



COLORADO
Colorado Water Conservation Board
Department of Natural Resources

1313 Sherman Street, Room 718
Denver, CO 80203

P (303) 866-3441
F (303) 866-4474

Jared Polis, Governor
Dan Gibbs, DNR Executive Director
Rebecca Mitchell, CWCB Director

TO: Colorado Water Conservation Board Members

FROM: Kevin Houck, P.E.,CFM, Chief
Terri Fead, P.E., CFM, Floodplain Mapping Coordinator
Watershed & Flood Protection Section

DATE: July 8, 2021

AGENDA ITEM: Agenda Item 22. July 21-22, 2021 Board Meeting - Floodplain Rules and Criteria Manual Update

Background:

The Rules and Regulations for Regulatory Floodplains in Colorado (Rules) were initially promulgated in 1987, and were updated in 2005 and 2010. The Rules provide technical standards for floodplain designation and approval by the State and also provide required State higher standards above minimum requirements in the National Flood Insurance Program for floodplain regulation.

The Rules incorporate numerous documents by reference. Many of these external documents have been updated over the past decade with a significant update in the fall of 2020 to FEMA mapping standards. In order to remain consistent with these standards, an update to the Rules is needed to incorporate these new documents. Rulemaking processes do not allow for automatic updates of incorporated documents, so a rulemaking hearing is needed for these updates. This is the primary reason for this proposed rulemaking hearing.

In addition, Staff would like to take advantage of the rulemaking hearing to incorporate a number of housekeeping updates. In some cases, these updates may be as simple as small clerical changes. In other cases where years of interactions with stakeholders have indicated the wording of certain passages has led to some confusion and misinterpretation, wording is being updated to provide desired clarification.

It is not proposed to make major policy changes with this Rules update.

Staff will outline the recommended changes to all 20 rules within this rule set during the board meeting presentation. As a quick summary, as noticed to the public, the primary proposed changes include the following:

- 1) update the standards and processes for floodplain designation to make the Rules consistent with FEMA floodplain mapping procedures,
- 2) amend and clarify Rule 4 definitions;
- 3) update references to external documents; and
- 4) clarify the following Rules: Rule 5, Rule 7.I.(2), Rule 8.D, Rule 10.C-F, Rule 11.B, Rule 12.D, Rule 12.J, the introductory paragraph to Rule 14, Rule 17, and Rule 20



Proposed changes to the existing rule set from 2010 were made by CWCB staff with input from the Attorney General’s staff, FEMA, and CWCB’s floodplain mapping consultants. Following the draft of these initial changes, a total of three stakeholder workshops were held via Zoom on June 29th, July 9th, and July 12th. (Please note that this memorandum was prepared prior to the July 9th and 12th meetings.) The June 29th meeting had 68 attendees, and it was a remarkably productive meeting, with numerous suggestions resulting in further changes to the original proposed draft changes.

One ongoing issue which still needs to be resolved at the time of this memorandum are proposed changes to Rule 14. A subgroup of professionals from the City of Fort Collins, the City and County of Denver, the Mile High Flood District, and the City of Thornton volunteered to tackle this issue with CWCB staff. After a kickoff call of this subgroup on July 6th, the group agreed to reconvene on August 2nd with the goal of resolving the issue at that time.

The proposed rulemaking timeline, which is subject to change, includes filing a Notice of Rulemaking with the Secretary of State and the Department of Regulatory Agencies by July 30th, a Notice of Rulemaking published in the Colorado Register by August 10th, and a Rulemaking Hearing at the CWCB November meeting.

A rulemaking update page has been created on CWCB’s website and can be found at <https://cwc.colorado.gov/floodplain-rules-revisions> with a link available on the CWCB front page. This update page includes stakeholder meeting information, draft document updates and revisions, current Rules, public comments, and additional information. If board members would like to view draft changes, they are recommended to view them on this webpage as they are likely to be updated between the date of this memorandum and the board meeting. However, hard copies of the most current proposed revisions will be provided at the board meeting to assist with following along with the presentation.

Staff recommendation:

1. Authorize staff to coordinate with the Attorney General’s Office to initiate the formal rulemaking process for revisions to the Rules and Regulations for the Designation and Approval of Floodplains in Colorado to: to 1) update the standards and processes for floodplain designation to make the Rules consistent with FEMA floodplain mapping procedures, 2) amend and clarify Rule 4 definitions; 3) update references to external documents; and 4) clarify the following Rules: Rule 5, Rule 7.I.(2), Rule 8.D, Rule 10.C-F, Rule 11.B, Rule 12.D, Rule 12.J, the introductory paragraph to Rule 14, Rule 17, and Rule 20, including taking all required steps to initiate the rulemaking. Such steps include but are not limited to filing notice with the Secretary of State and the Department of Regulatory Agencies of the proposed rulemaking and a rulemaking hearing to be held no earlier than November 2021.
2. Appoint First Attorney General Jen Mele as Hearing Officer for the rulemaking hearing to oversee procedural matters, such as setting deadlines and submission of documents.

