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TO: Colorado Water Conservation Board Members

FROM: Stephanie DiBetitto, Community Assistance Program Coordinator
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DATE: September 19, 2018

AGENDA ITEM #7: Temporary Designation of Best Available Floodplain Data Policy

Background: The Colorado Water Conservation Board (CWCB) is the state coordinating agency for the National Flood Insurance Program (NFIP). As part of this duty, the CWCB designates floodplain mapping. One of the reasons the CWCB designates floodplain maps is to ensure technical standards are met and to prevent the regulation of non-technical floodplains.

Most commonly, FEMA Flood Insurance Rate Maps become regulatory map products through FEMA designation after a formal appeal period concludes and a Letter of Final Determination is issued. In the case of regulatory documents prepared by the Federal Emergency Management Agency (“FEMA”), the CWCB designates floodplain mapping after FEMA has officially designated such maps. However, preliminary FEMA map products are made available to the public as best available information before designation by FEMA or the CWCB. In addition, in post-disaster emergency circumstances there may be a need to utilize preliminary FEMA map products or locally produced flood data as best available information for regulatory purposes.

This proposed policy seeks to provide a path to temporarily adopt better available flood information in post- disaster situations where CWCB does not have an active role in carrying out the study or in situations where maps have been designated as preliminary by FEMA and are undergoing greater review before they become effective. CWCB designation does not result in enforcement of local floodplain information; instead it provides basis for regulation by local entities.

This item was brought to the Board for discussion at the July 2018 Board Meeting. Board recommendations were minimal and have been incorporated into the policy (attached).

Staff recommendation:

Staff recommends the Board adopt the “Temporary Designation of Best Available Floodplain Data” policy.



POLICY NUMBER: 22

SUBJECT: **TEMPORARY DESIGNATION OF BEST AVAILABLE FLOODPLAIN DATA**

EFFECTIVE DATE: September 19, 2018

BACKGROUND: The Colorado Water Conservation Board (CWCB) is the state coordinating agency for the National Flood Insurance Program (NFIP). As part of this duty, the CWCB designates floodplain mapping (includes floodway information). One of the reasons the CWCB designates floodplain maps is to ensure technical standards are met and to prevent the regulation of non-technical floodplains.

Most commonly, the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps become regulatory map products through FEMA designation after a formal appeal period concludes and a Letter of Final Determination is issued.

In the case of regulatory documents prepared by the Federal Emergency Management Agency (“FEMA”), the CWCB designates floodplain mapping after FEMA has officially designated such maps. However, preliminary FEMA map products are made available to the public as best available information before designation by FEMA or the CWCB. In addition, in post-disaster emergency circumstances there may be a need to utilize preliminary FEMA map products or locally produced flood data as best available information for regulatory purposes.

AUTHORITY: Floodplains are a matter of statewide importance and the CWCB has been given the authority to prevent flood damages, regulate and designate floodplains, and ensure proper regulation of floodplains. §§ 24-65.1-101, 24-65.1-202(2)(a)(I), 24-65.1-302(1)(b) (2)(a), 24-65.1-403(3).

The CWCB has the authority to coordinate and prescribe the standards for all floodplain studies conducted by federal, local and other state agencies so that reasonably uniform standards can be applied to identify and designate floodplains. § 24-65.1-403(3)(a) , C.R.S. (2016). The CWCB must first approve a floodplain designation before designation as such by any local governments. § 24-65.1-403(3)(b).

The General Assembly gave the CWCB the authority to gather data and formulate methods and plans for prevention of floods 37-60-106(1)(c)–



(g), (j), (k), C.R.S. (2018).

PURPOSE: Studies used to regulate floodplains locally must be designated by the State (CWCB Board). This policy seeks to adopt better available flood information in post- disaster situations where CWCB does not have an active role in carrying out the study or in situations where maps have been designated as preliminary by FEMA and are undergoing greater review before they become effective. CWCB designation does not result in enforcement of local floodplain information; instead it provides basis for regulation by local entities.

APPLICABILITY: Situations where this policy may apply include:

1. In post-disaster scenarios where emergency circumstances apply, the CWCB Board, in good faith, will temporarily designate studies as soon as they are requested by communities, prior to Board adoption. If the Board does not subsequently approve the studies at the next Board meeting, then the interim designation will become rescinded. Disaster scenarios apply when a State disaster is declared. The post-disaster scenario where emergency circumstances apply remains in place for a minimum of six months, or on a case-by-case basis determined by the CWCB Executive Director.
2. Temporary designation for preliminary FEMA maps, utilized as best available for a period of time before they are designated formally by the Board. Because the CWCB is generally involved in FEMA map update processes, it is assumed that the Board would eventually designate the new studies once they become effective.

PROCEDURE: Studies must conform to standards identified in the State Floodplain Rules and Regulations, as well as FEMA’s technical guidelines and standards where applicable. Variance procedures as defined in the Department of Natural Resources Colorado Water Conservation Board “Rules and Regulations for Regulatory Floodplains in Colorado” apply.

It is highly recommended that State designated best available floodplain information be used only if it is more restrictive than FEMA effective floodplain data. If it is less restrictive, then a FEMA Letter of Map Revision must be in place before regulating to the designation.

In the case of Situation 1 above, designation of requested studies will be temporarily applied upon approval by the CWCB Executive Director to be sensitive to emergency situations. Local adoption of temporary studies is needed before communities can use them for regulation. The



request for designation will be placed on the agenda of the next CWCB Board meeting. Once the Board meeting takes place, this temporary designation will either become permanent through Board action, or will be become rescinded if no Board action is taken.

In the case of Situation 2 above, designation of preliminary FEMA maps and studies will be temporarily applied automatically upon notification of request by local governments to begin regulating to new studies and maps before the effective date. The community should be aware that the preliminary data is subject to change. The request for designation will be placed on the agenda of the first CWCB Board meeting following the effective date. Once the Board meeting takes place, this temporary designation will either become permanent through Board action, or will become rescinded if no Board action is taken or if the Board rejects the request for designation.

