facilities
- Address residual risk behind levees
- Incorporate FEMA Guidelines and Specifications for Flood Hazard Mapping Partners by reference, allowing for removal of lengthy appendices
- Reference Colorado Floodplain and Stormwater Criteria Manual as an optional aid for compliance with this rule

Summary Statement Rule #8

- **RULE 8 STANDARDS FOR REGULATORY FLOODWAYS**
- **Intent:** Discuss the use of floodways as regulatory tools
- **Modifications:**
 - Application of a ½ foot floodway (grandfathering applies)
 - Clarification that this rule does not apply to communities where flood elevations have not been established



Summary Statement Rule #9

● **RULE 9 CRITERIA FOR DETERMINING THE EFFECTS OF FLOOD CONTROL STRUCTURES ON REGULATORY FLOODPLAINS**

● **Intent:** To address technical and regulatory criteria that must be met in order for flood attenuation effects of dams, irrigation facilities, and similar structures to be considered.

● **Modifications:**

- Allows private ownership as long as structure is publicly maintained
- Requires concurrence with DWR for irrigation facilities to ensure maintenance of water rights
- Removes requirement for flood routing agreement between local government and CWCB



Summary Statement Rule #10

- **RULE 10 CRITERIA FOR DETERMINING EFFECTS OF LEVEES ON REGULATORY FLOODPLAINS**
- **Intent:** To address technical and regulatory criteria that must be met in order for effects of levees to be considered.
- **Modifications:**
 - Discourages use of levees
 - Modifies required inspections to every three years
 - Allows for private ownership as long as publicly maintained
 - Discusses methods of mapping levees providing less than 100-year protection



Summary Statement Rule #11

● RULE 11 FLOODPLAIN MANAGEMENT REGULATIONS

- **Intent:** Sets forth minimum floodplain management standards statewide.

● **Modifications:**

- Requires compliance with NFIP minimum standards regardless of community participation in NFIP (clarification, not new requirement)
- Requires one foot minimum freeboard for new and substantially changed structures
- Establishes more restrictive requirements on issuance of permits on properties removed from floodplain due to Letters of Map Revision Based on Fill

Summary Statement Rule #12

- **RULE 12 EFFECTS OF FLOOD MITIGATION MEASURES AND STREAM ALTERATION ACTIVITIES ON REGULATORY FLOODPLAINS**
- **Intent:** Provide floodplain regulation requirements for stream alteration activities.
- **Modifications:**
 - Consideration of Low Impact Development (LID) in design
 - Clarification of previously ambiguous floodway requirements
 - Clarification of when a Letter of Map Revision (LOMR) is required



Summary Statement Rule #13

● RULE 13 PROCESS FOR DESIGNATION AND APPROVAL OF REGULATORY FLOODPLAINS

- **Intent:** Outlines the process and procedure for CWCB consideration of a request for designation and approval of a regulatory floodplain.
- **Modification:** Requirement to use the 500-year floodplain as the basis for floodplain management when critical facilities are involved.

A vertical strip on the left side of the slide shows a topographic map of a river valley. The map features contour lines, a river channel, and some infrastructure like roads or bridges.

Summary Statement Rule #14

- **RULE 14 DESIGNATION AND APPROVAL OF CHANGES TO REGULATORY FLOODPLAINS**
- **Intent:** Provides the procedures for Board consideration of a revision or amendment to a previous designation and approval action by the CWCB.
- **Modification:** Renumbering of rule only.

A vertical strip on the left side of the slide shows a topographic map of a river area, with contour lines and a yellow line indicating a path or boundary.

Summary Statement Rule #15

● RULE 15 VARIANCES

- **Intent:** Provides the procedures to implement the provisions for a variance to a floodplain designation.
- **Modification:** Renumbering of rule only.

A vertical strip on the left side of the slide shows a topographic map of a river area, with contour lines and a yellow line indicating a path or boundary.

Summary Statement Rule # 16

● RULE 16 ENFORCEMENT OF FLOODPLAIN RULES AND REGULATIONS

- **Intent:** Provides procedures for enforcing these floodplain rules and regulations through a Notice of Non-Compliance.
- **Modification:** New Rule

Summary Statement Rule #17

● **RULE 17** **INCORPORATION BY REFERENCE**

- **Intent:** Recognizes that certain standards and specifications are referenced or incorporated into a rule, subsection, or Appendix.
- **Modification:** Renumbering of rule only

Summary Statement Rule #18

● **RULE 18** **SEVERABILITY**

- **Intent:** Standard language that must be included in all State Rules to allow valid rules to remain intact while any invalid rules are voided.
- **Modification:** Renumbering of rule only

Summary Statement Rule #19

● **RULE 19 FLOODPLAIN MANAGEMENT CONSIDERATIONS**

● **Intent:** States suggested floodplain management practices that would further enhance the goals of flood hazard reduction.

● **Modifications:**

- Removes suggestion to consider 500-year event for critical facilities (this revision proposes to make this mandatory)
- Adds suggested implementation of buffer ordinances
- Encourages use of state and federal mitigation/preparedness funds
- Encourages use of Certified Floodplain Managers as reviewers
- Encourages establishment of residual risk mapping

Summary Statement Rule #20

RULE 20 **EFFECTIVE DATE**

- **Intent:** Standard language that must be included in all State Rules.
- **Modification:** Revised to reflect new effective date of rules.

END OF RULES SUMMARY

Agenda Item 21



A vertical strip on the left side of the slide shows a topographic map of a river valley. It features contour lines, a river channel, and some infrastructure like roads or bridges.

Statement of Basis and Purpose for the Proposed Revisions to the Floodplain Rules and Regulations

The Rules:

- Are promulgated to carry out the authority and responsibilities of the Colorado Water Conservation
- Provide uniform standards for regulatory floodplains in Colorado and standards for activities that may impact those floodplains
- Stipulate the process by which regulatory 100-year and 500-Year floodplain information is designated and approved by the CWCB

A vertical strip on the left side of the slide shows a topographic map of a river valley. It features contour lines, a winding river, and some infrastructure like roads and bridges.

Basis and Purpose (continued)

The Rules:

- Provide the steps necessary for floodplain mapping sponsors to follow in order to have their information designated and approved by the CWCB
- Contain standards and specifications for approximate and detailed regulatory floodplain information in Colorado
- Addresses certain floodplain management regulations to apply statewide regarding critical facilities and new and substantially changed development

Basis and Purpose (continued)

The Rules:

- Set forth the process and procedures for the CWCB to designate and approve *changes* to previously designated information
- Provide additional information and recommendations, above and beyond the 100-year floodplain requirements, that can serve communities in need of technical, regulatory, and administrative information. The additional information outlines further steps that can be taken to increase public safety and property protection



Proposed Rulemaking Timeline

- **Feb 1** – Release Draft Rules for Public Comment
- **April 10** – File Notice of Rulemaking with Secretary of State and DORA
- **April 25** – Notice of Rulemaking published in Colorado Register
- **May 18** – Rulemaking Hearing at CWCB Board Meeting in Durango. Rules must be adopted by May 25.
- **June 14** – File rules with Secretary of State and DORA
- **June 25** – Rules published in Colorado Register
- **July 15** – Rules effective



Rulemaking Hearing Officer

- Recommendation by AG's Office
- Casey Shpall
- Need Board approval