

**Date:** 12/7/2022

**Topic:** Water Provider Group 1041 Regulations Discussion

**Duration:** 90 minutes

**Participants:** Kirk Longstein (City), Miriam McGilvray (Logan Simpson), Luke O'Brian (Northern Water), Brian Zick (Boxelder Sanitation), Sandra Bratie (FCLWD/SFCSD), Linsey Chalfant (FCLWD/SFCSD), Eric Rickentine (NWCWD), Mike Scheid (ELCO Water District)

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**Introductions:**

- Kirk Longstein – Senior Environmental Planner
- Miriam McGilvray – Logan Simpson (Consultant)
- Luke O'Brian, Northern Water
- Brian Zick, Boxelder Sanitation
- Sandra Bratie, FCLWD/SFCSD
- Linsey Chalfant, FCLWD/SFCSD
- Eric Rickentine, NWCWD
- Mike Scheid, ELCO Water District
- Zachary White, North Weld County Water District

**Summary:**

1. Applicability for projects casts too wide a net and will capture too many projects. Particular concern was for projects within existing rights-of-way and easements. Recommendation to look at exemptions for ROW projects.
2. Generally on the fence whether the geographic limits are better option. The right of way and easement applicability seems like the larger issue here.
3. Process should be clear that completeness review resets the 60-day clock if Fort Collins requests additional information.

**Actions:**

1. Provide the definition of "Development" and then will be able to provide number of projects that are coming.
2. If Geographic Limits are used, include a map with the buffers will be easier to apply.
3. Set up another meeting in early January to walk through draft regulations more specifically. Miriam to distribute Doodle Poll. Participants to indicate which sections they want to focus on.
4. Suggestion to include CoFC Utilities in this group discussion

**Notes:**

Kirk offered an overview of what's changed in the new draft, particularly with

- Procedural Changes
  - Extension to the Moratorium until March 31. First Reading on Feb. 7

- Updated Permit Review Process. Shifted to heavy pre-application timeline. Removed staff discretion and made Council final decision maker.
- FONAI (Finding of Negligible Adverse Impact) determined in Pre-Application Process
  - Moved from FONSI. “Significant” was too high to trigger permit review.
  - Can be appealed to PC and City Council, but staff determination up front
- Alternatives are reviewed through Pre-Application process, not as a Review Criteria
- Moves away from Project-based thresholds to Geographic Thresholds
- Added CDPHE definition of Disproportionately Impacted Communities

#### Process Discussion

- Eric: How is “Adverse Impact” determined?
  - Kirk: Intended to be a lower bar than “significant”
- Sandra: Pipe projects that are in the public corridor/ROW, does this capture all projects?
  - Applicability: New projects, material change and upgrades, and if there is an adverse impact to one of the natural resources. Otherwise, it wouldn’t trigger a full 1041 permit.
  - FONAI is initial determination of applicability for the 1041 permit process.
  - Sandra: This feels like it will capture a lot of projects and thus it will be a huge workload.
- Sandra: This seems to cast a very wide net for number of projects. And the 28<sup>th</sup> day pre-app process may be too long.
- Mike: Still confused on process and who determines whether they have to go to the city or not.
  - The intent isn’t to bring everything into the 1041 review process. City wanted to narrow the scope using the geographic resource.
  - Mike: How does this square with our statutory allowance to build in the right-of-way?
- Kirk: the Pre-application process was intended to be a release valve, but it sounds like this may complicate your process. How can we update the review process to be more efficient?
  - Sandra: Leave the exemption for dedicated Right of Way and Easements
    - Kirk: This was a directive from council, so encourage communication with decision makers on this point.
- Eric: My understanding is that the City will sub out the work load for review of applications. And then the applicant needs to pay the consultant fee. Not a burden to City staff.
  - Kirk: yes, however, city staff will be closely involved in the customer service aspect of the application to make sure it’s going well.
- Brian: Should make it clear that the 60-day process could be circular as the city asks for more and more for the completeness review.
- Sandra: What are the costs on this?
  - Kirk: FONAI is covered, no cost. Issued an RFI to third party consultants to propose a program to review and inspect the application projects which is still TBD to know what the costs look like. Will share more information on costs with Council in February.

Council Question #1: Do you have feedback on the proposal scope to focus on the greatest areas of impacts rather than major projects?

- Eric: How are temporary impacts vs. permanent impacts reviewed?
  - Kirk: if the impact has any adverse impact to a natural habit or any one of the general review standards.

- Sandra: Does this map include the buffer?
  - Kirk: No, these are only the natural features, and then we would adopt the Buffer Table
  - Kirk would suggest engaging with staff in the pre-application to make sure if a project is applicable.
  - Still need to ground truth the natural features on the map, as part of the FONAI/pre-application review.
- Mike: Is there political support for the geographic thresholds?
  - Kirk: yes, there is general support for this direction. However, the environmental stakeholders adamantly do not support this.
  - Mike: Not sure which is the lesser of two evils. Still feels onerous.
- Sandra (asked in Chat): Will the geographic thresholds always be updated in context of 1041 or is there risk that they can be added by an auxiliary process such as land use code, Nature in the City, etc.?
- Brian: As a sewer utility, we have facilities within natural areas and have had a good working relationship with the City to do maintenance and upgrades. Request that the new regulations acknowledge existing facilities – maybe as an exemption. If we have to dig up and replace a pipe, there aren't alternatives to that project.
  - Our customers are the public and the costs associated with these permits go back on the community. Council needs to be aware that all this impacts rate payers, even disadvantaged community members.
  - We don't do development, we respond to demand and current needs.
  - Kirk: if your project is in a direct relationship with a development, this wouldn't apply.

#### Council Question #2: Definition of "Natural Resources"

- Kirk: the inventory may be outdated and may require additional review. What's missing here? We've shrunk the scope, so what other features or databases could/should we include? CPW High Priority Area, or City Natural Areas Wildlife connectivity areas.
  - Eric: clarify if these areas are already part of this definition?
    - Kirk: yes, these would help inform.
- Eric: There are already processes in place to mitigate natural areas, though it's administrative. There are mitigation standards as part of that.
  - Kirk: This was intended to use this process to create a more binding process to replace SPAR.
- Sandra (from Chat): I also echo the earlier comment that it doesn't align that this is only for water/sewer and surface highway. Specifically when the intent is to minimize impacts to these geographic locations or promote the nature in the city and connectivity corridors.
  - Miriam: The geographic/natural area thresholds is a hybrid approach to applying 1041 powers. The City did not designate an Area of State Interest to include areas of historical, natural, or archaeological resources of statewide importance, which could've applied to all types of activities/projects within those areas. Instead, City Council designated only these Activities of State Interest (highway and water/wastewater projects) and are putting guardrails on where the regulations are most appropriate.
- Brian: State process already requires a permit process for pipes 25" or larger and any treatment facility improvement. How does this overlap with those State requirements.

- Sandra: the state process currently has size thresholds for new easements. This feels like an easier/simpler threshold.

How to comment and be involved:

- Mike: Are you interested in written/red line comments on this version in the form of additional feedback?
- Kirk: Timing doesn't allow for another draft to be release for another round of review before First Reading. Suggest comments to be viewed as a general policy direction in a memo format.
- Can provide comments directly to Kirk, will be submitted as public record and included in the City Council Packet. Also can send to [cityleaders@fcgov.com](mailto:cityleaders@fcgov.com) to communicate directly to City Council and City Manager about what you like and don't like.
- Eric: There seems to be a lot of unanswered questions and had serious impacts on how projects will happen in the future. Seems to be moving too fast. There should be a chance to comment on the next draft with thorough review before goes to the First Reading.
- Mike: What's the deadline for comments?
  - We can meet again as a group in January.
  - January 20 as deadline for comments to get into packet for First Reading, but if there are comments ahead of time, we can try to integrate earlier into legal review and draft changes.

**Date:** 12/19/2022

**Topic:** Economic/Municipal Group 1041 Regulations Discussion

**Duration:** 90 minutes

**Participants:** Kirk Longstein (City), Miriam McGilvray (Logan Simpson), Joe Rowan (consultant with Chamber of Commerce), Keith Meyer (Ditesco), Kevin Jones (FC Chamber), Mike Scheid (ELCO), Peggy Montano (Trout Raley Law), Randy Siddens (ELCO), Kim Emil (Town of Windsor), Eric Rickentine (NWCWD)

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**Introductions:**

- Kirk Longstein – Senior Environmental Planner
- Miriam McGilvray – Logan Simpson (Consultant)
- Joe Rowan – FC Chamber of Commerce
- Keith Meyer – Ditesco
- Kevin Jones – FC Chamber of Commerce
- Mike Scheid - ELCO
- Peggy Montano – Trout Raley, general counsel for Northern Water
- Randy Siddens – ELCO
- Kim Emil – Town of Windsor
- Eric Rickentine – NWCWD

**Summary:**

1. Exemptions: Projects within existing easements and rights-of-way should be exempt. Including them is overly punitive and burdens small projects. Project previously approved by PZ (and SPAR process) should be exempt.
2. Emergency repair or maintenance on facilities is not adequately addressed and should not be applicable to 1041 regulations.
3. These regulations are too far removed from what the 1041 House Bill intended – the scope of these regulations is overreach from regulating “Activities of State-wide Interest.”
4. Look at definitions – project size, types of projects (i.e. ditches), “development”, and other state definitions
5. Update application process to allow the applicant to revise before final City Council decision.
6. Define role of 3<sup>rd</sup> party consultant in application review process.
7. Review pass-through fees, permit fees, inspection fees so that there isn’t “triple dipping” or overlap between fees for topic experts.
8. FONAI screening process is supported.

**Actions:**

1. Send comments to Kirk the week of January 9<sup>th</sup> in order to get changes into the draft.
2. Kirk to add Kim Emil (Windsor) to email communication ([kemil@windsorgov.com](mailto:kemil@windsorgov.com))
3. Kirk to prepare summary of proposed changes to policy direction and share with group.
4. Miriam to send Doodle Poll to schedule second meeting in early January.

## Notes:

Kirk offered an overview of what's changed in the new draft, particularly with procedural changes, and geographic threshold approach.

- Extension to the Moratorium until March 31. First Reading on Feb. 7
- Joe: Asked if Water Commission has been involved
  - Kirk: Yes, gave updated to Water Commission and they will provide written comments. Water providers and representatives from boards and commissions are also engaged as part of these working group meetings.
  - Formal memos from other boards/commissions will likely not be available ahead of time but included in council packets.
- Procedural Changes
  - Updated Permit Review Process. Shifted to heavy pre-application timeline. Removed staff discretion (tiered approach) and made Council final decision maker.
  - FONAI (Finding of Negligible Adverse Impact) determined in Pre-Application Process
    - Moved from FONSI. "Significant" was too high to trigger permit review.
    - Can be appealed to PC and City Council, but staff determination up front
    - We've heard support for this approach from other groups
  - Alternatives are reviewed through Pre-Application process, not as a Review Criteria
- Moves away from Project-based thresholds to Geographic Thresholds.
  - Larimer County has project-based thresholds (pipe, easement sizes) and we may want to reconsider our approach.
  - City may have shrunk the scope too much. Getting feedback from other groups that we didn't quite hit the mark.
- Review process/timeline
  - 28-day initial screening for FONAI and whether permit is required. Conceptual review. Similar to development review process, with Director as decision maker. Can appeal to Planning & Zoning.
  - Application Completeness Review Process with 60-day limit. Timeline provides predictability for applicant. Alternative considerations at this phase, with mitigation.
    - Have heard from others that we need more specificity on when those 60 days starts/ends if staff asks for additional components of the application.
  - Outsourcing review of applications to 3<sup>rd</sup> party. Cost of that review is passed on to applicant. Likely between \$25k-\$35k.
    - City is paying for both city and consultant experts. Permit fee plus 3<sup>rd</sup> party application review plus city staffing – sounds like "triple dipping" and significant expense to applicant.
    - Not unreasonable for huge projects, but the applicability thresholds capture smaller projects. Feels too much of a burden for smaller projects.
    - City would look to other example city 1041 regs. for a benchmark size/threshold standards.
- Question of applicability – are projects within existing easements included? Yes.
  - Joe: easements should be exempted

- Kirk: Should there be an additional trigger for projects within an existing easement. Such as, if the easement is increasing or if the size of the project creates additional impacts.
- Mike: Are maintenance or emergency repairs included?
  - This is a gap in the current draft and needs to be addressed.
  - This is crippling to service providers and their customers, not just timing being on hold during application review but also costs.
- Change in definition of “Development” was addressed in the June Council discussion
  - Group consensus: this new definition creates too much of a burden.
  - Kirk: what bookends can we put on this?
  - Eric: It’s only a “loophole” to close if it gets around a city goal. What is the goal that the city is trying to achieve?
- Joe: there may have been miscommunications with staff and city council this year.
- Keith: Nexus for 1041 regs is within major infrastructure projects of state-wide interest. Current draft misses that nexus by capturing too many small projects.
  - “Major” means trunk mains, transmission lines. Collection and distribution facilities are not major. Not necessary to specify size.
  - Easement projects should only be included here if the easement needs to be augmented or amended.
  - This draft would include all projects that are within alleys and urban streets, which misses the mark on what the 1041 regs are intended to regulate.
  - Kevin: The community desires aren’t clearly represented in this draft. The benchmark is “state-wide interest” and this gets way too much in the weeds with the types of projects that this captures.
- Mike: The draft and the activities designated in this draft are not equitable with other utilities (energy and gas) that use the same easements.
- Peggy: during emergencies (pipe breaking), it’s not an appropriate time to go through permitting process. Bring common-sense approaches.
- Peggy: Consultant role could either be an advocate for one side or another. Slippery slope and needs more bookends to narrow their scope.
- Peggy: Cumulative permitting process – how does an applicant resolve the issues coming out of all the other permitting applications (county, state, local permits)?
- Peggy: FONAI uses “negligible”, but you can be denied a permit for “any adverse impact” – draft language and process is inconsistent.
  - Kirk: FONAI is intended to screen out projects that are
  - Peggy: FONAI is a good idea.
  - Joe: could only be denied for a “material impact” maybe? May complicate everything by adding another term.
- Peggy: Should build in something after City Council Hearing to give the applicant a way to modify the proposal to address their concerns. Give City Council opportunity review draft proposal before it’s final.
  - Kirk: PZ process is fully transparent in terms of their conditional recommendation to Council. Maybe some of that can be worked out in that process.
  - Elected officials may not align with PZ recommendation, so there should be a way to adapt the application after the draft has been reviewed by Council.

- Keith: Ditches were added to the definition of a domestic water system, which they are not.
- Keith: exempt prior SPAR-approved projects.
  - Kirk: There is support for that and that will be reflected in the next draft.
- Kirk: Revised draft language won't be released early. Council will review same time as public.
  - Eric: if Council understood the tight timeline, they may want to push out.
  - Moratorium deadline is the urgency, but some people would like to get the regulations right, even if that extends the moratorium.
  - Could have more time between first and second reading.
- Peggy: Geographic language – something future planned city facilities/parks? As an applicant, that's not clear. "Developed or underdeveloped" is the text. How to make it more predictable?

How does this group feel about moving the geographic applicability trigger into the general review standards?

- There is already a definition of Natural Features and National Resources in the land development code.
- Peggy: Already so much unpredictability for applicant. Subjective standards are hard to work with.
- Kirk: We're hearing that we need to provide more clarity/parameters on mitigation and alternatives process.
- Peggy: There is state attorney definitions on mitigation. Need to tie mitigation to solve current problems/impacts but not to mitigate what's happened in the past.
  - Kirk: There is literature to provide framework for evaluating mitigation in CDOT projects in wetlands. CSU professor put this together for CDOT.

Summary Thoughts:

- Bonding and security: what does that look like for water/wastewater projects?



**Date:** 12/7/2022

**Topic:** CDOT Group 1041 Regulations Discussion

**Duration:** 60 minutes

**Participants:** Kirk Longstein (City), Miriam McGilvray (Logan Simpson), Heather Paddock (CDOT), James Eusen (CDOT), Vanessa Santistevan (CDOT), James Usher (CDOT)

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**Introductions:**

- Kirk Longstein, Senior Environmental Planner with Fort Collins
- Miriam McGilvray, Logan Simpson (Consultant)
- Heather Paddock, CDOT
- James (Jim) Eusen, CDOT
- Vanessa Santistevan, CDOT
- James Usher, CDOT

**Summary:**

1. Generally support a narrower scope, using geographic limits, as long as there is explicit areas and criteria to take out subjectivity in application process.
2. Clarify process if Fort Collins doesn't meet the shotclock deadlines. Does the application move forward?

**Actions:**

1. Send mapping resources and presentation to CDOT Working Group
2. Send a schedule and timeframe for how and when to provide comments.
3. Create a checklist

**Notes:**

Kirk offered an overview of what's changed in the new draft.

- Procedural Changes
  - Extension to the Moratorium until March 31. First Reading on Feb. 7
  - Updated Permit Review Process. Shifted to heavy pre-application timeline. Removed staff discretion and made Council final decision maker.
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- Moves away from Project-based thresholds to Geographic Thresholds
- Added CDPHE definition of Disproportionately Impacted Communities

Council Question #1: Do you have feedback on the proposal scope to focus on the greatest areas of impacts rather than major projects?

- Heather: like where this version is headed.
  - Like the more focused lens – less bureaucracy for the same results.
  - Like the FONAI process. Feels more common-sense approach and have suggested this to Boulder County.
- Vanessa: appreciate the geographic threshold approach.
- Kirk: Can we leverage the pre-application 28day review process to cast a wider net and then move the geographic thresholds to a review standard. Brings up additional element that these geographic limits (natural areas) don't recognize: Disproportionately Impacted Communities, and social component
- Vanessa: CDOT already has to look at DEI into their projects anyway. How is it defined?
  - Might be better to map the social resource areas too.
- Heather: the more we can close in and follow a defined checklist for the applicant, the better. Want to avoid subjectivity.
  - Include whatever is important, but be sure to define those areas or criteria explicitly
- Vanessa: How is mitigation defined?
  - Kirk: Would be a one-to-one compensatory mitigation. Mitigation would only be needed that go through the natural features.
  - Inspections and bonding was added to this version. Would want on-site mitigation, not fee-in-lieu or banking.
- Heather: What level of design is required for that pre-application process?
  - Kirk: would need to know where the road goes, but not engineering plans
  - The intent of the 1041 Regs is to make a better project, not to kill a project.
- Heather: If Fort Collins didn't make the deadlines, would the projects just keep moving forward in the process?

Council Question #2: Definition of "Natural Resources"

- Kirk showed the Geographic Threshold maps with the CPW High Priority Habitat features too.
  - Archaeological resources are missing
  - Habitat corridors and linkages to potentially add
- Vanessa: The CDOT definitions are more specific to each type of resources.

How do you want to stay involved?

- Heather: provide a schedule and timeframe for how and when to provide comments.
  - The First Reading is February 7
  - Preference to consolidate comments ahead of time so staff can show where and how those comments were addressed.
  - January 20 – packet to Council.
  - [cityleaders@fcgov.com](mailto:cityleaders@fcgov.com) to send comments directly to City Council and City Manager.
- Jim: will get with the team to see if there are any other comments. Appreciate the effort to engage and listen to us.
- Heather: feels like a good approach, especially compared to Boulder.

**Date:** 12/13/2022

**Topic:** Boards and Commissions Group 1041 Regulations Discussion

**Duration:** 90 minutes

**Participants:** Kirk Longstein (City), Miriam McGilvray (Logan Simpson), Ted Shepard (PZ), Karen Artell (AQAB), Dawson Metcalf (NRAB), Ross Cunniff (LCSB), Barry Noon (NRAB), Michelle Haefele (PZ)

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**Introductions:**

- Kirk Longstein – Senior Environmental Planner
- Miriam McGilvray – Logan Simpson (Consultant)
- Ted Shepard, Planning Commission
- Karen Artell, AQAB
- Dawson Metcalf, NRAB
- Ross Cunniff, LCSB
- Barry Noon, NRAB
- Michelle Haefele, Planning Commission

**Summary:**

1. Recommend that application process explicitly allow for time extensions.
2. Recommend that neighborhood/public is notified or engaged through the FONAI process too.
3. Generally, this group does not support the geographic limits.
4. Suggest looking at specific scope and size thresholds instead of geographic limitations (i.e. pipe sizes and whether it's new or a replacement).
5. Would like Council to designate other Activities of State Interest in the future.
6. Use and build on the existing "Natural Features" definition already in the code and maybe build in subsurface hydrologic resources too.

**Actions:**

1. Reconvene after New Year. Miriam to send out Doodle Poll with additional meeting times.
2. Working Group members are encouraged to send additional written comments directly to City Council.

**Notes:**

Kirk offered an overview of what's changed in the new draft, particularly with

- Procedural Changes
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#### Process Discussion

- Ted: “shot-clock” was sometimes negotiated with SPAR applicants for complex projects. Is there anything in the draft that outlines that flexibility?
  - Kirk: the 60 days for the application submission and completeness review helps staff stay on track. Perhaps during that time, we could
  - Ted: recommend that we include language that explicitly allows for time extensions.
- Michelle: Would like to have staff more hands-on with the applications. Perception that paid consultants could be biased toward applicant (who pays for them).
  - Kirk: Option to have contract work managed through the city, not directly hired from applicant
- Ross: No neighborhood meeting for FONAI, but meeting notice?
  - Kirk: no, but we plan on making that revision
- Barry: “Adverse” vs. “Significant” aside, there should be a numerical threshold to determine impact. What are the decision thresholds? Should be numeric, not qualitative.
  - Kirk: That termination uses the city’s general review standards. The benchmark is not prescribed in the code, but the city already has some EPA limits to ozone or hazard materials etc. But the benchmark data is not codified.
- Barry: If we did have numeric benchmarks, but isolated impacts may not reach that threshold.
  - Kirk: We do not include cumulative impacts within the general review standards.
  - Barry: example of timber sales at a landscape scale not a single unit scale. Oil and gas is another great example.
  - Kirk: If we did put some bookends on that cumulative analysis? Impact on 3 generations in the future? Or reduce the scope of how that is approach?
  - Barry: The way we’ve made decisions in the past, shows that we should do it differently in the future.
  - Kirk: Please share any examples of methodology.
  - Michelle: NEPA process is very similar to this. Not sure if FONAI is better or not. FONSAI has been used in the NEPA process since the 70s.
  - Ted: could you address cumulative issue, add a scoping study and conversation with staff?
  - Kirk: If we add cumulative impact as part of the general review standards, would need some massaging to understand that scope (geographic scale, timing/generational scale etc.)? Could likely address at staff level or during the pre-application review process.
  - Michelle: Look at EPA standards. Will send.
- Ted: 90 day continuance. Is that the maximum? Should it be “up to 90 day continuance”?
  - Kirk: will double check with the statutory guidance.
- Kirk: Updates to the definition of “Development” include City projects and projects within existing right of ways and easements. Some people think that that is unnecessary overreach and are asking for an easement size threshold or exception for projects in the right of way.

- Kirk: Public utility projects as part of another development review process would be exempt. 1041 would be redundant and are therefore exempted.
- Ted: College and Trilby widening example: joint funding for a public utility project.
  - Kirk: that would go through the general development review process and not a 1041 application. But if there are blind spots on that example, let him know.

#### Council Question #1: Geographic Limitations

- Michelle: Geographic limits were the result of a special interest going directly to Council.
- Karen: Why are the water providers supportive of the geographic limits?
  - Kirk: familiarity with other city standards.
- Ross: Other utility, energy, and natural gas providers are not included in these regulations?
  - Kirk: Correct, City Council decided not to designate those as part of our regulations. But they could be designated in the future.
- Barry: “Geographic limitations/thresholds” doesn’t make sense to me.
- Kirk: There are several maps that show natural and historic features. What are we missing and is this a good way to apply the geographic limits?
  - Process:
    - 1) if it is a designated activity and definition of those types of projects
    - 2) if it intersects with one of these geographic thresholds (likely that no 1041 permit would be required if it doesn’t intersect with a geographic feature)
    - 3) analysis for FONAI
  - Looking for additional resources to ground truth the extent of these features
- Dawson: All of these different maps, what are we trying to include here? What are natural resources?
  - Kirk: That is one of our questions today. What do we want to include
  - Dawson: want to emphasize connectivity as part of the Natural Resource definition.
- Karen: Concern that if the geographic standards are more restrictive, it may push the projects outside of natural areas and burden private landowners. Some of these providers/applicants have eminent domain.
  - Kirk: the intent is to add protections for landowners.
  - Karen: using geographic limits doesn’t recognize or protect residents. Social component is lacking here.
- Barry: the two drafts (with or without geographic limitations). Doesn’t support geographic limits. Projects outside of the city that still have impacts on city do not trigger this permitting process?
  - Kirk: Correct, that is the current interpretation of the statute.
  - Barry: Ecological systems are open systems that don’t respond to political boundaries.
- Kirk: The moratorium language includes a project AND geographic approach, which is confusing.
- Ted: The City will be asked by utility providers to look at the project scale and scoping. Ex: pipe replacement is a gray area. There is too much open to interpretation. Suggest looking at pipe sizes and whether it’s new or a replacement to help limit the scope instead of a geographic threshold for all projects.

- Michelle: did not support the tiered approach at any point. There was pushback on the previous tiered approach which she supported when the applicability was still across the whole city.
  - Kirk: There are still a lot of projects that would be applicable within this geographic proposal.
  - Michelle: There are also a lot of projects that will affect people and underserved communities that aren't reflected in this approach.
- Ted: If a project doesn't meet a geographic threshold, would it still have to go through a SPAR?
  - Kirk: need to check on this, but that is the assumption.
  - Karen: And if it was a project that went through SPAR, they can ignore the SPAR recommendation. This leaves FC residents without protections.
- Ross: We want the whole city to be applicable, because we don't know what we don't know.
- Ted: Use and build on the existing "Natural Features" definition already in the code to define "Natural Resources."
  - Ross: should include more sub-surface hydrologic features too. And work on mapping.

How to comment and be involved:

- If comments are sent to Kirk, he can distribute. If you want to advocate for a particular position, Kirk recommends sending comments directly to Council.

**Date:** 12/6/2022

**Topic:** Environmental Group 1041 Regulations Discussion

**Duration:** 90 minutes

**Participants:** Kirk Longstein (City), Miriam McGilvray (Logan Simpson), Vicky McLane, Ray Watts, Hattie Johnson, Mark Houdashelt, Scott Benton, Gary Wockner

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**Introductions:**

- Kirk Longstein – Senior Environmental Planner
- Scott Benton – Environmental Planner
- Miriam McGilvray – Senior Planner with Logan Simpson (Consultant)
- Ray Watts – previously on Land Conservation Stewardship Board. Kicked off full 1041 process.
- Vicky McLane – LCS Board too, League of Women Voters
- Hattie Johnson – American Whitewater
- Mark Houdashelt – Fort Collins Sustainability Group; Airport Advisory Board
- Gary Wockner – Save the Poudre

**Summary:**

1. Geographic limits aren't supported. Should be city-wide.
2. Adverse vs. Significant doesn't change the problem. Recommendation: No Impact.
3. Impact to city property and city residents needs to be reflected in the regulations even though the activity is built outside city limits.
4. Buffer Areas don't recognize that there may be other impacts outside of those areas (i.e. migratory birds).

**Actions:**

1. Review language to clarify timing and what happens if we don't meet the deadlines.
2. Set up another meeting with this Focus Group in early January.
3. Kirk will look into public comment opportunity to City Council before First Reading.

**Notes:**

Kirk offered an overview of what's changed in the new draft.

- Procedural Changes
  - Extension to the Moratorium until March 31. First Reading on Feb. 7
  - Updated Permit Review Process. Shifted to heavy pre-application timeline. Removed staff discretion and made Council final decision maker.
  - FONAI (Finding of Negligible Adverse Impact) determined in Pre-Application Process
    - Moved from FONSI. "Significant" was too high to trigger permit review.
    - Can be appealed to PC and City Council, but staff determination up front
  - Alternatives are reviewed through Pre-Application process, not as a Review Criteria

- Mark asked: if an application is deemed incomplete, does the 60-day clock start again?
  - Yes
  - If the City doesn't make completeness review action in those 60 days, does it automatically move forward?
  - ACTION: Review language to clarify timing and what happens if we don't meet the deadlines?
- Gary asked: What version are we looking at to review?
  - Only difference between two versions is the geographic limitations

Council Question #1: Do you have feedback on the proposal scope to focus on the greatest areas of impacts rather than major projects?

- Vicky: the City limits should be the full scope, not with the geographic limitations.
  - Gary agrees. Feels like the geographic limitations didn't come out of the process. Concerned that the recommendations really don't reflect our input.
- Kirk responds: the geographic limitations were introduced as a compromise. There was confusion about the moratorium language. Staff was given direction to introduce Natural Buffer thresholds as a compromise for those folks.
  - This is a standard that's already in place. This would apply the same standards that we use in the Land Use Code.
  - Does this provide more predictability for applicants?
  - Where are the other areas that we want to protect?
- Ray: The geographic threshold language could be interpreted two ways: that it limits the scope or that it clarifies the criteria and standards to apply.
  - Recommendation: Use as standards, not as geographic limits
- Kirk: these are already included in the FONAI review standards.
- Mark: The areas on this map include natural habitat areas outside of City Limits. What's our jurisdiction for this permit?
  - Kirk: Federal Nexus areas would be NEPA process. These activities would only be in the City's 1041 jurisdiction within the City Limits.
  - "Purpose and Findings" says "public safety and welfare" but this is written to only protect the natural areas. If you're only trying to protect natural areas, then the purpose language should be revised.
- Gary: Significant changed to adverse, but there isn't much difference between the two. Our recommendations were No Impacts. Does not support the geographic limitation.
  - Massive projects can be built surrounding Fort Collins, but we can't regulate those because the project isn't in the City Limits.
  - Very concerned that this is going to be greenwashing without any meaningful impact.
  - Kirk: NISP pipeline would apply but not the reservoir.
  - Gary: There is a recent court case between Larimer County and Thornton Water. Gray area and hasn't been thoroughly tested.
- Gary: There are activities that would have impacts to the whole watershed
- Miriam: The powers that have been given by the state don't extend to activities that are built outside of the city limits. That would need to go through the Larimer County 1041 permitting process.



- Ray: Agree with Miriam’s interpretation of the 1041 Bill, but there are activities that will impact whole watershed. This really should be tested to expand to a “Buffer area” surrounding the city.
- Ray: The “Buffer” word needs to be used judiciously, how broad is the area that creates the impacts on our natural features. Need fresh environmental analysis for each project, don’t just try to use the buffer standards. Buffers shouldn’t be pre-ordained (where are the animals going or where does the water come from).

Council Question #2: Definition of “Natural Resources”

- Vicky: air quality isn’t adequately included. Transportation projects will have air quality impacts.
  - Kirk: air quality is included in general standards
  - Air, Water, and Soil are natural resources, so the whole city needs to be included.

Kirk: brings up additional element that these geographic limits (natural areas) don’t recognize:

1. Disproportionately Impacted Communities, and social component
  2. Add CPW State Wildlife High Priority Areas
- Ray: thinks these are similar to the other buffer areas in that they don’t cover the lateral impacts. These could be triggers for additional analysis, but don’t use these for the initial FONAI.
  - Vicky: migratory birds don’t fit into these buffer areas

Gary: Natural Area buffer standards for easements are decided by the Natural Areas Director. City Council should be decision maker in approving easements. Administrative adoption of those standards is weaker than a full City Council adoption in some form into City Code. Concern that those standards could be changed/weakened too easily.

Hattie: will review and send comments either by email or at next meeting.

**Date:** 1/9/2023

**Topic:** Boards and Commissions Group 1041 Regulations Discussion

**Duration:** 60 minutes

**Participants:** Kirk Longstein (City), Miriam McGilvray (Logan Simpson), Vicky McLane, Ray Watts, Hattie Johnson, Mark Houdashelt, Gary Wockner, Dawson Metcalf, Elena Lopez

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**Introductions:**

- Kirk Longstein – Senior Environmental Planner
- Miriam McGilvray – Logan Simpson (Consultant)
- Vicky McLane
- Ray Watts
- Hattie Johnson
- Mark Houdashelt
- Gary Wockner
- Dawson Metcalf
- Elena Lopez

**Summary:**

1. Important to cross-reference the definitions and share the relevant maps and information.
2. Tighten up definition of “impact area,” perhaps by naming it “construction area” instead.
3. Need to make sure that there are still protections for impacts on private property too, and not just environmental impacts to city-owned natural areas.
4. Gratified to see the inclusion of Disproportionally Impacted Community criteria.

**Meeting Notes:**

- PC Public Hearing will be on January 25, 2023. Staff is committed to having the draft ready for that meeting. First reading with the City Council will be February 7, 2023. Would need comments by January 23.
- Based on recent feedback, there was not wholesale support for the geographic limitations. This new draft recommends updating the definitions to include project size thresholds similar to Larimer County regulations. Previously proposed geographic based thresholds should be applied as review criteria to the FONAI determination.
  - Ray: What does the City Attorney say about this approach?
    - What we’re proposing here is legally defensible. With City Council as the sole decisionmaker, there is concern that capturing too many projects would bog down the docket.
    - Intent is to exclude smaller projects and focus on projects that would be captured by SPAR.

- Vicky: very concerned about the definition of Natural Resources. Limiting ourselves if we use the state definition.
  - Kirk: staff recommendation is to use LUC definition of Natural Features which is an expanded definition. Also would include critical habitat and corridors which is identified by Nature in the City.
- Mark: Important to cross-reference the definitions in the LUC and share where the maps/geographic areas area and how/who updates them.
  - Kirk: Staff intends to include a checklist and handbook/program guide to help applicants find all the relevant information.
- Pre-application Submittal Requirements:
  - Ray: “impact area” is hugely ambiguous. Should tighten up that definition.
    - Kirk: regulating surface activities with these regulations. Defined as 1mile outside of area that construction area.
    - Ray: recommend calling it “construction area” instead, if it really means where there is surface disturbance.
  - Kirk: Intent to provide more transparency and more public input before the FONAI determination. The Pre-Application Activity Review and Neighborhood Meeting brought in earlier in the process.
  - Mark: are these requirements intended to be submitted for each of the design alternatives?
    - Kirk: The cumulative impacts and conceptual mitigation plans would be for the preferred alternative. The neighborhood meeting is intended for the client to make their case for their preferred alternative.
- FONAI Determination – Includes the geographic areas
  - If FONAI is determined, there will still be other construction permits that the project will need. City will still be involved in the project, but it won’t need to go through the rest of the 1041 permitting process.
  - FONAI determination criteria is unique to this 1041 permitting process (decided not to use common review standards set forth in Section 2-401 of the LUC).
  - Ray: Gratified to see the inclusion of Disproportionally Impacted Community criteria
  - Ray: These minimum criteria for FONAI determination, which provides clarity and predictability for the applicant too.
  - Mark: are the last three criteria applicable to just the “impact area” or further out?
    - Kirk: All the analysis in the pre-application would inform how the criteria is applied.
  - Mark: Feels like the geographic thresholds have just been moved to a different place in the regulations. Need to make sure that there are still protections for impacts on private property too.
    - Common Review Standards would still apply. Mitigation Plans have performance criteria, too.
  - Elena: Could consideration of public input be added as a FONAI criteria? Also, wish this was still a FONSAI and not a FONAI.
    - Kirk: hopefully we’re addressing this concern by having a neighborhood meeting ahead of the FONAI determination.

- Ray: First few bullets have emphasis on city-owned property. Degradation of environmental quality or degradation of access to natural areas for private property/neighborhood should be on this list.
  - Kirk: Natural features on private property is covered in the buffer area
- Kirk: Eminent Domain was brought up at another meeting and staff is looking into what protections we can build into these 1041 regs.
- Nina: When will the next full version of the draft regulations be available?
  - Kirk: the full draft will be included in the packet for the Planning Commission packet: January 25<sup>th</sup>.
  - P&Z puts forth a recommendation prior to a city Council hearing. So providing comments ahead of the P&Z meeting are beneficial.

**Date:** 1/11/2023

**Topic:** Water Provider Group 1041 Regulations Discussion

**Duration:** 60 minutes

**Participants:** Kirk Longstein (City), Miriam McGilvray (Logan Simpson), Kathryn Marko (Fort Collins), Brian Zick (Box Elder), Jason Graham (Fort Collins), Randy Siddens (ELCO), Sandra Bratlie (FCLWE/SFCSD), Tim G, Zachary White (NWCWD), Jesse Schlam (Fort Collins), Eric Reckentine (NWCV), Mike Scheid (ELCO), Sean Chambers (City of Greeley)

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**Introductions:**

- Kirk Longstein – Senior Environmental Planner
- Miriam McGilvray – Logan Simpson (Consultant)
- Kathryn Marko
- Brian Zick
- Jason Graham
- Randy Siddens
- Sandra Bratlie
- Tim G
- Zachary White
- Jesse Schlam
- Eric Reckentine
- Mike Scheid
- Sean Chambers

**Summary:**

1. The new 2,000 average daily flow definition is arbitrary and too low of a metric for these regulations. The metric should be applied differently for domestic water and wastewater, too.
2. Regulations should clarify process for when routine maintenance/repair becomes a replacement, which is often not known until they open it up. Consider a linear foot threshold for what a replacement is versus a repair, and clarification that replacement of aging infrastructure is a type of maintenance.
3. Water/sewer plant capacity should maybe be considered as part of the definitions.
4. The process is rushed and doesn't adequately allow for review and revisions before Council hearings.

**Action:**

1. Request to share the website for the DIC mapping and CPW critical habitat maps: [https://teeo-cdphe.shinyapps.io/COEnviroScreen\\_English/](https://teeo-cdphe.shinyapps.io/COEnviroScreen_English/)

## Meeting Notes:

- PC Public Hearing will be on January 25, 2023. Staff is committed to having the draft ready for that meeting. The packet will likely be available the Friday before. PC will hear public comment before they deliberate and provide a recommendation to City Council.
  - The next draft will also be presented to the Water Commission on Jan. 19.
- First reading with the City Council will be February 7, 2023. Would need comments by January 23 if sent ahead of time.
- Based on recent feedback, there was not wholesale support for the geographic limitations. This new draft recommends updating the definitions to include project size thresholds similar to Larimer County regulations. Previously proposed geographic based thresholds should be applied as review criteria to the FONAI determination.
  - Brian: Who determines the adverse impact to a natural feature, historical resource or DIC in the first bullet of exclusions?
  - Kirk: This would be discussed in the preliminary review.
  - Brian: Currently we don't ask the City for a permit for maintenance or repair as long as they are in an existing easement.
- Mike: Who makes the determination of how many gallons of day is the average flow in the definition? Do we submit every project for the City to make the determination, or can we make that determination?
  - Kirk: Yes, assuming the other permitting is correct.
  - Sandra: Did the 2,000 gallons come from another community? It doesn't make sense and is arbitrary. May not know at the beginning of the project.
  - Kirk: Yes, it came from another community.
  - Sandra: Thanked the City for narrowing down the scope and bringing in exclusions.
  - Sean: The 2,000 gallon metric will be different between sewer and domestic water.
  - Randy: This could be a 20 home subdivision. This catches even 6" waterlines. Seems too low and maybe shouldn't even be in there.
- Sean: Sometimes a repair becomes a replacement. Is there a linear foot threshold for what a replacement is versus a repair?
  - Kirk: If it is like for like, that seems pretty straightforward. When it becomes an enlargement, bigger pipe diameter, or larger easement/disturbance area, then it would need to be assessed.
  - Sean: sometimes we don't know until we have already ripped up. Do we have to shut down the transmission line until we get a 1041 permit or just replace the 50' of pipe?
  - Sandra: The new lead and copper regulations where we need to go into a project unknown for replacement is a good example.
  - Kathyne: Routine replacement of aging infrastructure is a type of maintenance. Need to clarify this in the regulations.
  - Sandra: A lot of this process is duplicative of what is already in place already with Natural Areas and Parks.
  - Randy: If easement is considered permanent property right acquisition, what is the threshold of how large that easement is or what is considered an expansion?
- Randy: "Adjustment" needs better definition. Is nebulous.

- Sandra: Will new water/sewer as part of an approved Development Review project by City of Fort Collins still be excluded from 1041?
  - Kirk: Yes, if your project is already part of another development proposal (like a subdivision), then a 1041 permit is not required. It is another exclusion.
- Kathrynne: Water/sewer plant capacity should maybe be considered as part of the definitions.
- Kirk: Project must be within or partially within city limits. Jurisdiction ends at city limits.
  - Sandra: Foothills tank (FCLWD) it's a parcel they own but surrounded by natural areas. If it needs to go through SPAR, would we be released from that process?
  - Kirk: If the fork is between SPAR or 1041, then the 1041 permit process is required. If it gets a FONAI, then it may go through SPAR.
- Sean: "Adverse impacts" presumably has a definition, does the analysis of adverse impacts for a project like a treatment plant or potable tank include a review of environmental impacts?
- Pre-Application Submittal Process:
  - How long would it take to go through the Conceptual/Preliminary Design Review, Pre-application activity and neighborhood meeting?
    - Kirk: This would largely depend on the client.
  - Mike: Are there going to be clear expectations for this?
    - Kirk: yes, there will be.
- FONAI Criteria:
  - Randy: clarify where to find a map of these geographic areas
  - Sandra: Can you expand on the "natural habitat corridor" - item 6? Is this the last map provided from last meeting?
    - Kirk: Adverse Impact is a nebulous term, but yes, it would be the Nature in the City Plan. If there is enough detail in the mitigation plan, then we can take that into consideration and potentially determine a FONAI.
  - Sandra: Can a whole program be brought in?
    - Kirk: we can work with you to get one approval/1041 permits, could be brought forward as a package. Outlined in the decision procedures.
  - Sandra: Does Council know how many projects are expected? There are a lot.
- Brian: How do we plan for the fees?
  - Kirk: Not recommending a new permit fee. FONAI review will be staff and a contractor. Not sure how that will be billed yet. The full permit now doesn't include both a permit fee and a contractor fee. A third-party review cost will be defined in through the process. \$15,000-\$35,000 is an estimate for the full permit process fees.
  - Brian: Intuitively thought about \$50,000 for that consultant costs and then internal hiring to complete the analysis or develop the mitigation plans.
- Mike: We feel this is still a rushed process.
  - Sandra: Agree - the rush doesn't give time to present to either agency boards.
  - Eric: Agree that it doesn't feel like a fair time to review.
  - Mike: Would like city staff to deliver this comment to leadership.

**Date:** 1/6/2023

**Topic:** Boards and Commissions Group 1041 Regulations Discussion

**Duration:** 80 minutes

**Participants:** Kirk Longstein (City), Miriam McGilvray (Logan Simpson), Ted Shepard (PZ), Karen Artell (AQAB), Stephanie Blochowiak (Transportation Board), Ross Cunniff (LCSB), Barry Noon (NRAB)

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**Introductions:**

- Kirk Longstein – Senior Environmental Planner
- Miriam McGilvray – Logan Simpson (Consultant)
- Ted Shepard, Planning Commission
- Karen Artell, AQAB
- Stephanie Blochowiak (Transportation Board)
- Ross Cunniff, LCSB
- Barry Noon, NRAB

**Summary:**

1. Show the justification of how the new project definitions were reached.
2. Like addition of cumulative impact analysis, especially as it relates to impacts on DIC.
3. “Adverse impacts” must be contemplated beyond city-owned property and beyond just the footprint of the project.
4. There was confusion about if modifications or variances are allowed through this process.
5. Would be helpful to have a 1041 handbook.

**Actions:**

1. Kirk to follow up on how eminent domain powers could be used by water/sewer providers.
2. Kirk will look into whether the PC hearing is quasi-judicial or not.
3. Kirk to clarify new names of the relevant boards and commissions (is the Land Use Review Commission the old ZBA?)

**Meeting Notes:**

- PC Public Hearing will be on January 25, 2023. Staff is committed to having the draft ready for that meeting.
- Based on recent feedback, there was not wholesale support for the geographic limitations. This new draft recommends updating the definitions to include project size thresholds similar to Larimer County regulations. Previously proposed geographic based thresholds should be applied as review criteria to the FONAI determination.
  - Karen sent follow-up email articulating why she doesn’t support the geographic thresholds (see attached)



- New definitions are generally from Larimer County 1041 regs, but there's confusion about where the numbers come from (how they were initially identified).
- Barry: Consider using percentage of flow vs. what's available instead of absolute amounts.
- Kirk: some jurisdictions have used equivalent household usage for water instead, but city decided not to go that route.
- Ted: Requested graphic that shows the comparison with other jurisdictions on these project-based definitions.
- Karen: could the water providers share what types of projects would fall within these new definitions?
- Stephanie: limits of construction (easement width) are really important.
- Ross: Pipe size makes a lot of sense because there's a nexus with the impact if there were a breakage.
- Process Updates – brought back in the Conceptual/Preliminary Design Review in the Pre-Application Submittal Process. There's also a neighborhood meeting earlier in the process before staff make a determination of a FONAI. And the FONAI can be appealable.
  - Barry: Likes the cumulative impact analysis addition, but mitigation assumes that those cumulative impacts can be mitigated. Need to be clear that something could be fundamentally reversible.
  - Kirk: Mitigation will be focused on restoration of land disturbance resulting from the project.
  - Kirk: Clarified that the permit review process does not include cumulative impacts or temporal impacts.
  - Stephanie: CDOT projects may have more long-term impacts than the water projects, especially with regard to air quality and DIC.
  - Kirk: please submit more information about what the guardrails should be for the cumulative impacts.
  - Stephanie: Economic analysis over time with development along the river – we would find the full economic strata living along the river, not just DIC. And are we hearing from these disproportionately impacted communities.
- In last draft, the FONAI was evaluated against the common review standards. This new draft uses criteria that is separate from the common review standards.
  - Karen would like geographic thresholds removed completely, not just pulled into the FONAI criteria.
  - Ted requested a process diagram.
  - Ross: Main concern is that “adverse impacts” are contemplated beyond city-owned property and beyond just the footprint of the project.
    - Kirk: the analysis will look within 1 mile of the project area
  - Karen: if this incentivizes projects to go through private property, worry that this could result in eminent domain.
    - Ted: Even with eminent domain, there is still monetary compensation.
    - Stephanie: Doesn't think this would necessarily incentivize projects to avoid city property.
    - Kirk: some of this may be built in as approval conditions with the city council.

- Kirk plans on including the CPW High Importance wildlife areas in the overall review criteria.
- Ted: recognized Karen's question about modifications/variances would not apply in a 1041 permit. Should build in a release valve or flexibility.
- Ted: These regulations are long overdue.
- Ross: Good progress but cautious.

### **Karen's Email (submitted 1/5/2023)**

I felt like I wasn't explaining my thoughts clearly at our December 2022 meeting. Here are my thoughts regarding the City's 1041 draft regulations. I'll send the comments to City Council too.

First, eminent domain is the right of the government to take property, including private property for public use.

Examples of entities that have eminent domain powers:

Northern Water, like other water providers, stores and delivers water for irrigation, municipal, domestic and industrial purposes. Northern Water is a public agency that contracts with the U.S. Bureau of Reclamation to build and maintain the Colorado-Big Thompson Project.

<https://www.northernwater.org/about-us>

The East Larimer County Water District is a political subdivision of the State of Colorado. ELCO has the authority to condemn property. <https://www.elcowater.org/about-us>

CDOT is a Colorado state government agency. <https://www.codot.gov/about>

All Fort Collins residents and property should be protected under the City's 1041 regulations. I would like to see the City adopt 1041 regulations without geographic limitations.

Using regulations with geographic limitations that only protect City interests such as existing or planned future City natural areas or parks, City owned right of ways, existing or potential future buffer zones for natural habitat or feature and historic resources puts City residents and their property at risk for the following reasons:

- Property owners are left to their own resources to deal with monied, powerful entities that have eminent domain powers.
- Because 1041 regulations must be followed in addition to all other City development codes, applicants may be incentivized to develop their project outside of geographic areas protected by 1041 regulations, in other words outside of City owned property and on private property owners' land.
- The specific purposes listed in the draft regulations, and below, are almost wholly gutted by limiting the regulations to geographic locations of City owned land, natural area or park, anticipated City building sites, buffer zones of natural habitats and historic resources. 1-102 (A)
  - (1) protect public health, safety, welfare, the environment and historic and wildlife resources;
  - (2) Implement the vision and polices of the City's Comprehensive Plan;

- (3) Ensure that infrastructure growth and development in the City occur in a planned and coordinated manner;
- (4) Protect natural, historic, and cultural resources; protect and enhance natural habitats and features of significant ecological value as defined in Section 5.6.1; protect air and water quality; reduce greenhouse gas emissions and enhance adaptation to climate change;
- (5) Promote safe, efficient, and economic use of public resources in developing and providing community and regional infrastructure, facilities, and services;
- (6) Regulate land use on the basis of environmental, social and financial, impacts of proposed development on the community and surrounding areas; and
- (7) Ensure City participation in the review and approval of development plans that pass through and impact City residents, businesses, neighborhoods, property owners, resources and other assets.
- Geographic limitations creates confusion and uncertainty for applicants and residents and property owners. There are two different sets of regulations for land within and without proposed geographic limitations.

The draft regulations attempt to address disproportionately impacted (DI) communities. According to the draft regulations, DI community shall mean a community that is in a census block group where the proportion of households that are low income, that identify as minority, or that are housing cost-burdened is greater than 40% as such terms are defined in CRS § 24-4-109(2)(b)(II) and as amended. (Bold added by me).

I recommend using Colorado's EnviroScreen [https://teeo-cdphe.shinyapps.io/COEnviroScreen\\_English/](https://teeo-cdphe.shinyapps.io/COEnviroScreen_English/) to better characterize the Fort Collins community as to low income, minority or housing cost burdened greater than 40%. I think how DI communities will be addressed needs to be expanded in the regulations.

I appreciate that air quality, emissions and leak prevention are addressed in the regulations. I'm hoping air quality measures, including limiting GHG emissions, are in place and enforced for both the construction phase and operational phase of any development.

I agree the modification of standards, variances and appeal form administrative decisions to the land use review commission of the land development code should not be applicable to the 1041 regulations.

Karen Artell

**Date:** 1/12/2023

**Topic:** Economic/Municipal Group 1041 Regulations Discussion

**Duration:** 90 minutes

**Participants:** Kirk Longstein (City), Miriam McGilvray (Logan Simpson), Joe Rowan (Chamber), Keith Meyer (Diesco), Keith Martin (Northern Water), Randy Siddens (ELCO), Zachary White (NWCWD), Kim Emil (Windsor), Sean Chambers (Greeley)

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**Introductions:**

- Kirk Longstein – Senior Environmental Planner
- Miriam McGilvray – Logan Simpson (Consultant)
- Joe Rowan
- Keith Meyer
- Keith Martin
- Randy Siddens
- Zachary White
- Kim Emil
- Sean Chambers

**Summary:**

1. Participants aren't convinced that there is a problem that having 1041 regulations would fix. Current regulations and permitting processes cover the projects adequately. SPAR is not broken.
2. Using an average daily flow of 2,000 gallons in the definition is not an appropriate metric. It encompasses projects too small to be considered of statewide interest.
3. New 12" pipe size in the definition is not appropriate because transmission lines are at a minimum of 24".
4. New definition of 1,320 linear feet is not appropriate; to capture large projects the metric should be closer to 5 miles.
5. FONAI is seen as a lower bar than a FONSAI and doesn't feel like a legitimate off-ramp for good projects.
6. This is fundamentally flawed, and it would be worth rolling out as a pilot process to really understand how this works in practice.
7. Hope staff considers taking a pause and if you want to get it done right there's no need to rush.
8. If there IS a problem, and it's because of growth, then the City needs to look internally in the planning and zoning process.

**Actions:**

- In staff memo, it might be helpful to highlight any deficiencies to the current regulatory process.
- Asking water providers to send Kirk example projects that would fit or should fit under 1041 regulations.

## Meeting Notes:

- PC Public Hearing will be on January 25, 2023. Staff is committed to having the draft ready for that meeting. The packet will likely be available the Friday before. PC will hear public comment before they deliberate and provide a recommendation to City Council.
  - Joe: Do you feel that staff will have all the feedback by the PC meeting?
  - Kirk: Yes, we're working hard to get these regulations ready
- First reading with the City Council will be February 7, 2023. Would need comments by January 23 if sent ahead of time.
- Based on recent feedback, there was not wholesale support for the geographic limitations. This new draft recommends updating the definitions to include project size thresholds similar to Larimer County regulations. Previously proposed geographic based thresholds should be applied as review criteria to the FONAI determination.
- Keith Meyer: What is staff trying to solve with these regulations?
  - Kirk: This is a council directive, not led by staff. Want to make a regulatory framework for projects that would normally go through SPAR – so that the staff has more control over the decision.
  - Joe: Some council members wanted to halt NISP.
  - Kirk: It's not staff's role to stop projects. This is a program to make better projects.
  - Keith Martin: Is the intent of the regulations to identify environmental issues and mitigation strategies?
  - Keith Meyer: We've taken half a dozen projects through the SPAR process. It's not a broken process in practice. Even with these new definitions, we're regulating much more than what would go through the SPAR process.
  - Joe: In staff memo, it might be helpful to highlight any deficiencies to the current regulatory process.
- New Definitions:
  - Randy: if 2,000 gallons is in the final regulations, this will include small lines too that would serve a group of new homes or a single commercial establishment.
  - Keith Meyer: This has gotten worse, not better. A regular garden hose flows between 8-10 gallons per minute. So we're regulating to a garden-hose size pipeline. Not appropriate for this scale and intent of 1041 regulations.
  - Kirk: the definitions are intended to filter out smaller projects. Three of these come from Larimer County's regulations. The 2,000 gallons a day flow comes from Adams County to help determine how water/wastewater treatment plants would fit into this.
  - Joe: Is the gallon threshold even necessary with the pipe size?
  - Keith Meyer: 94 gallons per capita per day – 35 gallons per day per house. So this is less than 10 homes.
    - 12" pipe isn't a transmission lines. Distribution serve neighborhoods. Transmission lines serve cities and is usually 24" or larger.
    - Randy: We grid system on mile or half mile dimensions depending on density with a minimum 12" pipes. Anything under 24" is a distribution line.
  - Keith Martin: every single water utility is associated by new development. We do not drive new development and feel like we are penalized by zoning actions by the city.

- Keith Martin: there is a gray area of whether the City has the legal authority to manage growth in other municipalities through these regulations.
- Kirk: We should define what a transmission line actually is. The intent is to combine #2 and #3 to have the pipe size and length linked.
- Joe: where did 1,320 linear feet come from?
  - Kirk: from Larimer County. Intent is to be consistent with neighboring jurisdictions.
  - Randy: That's a quarter mile and isn't anything to what we need to do for new development.
  - Keith Meyer: this would trigger a small permit with the state and may be appropriate for Larimer County but not Fort Collins.
- Kirk: do you support the project-based threshold approach, and if so, what changes would you suggest for the definitions?
  - Randy: We don't support these at all. We don't believe that there is a problem that we need to solve. It will just create more problems and more headaches.
    - Eliminate #1 (gallon flow)
    - Larger than 24" pipe
    - Length needs to be 5 miles
    - Size of easement is irrelevant. Eliminate.
  - Kirk: Would ELCO be able to provide any example projects of what that might be look like?
    - Randy: 2<sup>nd</sup> Phase of the NEWT project. 42" new pipeline (10 years ago) hit 5 miles. Nobody heard any complaints from property owners.
    - Joe: None of these are statewide interest thresholds, but maybe we shoot for regional interest thresholds. {\*Joe is not suggesting that the draft policy should lower the threshold to regional impact, rather he is pointing to the fact that the *draft policy* is lowering the threshold}.
    - Keith Martin: will ask Peggy what Northern Water projects would fall within these.
- Exemptions
  - Kirk: any eminent domain or permanent property acquisition is not intended to go through this. The first two sub-bullets would be removed.
- Pre-Application Process
  - Kirk: This process is intended to provide clearer requirements for applicants.
  - Joe: A mile diameter is too far and just opens it up to more people to rally against a project. Needs to be clear that it's a half mile above the project and half mile below.
- FONAI determination and criteria
  - Joe: New adverse impact on DIC – needs definition. Is it a static geographic area or will it change over time?
    - Kirk: CDPHE has a program (Enviroscreen) at the Census Block level.
    - Joe: Accepts this if it's at the Census Block level
  - Keith Martin: Does this look at the secondary impacts or impacts off the construction site?
    - Kirk: No, this is just looking at the disturbance area of the surface activity.

- Keith Martin: FONAI decision is an administrative process, but giving it an appealable decisions. Should check legality.
- Keith Martin: What's the rational between the FONAI and FONSAI.
  - Kirk: "significant" was too hard to define.
  - Joe: This just moves from one subjective impact to another.
  - Keith: This used to be similar to a NEPA standard and that felt like a better high standard.
  - Sean: Greeley shares that concern. Seems to increase the threshold to adverse impact. "Significant" is a higher threshold. Is described as an off-ramp that you really can't get off of.
  - Kirk: The FONAI is the go/no for a full permit but once a project goes through full permit process the common review standards would be the bar.
- Sean: a water project path that didn't have any nexus to these geographic areas is very rare. Would like to better understand how the mitigation would be reviewed.
  - Kirk: Mitigation requirements are prescriptive and established based on best practices and industry standards.
  - Sean: If it's just a matter of identifying issues, a mitigation plan to resolve those issues, then why is a 1041 process necessary.
  - Kirk: the decision-maker can approve or deny with conditions.
- Sean: could the process include a way work through Council's issues without having to go back through a full process again or appeal.
  - Kirk: 2.1.6 Land Use Code, there is an optional pre-application hearing. No determination but really just a worksession with Council before the hearing. After P&Z and before Council hearing.
  - Kirk: If the applicant makes changes to the application without the public feedback loop, doesn't give due process.
  - Keith Martin: there should be a process to avoid a legal battle, and there should be a process to allow the permit to be approved later with City Council's conditions identified during the hearing even if the applicant didn't agree to those conditions at the time of the hearing.
- Joe: Where does this include a project that benefits the public interest?
  - Kirk: FONAI level and neighborhood meeting should give that opportunity.
- Closing Thoughts
  - Don't think this is going to get done in time
  - This is fundamentally flawed and it's worth rolling this out as a pilot process to really understand how this works in practice.
  - Hope staff considers taking a pause and if you want to get it done right there's no need to rush.
  - If there IS a problem, and it's because of growth, then the City needs to look internally in the planning and zoning process.

## Kirk Longstein

---

**From:** Ray Watts <wattsray@comcast.net>  
**Sent:** Monday, January 9, 2023 2:22 PM  
**To:** Kirk Longstein; mmcgilvray@logansimpson.com  
**Cc:** Gary Wockner; Vicky McLane; lopez.apclass@gmail.com  
**Subject:** [EXTERNAL] Comments for 1041 regulations

Hi Kirk,

I think that the movement of the list of geographic areas of concern to a different point in the process (FONAI determination, Section 2-304) is helpful. I have two suggestions:

- Specifically state that this is a minimum set of places where impacts will be evaluated
- Specifically state the inclusion of areas where citizens have expressed concerns about potential adverse impacts on private property (and this might include degraded environmental quality, enhanced risk exposure, or reduced access to nature), in the neighborhood meeting or other avenues of public comment

My thinking goes to this: the awkwardness of telling a citizen that their concerns could not be addressed because they did not fit into one of the currently listed geographic areas. It places a burden on the citizen to express their concerns, and it places a burden on staff to evaluate whether those concerns are well founded and to document the City's reasoning if it finds the concerns not to be well founded, and therefore excluded.

Is risk exposure well covered? Projects that would change hydrology, not only in rivers and streams but also across hillslopes can raise flood risks. Here I am remembering the July flash flood of 1997—which was a huge sheet-flow event, and not a rising-river event. This is an example similar to the Eagle River case, where the City would be wise to regulate projects on CSU (State) and Horsetooth (Federal) land along the western margin of the City.

You mentioned the question of Fort Collins' right to regulate projects where construction would not occur within City Limits. My understanding of court decisions is that local governments' efforts to protect local natural resources with 1041 regulations have generally prevailed when challenged by lawsuits. The case of Colorado Springs v Eagle County is the most relevant case that I am aware of (but many years have passed since then). Colorado courts found that Eagle County had the right to protect wetlands on federal lands by regulating construction projects on federal lands, when the applicant/sponsor of those projects was another Colorado local government. The only structural difference between that case and NISP is that the Eagle river construction activity and anticipated environmental impacts were both within Eagle County boundaries. In the case of NISP, most (not all) construction would be outside the City, but impacts would happen within the City. I believe that the City should be fully willing to claim 1041 regulatory authority and, if necessary, defend that authority in court. I alluded today to the City Attorney's aversion to litigation, and I suspect that the City Attorney will recommend that the City not claim the authority to apply 1041 to projects constructed primarily outside City limits, as a way to avoid litigation. That is not in the best interests of the City or its citizens. I will lend support to all efforts to include such authorities in our regulations.

We have not yet seen the Record of Decision (ROD) for NISP from the Corps of Engineers. If the ROD says that the Mulberry diversion is a necessary part of NISP, then the City clearly has regulatory authority over that



component of NISP, and that handle gives the City full rights to consider all adverse impacts of NISP, not just the surface impacts associated with the Mulberry diversion component. Northern Water would disagree, and the City must be willing to take the matter to court. Our regulations must be written to strongly support these actions.

You can see that I look at the 1041 regulatory effort largely through the lens of its application to NISP.

That raises another issue: cumulative impacts. There is no rational justification for considering only developments of the last decade. I illustrate with a well-known principle: covering more than about 15% of a watershed's surface with impervious surfaces will initiate significant hydrologic changes. So, permitting the first, second, or third project that paves and roofs 5% of the watershed is defensible. But the application for paving and roofing the next 5% should be rejected (or accepted only with extensive mitigations)—and it does not matter how long this comes after the first three projects. Cumulative impacts are forever. They do not go away after ten years. Ten years is a criterion that I will vociferously object to.

I look forward to seeing the next draft regulations.

Ray

## Kirk Longstein

---

**From:** Ray Watts <wattsray@comcast.net>  
**Sent:** Wednesday, December 7, 2022 5:27 PM  
**To:** Kirk Longstein  
**Subject:** [EXTERNAL] Re: UPDATE: 1041 regulations

As I promised, here are some specific points that I noted on the draft regs.

- Perhaps I missed it (searching the forest for one tree): who is Director?
- I noted during the Zoom call that Natural Area easement regulations are adopted administratively. There is nothing wrong with their content; rather, it is the possibility of their abrupt change (under pressure, perhaps) that gives me pause. There could also be question about this from an applicant, if they made plans working with one version and then the City changed them.
- The previous bullet suggests that the process of changing 1041 regulations and documents referenced therein should be codified.
- Buffer zone is a risky term because it can be drawn from historical documents rather than from fresh and thorough analysis. I suggest a longer, admittedly more cumbersome, construction, such as "areas of foreseeable impacts." This places a foresight burden on the applicant and on the City for qualified review of the analysis.
- The Planning and Zoning Commission has quasi-judicial authorities that are not held by other City Advisory Boards. Nevertheless, other Boards have expertise relevant to 1041 matters of state interest. For example, what does the PZC know about river flows, which can be seriously affected by water projects, such as NISP, and flow changes in turn can (will) have detrimental effects in Natural Areas. So, I think that the Land Conservation and Stewardship Board (LCSB) and the Natural Resources Advisory Board (NRAB), and possibly others, be given specific authority to recommend to City Council matters of state interest. The initial two activities being designated probably cover the majority of concerns, but natural resource and hazard areas are clearly in the wheelhouse of these Boards. The charters of these boards include responsibility to make policy recommendations to City Council, so recommendations with respect to 1041 designations are within their scope.
- One aspect of the drafts that was not much discussed, which I fully support, is the interim step of determining completeness of an application. This gives staff and advisory boards opportunity to request (demand) analyses that are missing or incomplete, while not shutting the process off with a permit denial. Is the 60-day period sufficient to engage contractors to assist with the determination?
- Every reference to wetland should be changed to "wetland and riparian area." Both depend on water levels which, for wetlands, sometimes are above ground; equally important, though, are the water levels below ground that support riparian communities. Most people in Fort Collins do not think about it, but our riparian forests (primarily along the Poudre River) are the only native forests in the City. All other trees live because they are irrigated. In our environment, clarity of protection of riparian areas is essential.
- Neighborhood meetings are mentioned without definition of the geographic extent of the relevant neighborhood. This affects the City requirements for notification of the meeting. What would be the neighborhood for a project that affects a Natural Area, in which no one lives but which is visited by thousands from across the City? This question suggests to me that "neighborhood" should not be used in this context. Perhaps simply "public meeting."
- Review standard J refers to groundwater quality. Groundwater levels are equally, perhaps more, important. Standard K mentions riparian areas with wetlands and later drops riparian areas. Lower

water levels will shrink riparian areas (trees near outer limits of these will die first). There is a lot of good stuff in the review standards, and if some of the criteria currently in geographic limitations are incorporated into review standards, they will be even stronger. As my specific comments indicate, they will need detailed review and editing so that they do not inadvertently leave out important factors.

That's all I have for now.

Ray

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**From:** Kirk Longstein <klongstein@fcgov.com>  
**Sent:** Wednesday, December 7, 2022 4:01 PM  
**To:** Miriam McGilvray <MMcGilvray@LOGANSIMPSON.COM>; Dawson Metcalf-Contact <dawson.metcalf@colostate.edu>; Doug Henderson <dhender@gmail.com>; Gary Wokner <gary@garywockner.com>; Hattie Johnson <hattie@americanwhitewater.org>; lopez <lopez.apclass@gmail.com>; Mark Houdashelt-Contact <mark.houdashelt@gmail.com>; Ray Watts <wattsray@comcast.net>; Vicky McLane <vmhmclane@gmail.com>; K A Wagner <kaswagner@me.com>; John McDonagh <johnamcdonagh@mac.com>  
**Subject:** RE: UPDATE: 1041 regulations

Hi everyone!

Thank you again for joining our meeting yesterday and providing such thoughtful feedback. As a follow up, please take a look at the attached meeting notes and let me know if we heard you correctly! I also want to acknowledge my mistake by not including Save the Poudre comments within the City Council packet ahead of the November 7 work session. I recognize the limited opportunities that groups have to provide public comment related to 1041 regulations and would like to offer a few additional opportunities to provide direct feedback to decision makers: 1.) reach out to their Councilmember(s) directly to request a meeting. 2.) draft a formal letter of your comments to send to Council, in addition to the summary that staff will produce as a part of the February 7 public record. [Cityleaders@fcgov.com](mailto:Cityleaders@fcgov.com) 3.) send comments ahead of first reaching, and speak publicly <https://www.fcgov.com/council/councilcomments>

if you feel like it would be a good use of your time, I'd like to offer another time to meet after the first of the year to dive deeper into a particular area of interest. Due to the capacity of the City Attorney's office, it's unlikely that a third version of the 1041 regulations will be released before the February 7 council packet. However, and if its helpful, I can create another cross walk that highlights the changes and areas where we made changes based on stakeholder feedback.

Thank you again for meeting and continued to stay engaged with this important work

Kirk

.....  
**Kirk Longstein, AICP**  
(he/him/his)  
Senior Environmental Planner  
City of Fort Collins  
Direct: 970-416-2865

---

**From:** Miriam McGilvray <MMcGilvray@LOGANSIMPSON.COM>  
**Sent:** Wednesday, November 23, 2022 2:25 PM  
**To:** Kirk Longstein <klongstein@fcgov.com>; Dawson Metcalf-Contact <dawson.metcalf@colostate.edu>; Doug Henderson <dhender@gmail.com>; Gary Wokner <gary@garywockner.com>; Hattie Johnson <hattie@americanwhitewater.org>; lopez <lopez.apclass@gmail.com>; Mark Houdashelt-Contact <mark.houdashelt@gmail.com>; Ray Watts <wattsray@comcast.net>; Vicky McLane <vmhmclane@gmail.com>; K A Wagner <kaswagner@me.com>; John McDonagh <johnamcdonagh@mac.com>  
**Subject:** [EXTERNAL] RE: UPDATE: 1041 regulations

Hello everyone,

Please follow the Doodle Poll link below to share your availability for a meeting in early-mid December (12/6 – 12/22). We are hoping to meet at least once before the end of the year. There may be some flexibility to meet a second time in early January, if needed.

<https://doodle.com/meeting/participate/id/ejZPzYRe>

Thanks and have a great Thanksgiving,

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~~m y u 7 4 | | 3 t l f s x r u x t s 3 t r %~~

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**From:** Kirk Longstein <[klongstein@fcgov.com](mailto:klongstein@fcgov.com)>  
**Sent:** Monday, November 21, 2022 3:35 PM  
**To:** Dawson Metcalf-Contact <[dawson.metcalf@colostate.edu](mailto:dawson.metcalf@colostate.edu)>; Doug Henderson <[dhender@gmail.com](mailto:dhender@gmail.com)>; Gary Wokner <[gary@garywokner.com](mailto:gary@garywokner.com)>; Hattie Johnson <[hattie@americanwhitewater.org](mailto:hattie@americanwhitewater.org)>; lopez <[lopez.apclass@gmail.com](mailto:lopez.apclass@gmail.com)>; Mark Houdashelt-Contact <[mark.houdashelt@gmail.com](mailto:mark.houdashelt@gmail.com)>; Ray Watts <[wattsrays@comcast.net](mailto:wattsrays@comcast.net)>; Vicky McLane <[vmhmcclane@gmail.com](mailto:vmhmcclane@gmail.com)>  
**Cc:** Jeremy Call <[JCall@LOGANSIMPSON.COM](mailto:JCall@LOGANSIMPSON.COM)>; Miriam McGilvray <[MMcGilvray@LOGANSIMPSON.COM](mailto:MMcGilvray@LOGANSIMPSON.COM)>  
**Subject:** UPDATE: 1041 regulations

**CAUTION:** This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello everyone,

As we move into the holiday season, I wanted to provide a brief update on version-two of the draft 1041 regulations and the intention to reconvene stakeholder groups before the end of the year. Supporting me with outreach is the team at Logan-Simpson (cc'd). In the coming days look for a doodle poll with potential times to meet and discuss the outcomes of the City Council Work Session, November 7; and, specific feedback related to geographic-based thresholds, adding a "Natural Resources" definition, and the 1041 permit application approval process with City Council as the sole decision maker.

If you did not have a chance to review version-two of the draft regulations I'm including a few links that may be helpful:

- [November 7 Work Session Summary](#)
- [Work Session Recording - Video](#)
- Version-two draft regulations - <https://www.fcgov.com/planning/1041-regulations>

I will be out of office November 24 & 25, but if you have a light week and would like to connect, please do not hesitate to reach out.

Warm regards,  
Kirk

.....  
**Kirk Longstein, AICP**  
(he/him/his)  
Senior Environmental Planner  
City of Fort Collins  
Direct: 970-416-2865

## Kirk Longstein

---

**From:** Peggy Montano <pmontano@troutlaw.com>  
**Sent:** Tuesday, January 10, 2023 4:56 PM  
**To:** Kirk Longstein; Brad Yatabe  
**Cc:** Keith Martin  
**Subject:** [EXTERNAL] 1041 regulations follow up  
**Attachments:** PEM comments to 2022-11-02 1041 Draft With Geotations for mitigation review 32-38.pdf; Boulder\_County\_Land\_Use\_-\_Conditional\_Approval\_of\_the\_SWSP\_II\_1041\_Permit\_Application\_-\_July\_16,\_2012[1].pdf

Kirk and Brad,

Attached please find two items pertinent to your work on the proposed 1041 regulations. The second is the permit issued by Boulder County for a Northern Water pipeline crossing Boulder County open space lands. I mentioned this to Brad and he requested that I send it to him.

The second is a series of comment bubbles on the 11-02-2023 draft that are on the Common Review Standards. Rather than try and rewrite what the author intended, or to try and clarify where they are vague or appear to be reaching beyond the footprint of the construction or facility, I opted to send in these comments knowing that a version 3 will be out soon and some may be superseded by a new draft.

It seems to me there are two key legal basis that raise my concern as I read this extensive list of common standards. Those are, that the regulations can't prevent the exercise of the water rights per the statute and, the impacts must be on the land on which the development occurs.

Some of these may be affected by adoption of the CDOT approach to wetlands as well.

Please take these into consideration as you move forward.

Kind Regards,  
Peggy

*Peggy E. Montaño*



Montaño • Freeman • Sinor • Thompson P.C.

1120 Lincoln Street, Suite 1600

Denver, Colorado 80203

tel: 303.339.5833

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**From:** [Peggy Montano](#)  
**To:** [Kirk Longstein](#); [Ian Mccargar](#); [Joe Rowan](#); [Keith Martin](#); [Keith Meyer](#); [Kevin Jones](#); [Sean Chambers](#); [Keith Meyer](#); [Mike Scheid](#); [Randy Siddens](#); [Kim Emil](#)  
**Cc:** [Jeremy Call](#); [Miriam McGilvray](#)  
**Subject:** [EXTERNAL] RE: UPDATE: 1041 regulations-suggestions attached  
**Date:** Thursday, December 22, 2022 12:00:42 PM  
**Attachments:** [image001.png](#)  
[revision suggestions.pdf](#)

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Hello All,

Following our call Monday I gave some thought to some of the discussion and have attached suggestions in three areas. One is the idea of adding to the process an opportunity for the applicant to hear the city council concerns and respond to them if there is a denial that is pending. Kirk is correct that the applicant will have the benefit of the other review and recommendations, but at times that may not translate into the city councilors concerns completely- for that reason see the italics which are added to section 2-313 on the attached.

Second, we discussed the concern that a consultant may be more of an advocate for the city and go outside the responsibility to facilitate the pre application review so I added a measure of transparency in the process. That is being notified that a consultant will be used, who is the consultant and a line of open communication with the applicant and the Director. See the italics which are my suggested additions.

Lastly, there have been many discussions about the “development” definition. While this third suggestion may implicate more of a legal question, I suggest that the definition of what is a “development” is given in the law creating 1041 and that definition should be reflected in the regulations. I have included that in the attachment as well. The italics in this definition are in the law but I italicized the words here to emphasize them.

I would welcome feedback from any of you on my comments attached.

Kind regards,  
Peggy

*Peggy E. Montaño*





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Denver, Colorado 80203  
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**From:** Kirk Longstein <[klongstein@fcgov.com](mailto:klongstein@fcgov.com)>  
**Sent:** Wednesday, December 21, 2022 4:37 PM  
**To:** Ian Mccargar <[imccargar@windsorgov.com](mailto:imccargar@windsorgov.com)>; Joe Rowan <[joerowan63@gmail.com](mailto:joerowan63@gmail.com)>; Keith Martin <[kmartin@h-mlaw.net](mailto:kmartin@h-mlaw.net)>; Keith Meyer <[keith.meyer@ditescoservices.com](mailto:keith.meyer@ditescoservices.com)>; Kevin Jones <[kjones@fcchamber.org](mailto:kjones@fcchamber.org)>; Peggy Montano <[pmontano@troutlaw.com](mailto:pmontano@troutlaw.com)>; Sean Chambers <[Sean.Chambers@Greeleygov.com](mailto:Sean.Chambers@Greeleygov.com)>; Keith Meyer <[keith.meyer@ditescoservices.com](mailto:keith.meyer@ditescoservices.com)>; Mike Scheid <[mikes@elcowater.org](mailto:mikes@elcowater.org)>; Randy Siddens <[randys@elcowater.org](mailto:randys@elcowater.org)>  
**Cc:** Jeremy Call <[JCall@LOGANSIMPSON.COM](mailto:JCall@LOGANSIMPSON.COM)>; Miriam McGilvray <[MMcGilvray@LOGANSIMPSON.COM](mailto:MMcGilvray@LOGANSIMPSON.COM)>  
**Subject:** RE: UPDATE: 1041 regulations

Hello: following up from our meeting last week and providing the notes to be included in the Feb 7 Council materials. Please take a closer look and let us know if we capture your feedback accurately.

Also, one of our members has notified me that the December 5 slides provided includes a discrepancy.

- Slide 11 indicates “Exempt projects previously approved through the SPAR process by Planning and Zoning” Under this NEWT3 would be exempt from 1041.
- Slide 28 indicates NEWT3 is subject to 1041.

Slide 28 is intended to provide example projects being discussed under “activities of State wide interest” this slide was created ahead of the November work session. As discussed during the November work session and included within the Council summary notes ([November 7 Work Session Summary](#)) there is general support for the exemption.

I truly hope everyone has a wonderful holiday season and I look forward to picking up our conversation after the new year.

Best,  
Kirk

.....  
**Kirk Longstein, AICP**  
(he/him/his)

Senior Environmental Planner  
City of Fort Collins  
Direct: 970-416-2865

---

**From:** Kirk Longstein

**Sent:** Monday, December 5, 2022 2:45 PM

**To:** Ian Mccargar <[imccargar@windsorgov.com](mailto:imccargar@windsorgov.com)>; Joe Rowan <[joerowan63@gmail.com](mailto:joerowan63@gmail.com)>; Keith Martin <[kmartin@h-mlaw.net](mailto:kmartin@h-mlaw.net)>; Keith Meyers <[keith.meyer@ditescoservices.com](mailto:keith.meyer@ditescoservices.com)>; Kevin Jones <[kjones@fcchamber.org](mailto:kjones@fcchamber.org)>; Peggy Montano <[pmontano@troutlaw.com](mailto:pmontano@troutlaw.com)>; Sean Chambers <[Sean.Chambers@Greeleygov.com](mailto:Sean.Chambers@Greeleygov.com)>

**Cc:** Jeremy Call <[JCall@LOGANSIMPSON.COM](mailto:JCall@LOGANSIMPSON.COM)>; Miriam McGilvray <[MMcGilvray@LOGANSIMPSON.COM](mailto:MMcGilvray@LOGANSIMPSON.COM)>

**Subject:** RE: UPDATE: 1041 regulations

Colleagues:

looking forward to our continued dialog about version-two of the draft 1041 regulations. The intent of our time together is to capture feedback on the questions outlined below. During these meetings your feedback will be noted, consolidated into themes, and presented to city council during first reading of the ordinance, February 7.

Please come prepared to our meeting by reviewing the resources bulleted below. Also, I'm including a copy of the slides I intend to share (Attached), so if you think that I am missing something or have specific questions that you'd like answered, feel free to send me a note ahead of time.

Thank you in advance for your time commitment to discuss these regulations and for your continued engagement throughout this process.

Kirk

**1041 working group meeting:**

Key questions:

1. Do you have feedback on the proposed scope to focus on the greatest areas of impacts rather than major projects?

Geographic Thresholds:

- Parks, natural areas, and other city-owned properties
- Natural habitat buffer zones
- Historic and cultural resources

2. Councilmembers asked Staff to explore adding the definition of "Natural Resources".
  1. After Geographic thresholds are applied, what additional areas are not covered?
  2. What review standards should staff consider adding related to "Natural Resources"?
3. General feedback and areas of concern within version-two of the draft 1041 regulations

Read-Before Homework

- [Nature in the City](#) Strategic Plan, Vision and Goals
- Nature in the City Wildlife Connectivity Map (Attached)
  
- [Colorado Parks and Wildlife High Priority Habitat maps](#)
- [Colorado Environmental Justice Mapping Tool](#)
  
- [3.4.1 Land Use Standards – Natural Habitat Features](#)
- [Natural Habitat and Features inventory](#)

.....  
**Kirk Longstein, AICP**

(he/him/his)

Senior Environmental Planner

City of Fort Collins

Direct: 970-416-2865

---

**From:** Kirk Longstein

**Sent:** Monday, November 21, 2022 3:35 PM

**To:** Ian Mccargar <[imccargar@windsorgov.com](mailto:imccargar@windsorgov.com)>; Joe Rowan <[joerowan63@gmail.com](mailto:joerowan63@gmail.com)>; Keith Martin <[kmartin@h-mlaw.net](mailto:kmartin@h-mlaw.net)>; Keith Meyers <[keith.meyer@ditescoservices.com](mailto:keith.meyer@ditescoservices.com)>; Kevin Jones <[kjones@fcchamber.org](mailto:kjones@fcchamber.org)>; Peggy Montano <[pmontano@troutlaw.com](mailto:pmontano@troutlaw.com)>; Sean Chambers <[Sean.Chambers@Greeleygov.com](mailto:Sean.Chambers@Greeleygov.com)>

**Cc:** Jeremy Call <[JCall@LOGANSIMPSON.COM](mailto:JCall@LOGANSIMPSON.COM)>; Miriam McGilvray <[MMcGilvray@LOGANSIMPSON.COM](mailto:MMcGilvray@LOGANSIMPSON.COM)>

**Subject:** UPDATE: 1041 regulations

Hello everyone,

As we move into the holiday season, I wanted to provide a brief update on version-two of the draft 1041 regulations and the intention to reconvene stakeholder groups before the end of the year. Supporting me with outreach is the team at Logan-Simpson (cc'd). In the coming days look for a doodle poll with potential times to meet and discuss the outcomes of the City Council Work Session, November 7; and, specific feedback related to geographic-based thresholds, adding a "Natural Resources" definition, and the 1041 permit application approval process with City Council as the sole decision maker.

If you did not have a chance to review version-two of the draft regulations I'm including a few links that may be helpful:

- [November 7 Work Session Summary](#)
- [Work Session Recording - Video](#)
- Version-two draft regulations - <https://www.fcgov.com/planning/1041-regulations>

I will be out of office November 24 & 25, but if you have a light week and would like to connect, please do not hesitate to reach out.

Warm regards,  
Kirk

.....  
**Kirk Longstein, AICP**  
(he/him/his)  
Senior Environmental Planner  
City of Fort Collins  
Direct: 970-416-2865

**From:** [Peggy Montano](#)  
**To:** [Kirk Longstein](#)  
**Cc:** [Keith Martin](#); [Brad Yatabe](#)  
**Subject:** [EXTERNAL] RE: UPDATE: 1041 regulations-suggestions attached  
**Date:** Sunday, January 8, 2023 2:57:15 PM  
**Attachments:** [image001.png](#)

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Thank you Kirk for your response below to suggested edits. Keith Martin is added to this email as he will participate in your workshop this week but I will be away at a long-delayed family wedding. I also added Brad Yatabe to this email.

First, some time ago you sent me a link to the CDOT wetlands regulation framework at <https://www.codot.gov/programs/research/pdfs/2009/facwet>. Our team has reviewed the CDOT regulation and the team is fine with Fort Collins adopting that wetlands approach in the 1041 regulations.

Now to answer your question below.

2-314 as I understand it, allows the City Council to add conditions to a Permit. Those conditions, in theory, should allow a permit to go forward and be approved. In 2-313, however, the language says a permit shall be denied unless the Council decides that conditions can allow the permit to be approved.

In practice, there may be reasons that the council denies a permit for reasons neither the staff nor the applicant can foresee. The language I suggested says the council in a denial would give detail about what criteria was not met and what an applicant would have to do to receive an approval. For the councilors voting no, it may be that each councilor has separate reasons. Until a denial vote by Council happens, with explanations of what an applicant may need to do to get an approval, neither staff nor an applicant may know the outcome was going to be denial. The timing of this would be at the end of a linear process where both the city staff and applicant would have worked over the months before the council vote to meet the code requirements. The language I suggested is in effect, a reconsideration of the council denial without an applicant having to go back and begin the process anew. I agree that an applicant can make changes and resubmit again. However, it may well be that the applicant may be willing to make the changes councilors describe to garner a positive vote. I hope this explanation is helpful.

Keith and I also had a discussion with Brad last week in which we suggested

that a stand-alone section in the regulations for a major extension of existing a domestic water system or site selection and construction of a major new domestic water system would provide a great deal of clarity to the draft regulations. The Common Review standards create confusion rather than clarity as applied to the water issues. As a side note, I believe on page 36 in Common review Standards (M) which applies to plant life, the word “animal” should be “plant” in the second line.

I am hopeful to also provide limited additional detailed edits to you on the language of the regulations early in the week.

Kind Regards,  
Peggy



1120 Lincoln Street, Suite 1600  
Denver, Colorado 80203  
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**From:** Kirk Longstein <[klongstein@fcgov.com](mailto:klongstein@fcgov.com)>  
**Sent:** Saturday, January 7, 2023 3:47 PM  
**To:** Peggy Montano <[pmontano@troutlaw.com](mailto:pmontano@troutlaw.com)>  
**Subject:** RE: UPDATE: 1041 regulations-suggestions attached

Hi Peggy,

I think your comments related to third party consultant are reasonable and I am proposing the revision within version three of the draft regs.

I'm reviewing your comments related to 2-313 Approval or Denial of Permit Application. Can you help me understand how your suggested revision would be different from 2-314 Issuance of Permit;

Conditions?

If an applicant's permit is denied by City Council and the entity wants to resubmit, the applicant can always make changes and resubmit through a pre-application submittal procedure Sec 2-303.

Thank you again for your thoughtful comments.

Kirk

.....  
**Kirk Longstein, AICP**  
(he/him/his)  
Senior Environmental Planner  
City of Fort Collins  
Direct: 970-416-2865

---

**From:** Peggy Montano <[pmontano@troutlaw.com](mailto:pmontano@troutlaw.com)>  
**Sent:** Thursday, December 22, 2022 11:59 AM  
**To:** Kirk Longstein <[klongstein@fcgov.com](mailto:klongstein@fcgov.com)>; Ian Mccargar <[imccargar@windsorgov.com](mailto:imccargar@windsorgov.com)>; Joe Rowan <[joerowan63@gmail.com](mailto:joerowan63@gmail.com)>; Keith Martin <[kmartin@h-mlaw.net](mailto:kmartin@h-mlaw.net)>; Keith Meyer <[keith.meyer@ditescoservices.com](mailto:keith.meyer@ditescoservices.com)>; Kevin Jones <[kjones@fcchamber.org](mailto:kjones@fcchamber.org)>; Sean Chambers <[Sean.Chambers@Greeleygov.com](mailto:Sean.Chambers@Greeleygov.com)>; Keith Meyer <[keith.meyer@ditescoservices.com](mailto:keith.meyer@ditescoservices.com)>; Mike Scheid <[mikes@elcowater.org](mailto:mikes@elcowater.org)>; Randy Siddens <[randys@elcowater.org](mailto:randys@elcowater.org)>; Kim Emil <[kemil@windsorgov.com](mailto:kemil@windsorgov.com)>  
**Cc:** Jeremy Call <[JCall@LOGANSIMPSON.COM](mailto:JCall@LOGANSIMPSON.COM)>; Miriam McGilvray <[MMcGilvray@LOGANSIMPSON.COM](mailto:MMcGilvray@LOGANSIMPSON.COM)>  
**Subject:** [EXTERNAL] RE: UPDATE: 1041 regulations-suggestions attached

Hello All,

Following our call Monday I gave some thought to some of the discussion and have attached suggestions in three areas. One is the idea of adding to the process an opportunity for the applicant to hear the city council concerns and respond to them if there is a denial that is pending. Kirk is correct that the applicant will have the benefit of the other review and recommendations, but at times that may not translate into the city councilors concerns completely- for that reason see the italics which are added to section 2-313 on the attached.

Second, we discussed the concern that a consultant may be more of an advocate for the city and go outside the responsibility to facilitate the pre application review so I added a measure of transparency in the process. That is being notified that a consultant will be used, who is the consultant and a line of open communication with the applicant and the Director. See the italics which are my suggested additions.

Lastly, there have been many discussions about the “development” definition. While this third suggestion may implicate more of a legal question, I suggest that the definition of what is a “development” is given in the law creating 1041 and that definition should be reflected in the regulations. I have included that in the attachment as well. The italics in this definition are in the law but I italicized the words here to emphasize them.

I would welcome feedback from any of you on my comments attached.

Kind regards,  
Peggy

*Peggy E. Montaño*



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**From:** Kirk Longstein <[klongstein@fcgov.com](mailto:klongstein@fcgov.com)>  
**Sent:** Wednesday, December 21, 2022 4:37 PM  
**To:** Ian Mccargar <[imccargar@windsorgov.com](mailto:imccargar@windsorgov.com)>; Joe Rowan <[joerowan63@gmail.com](mailto:joerowan63@gmail.com)>; Keith Martin <[kmartin@h-mlaw.net](mailto:kmartin@h-mlaw.net)>; Keith Meyer <[keith.meyer@ditescoservices.com](mailto:keith.meyer@ditescoservices.com)>; Kevin Jones <[kjones@fcchamber.org](mailto:kjones@fcchamber.org)>; Peggy Montano <[pmontano@troutlaw.com](mailto:pmontano@troutlaw.com)>; Sean Chambers <[Sean.Chambers@Greeleygov.com](mailto:Sean.Chambers@Greeleygov.com)>; Keith Meyer <[keith.meyer@ditescoservices.com](mailto:keith.meyer@ditescoservices.com)>; Mike Scheid <[mikes@elcowater.org](mailto:mikes@elcowater.org)>; Randy Siddens <[randys@elcowater.org](mailto:randys@elcowater.org)>  
**Cc:** Jeremy Call <[JCall@LOGANSIMPSON.COM](mailto:JCall@LOGANSIMPSON.COM)>; Miriam McGilvray <[MMcGilvray@LOGANSIMPSON.COM](mailto:MMcGilvray@LOGANSIMPSON.COM)>  
**Subject:** RE: UPDATE: 1041 regulations

Hello: following up from our meeting last week and providing the notes to be included in the Feb 7 Council materials. Please take a closer look and let us know if we capture your feedback accurately.



Also, one of our members has notified me that the December 5 slides provided includes a discrepancy.

- Slide 11 indicates “Exempt projects previously approved through the SPAR process by Planning and Zoning” Under this NEWT3 would be exempt from 1041.
- Slide 28 indicates NEWT3 is subject to 1041.

Slide 28 is intended to provide example projects being discussed under “activities of State wide interest” this slide was created ahead of the November work session. As discussed during the November work session and included within the Council summary notes ([November 7 Work Session Summary](#)) there is general support for the exemption.

I truly hope everyone has a wonderful holiday season and I look forward to picking up our conversation after the new year.

Best,  
Kirk

.....  
**Kirk Longstein, AICP**  
(he/him/his)  
Senior Environmental Planner  
City of Fort Collins  
Direct: 970-416-2865

---

**From:** Kirk Longstein  
**Sent:** Monday, December 5, 2022 2:45 PM  
**To:** Ian Mccargar <[imccargar@windsorgov.com](mailto:imccargar@windsorgov.com)>; Joe Rowan <[joerowan63@gmail.com](mailto:joerowan63@gmail.com)>; Keith Martin <[kmartin@h-mlaw.net](mailto:kmartin@h-mlaw.net)>; Keith Meyers <[keith.meyer@ditescoservices.com](mailto:keith.meyer@ditescoservices.com)>; Kevin Jones <[kjones@fcchamber.org](mailto:kjones@fcchamber.org)>; Peggy Montano <[pmontano@troutlaw.com](mailto:pmontano@troutlaw.com)>; Sean Chambers <[Sean.Chambers@Greeleygov.com](mailto:Sean.Chambers@Greeleygov.com)>  
**Cc:** Jeremy Call <[JCall@LOGANSIMPSON.COM](mailto:JCall@LOGANSIMPSON.COM)>; Miriam McGilvray <[MMcGilvray@LOGANSIMPSON.COM](mailto:MMcGilvray@LOGANSIMPSON.COM)>  
**Subject:** RE: UPDATE: 1041 regulations

Colleagues:

looking forward to our continued dialog about version-two of the draft 1041 regulations. The intent of our time together is to capture feedback on the questions outlined below. During these meetings your feedback will be noted, consolidated into themes, and presented to city council during first reading of the ordinance, February 7.

Please come prepared to our meeting by reviewing the resources bulleted below. Also, I’m including a copy of the slides I intend to share (Attached), so if you think that I am missing something or have specific questions that you’d like answered, feel free to send me a note ahead of time.

Thank you in advance for your time commitment to discuss these regulations and for your continued engagement throughout this process.

Kirk

**1041 working group meeting:**

Key questions:

1. Do you have feedback on the proposed scope to focus on the greatest areas of impacts rather than major projects?

Geographic Thresholds:

- Parks, natural areas, and other city-owned properties
- Natural habitat buffer zones
- Historic and cultural resources

2. Councilmembers asked Staff to explore adding the definition of “Natural Resources”.
  1. After Geographic thresholds are applied, what additional areas are not covered?
  2. What review standards should staff consider adding related to “Natural Resources”?
3. General feedback and areas of concern within version-two of the draft 1041 regulations

Read-Before Homework

- [Nature in the City](#) Strategic Plan, Vision and Goals
- Nature in the City Wildlife Connectivity Map (Attached)
  
- [Colorado Parks and Wildlife High Priority Habitat maps](#)
- [Colorado Environmental Justice Mapping Tool](#)
  
- [3.4.1 Land Use Standards – Natural Habitat Features](#)
- [Natural Habitat and Features inventory](#)

.....  
**Kirk Longstein, AICP**  
(he/him/his)  
Senior Environmental Planner  
City of Fort Collins  
Direct: 970-416-2865

---

**From:** Kirk Longstein

**Sent:** Monday, November 21, 2022 3:35 PM

**To:** Ian Mccargar <[imccargar@windsorgov.com](mailto:imccargar@windsorgov.com)>; Joe Rowan <[joerowan63@gmail.com](mailto:joerowan63@gmail.com)>; Keith Martin <[kmartin@h-mlaw.net](mailto:kmartin@h-mlaw.net)>; Keith Meyers <[keith.meyer@ditescoservices.com](mailto:keith.meyer@ditescoservices.com)>; Kevin Jones <[kjones@fcchamber.org](mailto:kjones@fcchamber.org)>; Peggy Montano <[pmontano@troutlaw.com](mailto:pmontano@troutlaw.com)>; Sean Chambers <[Sean.Chambers@Greeleygov.com](mailto:Sean.Chambers@Greeleygov.com)>

**Cc:** Jeremy Call <[JCall@LOGANSIMPSON.COM](mailto:JCall@LOGANSIMPSON.COM)>; Miriam McGilvray <[MMcGilvray@LOGANSIMPSON.COM](mailto:MMcGilvray@LOGANSIMPSON.COM)>

**Subject:** UPDATE: 1041 regulations

Hello everyone,

As we move into the holiday season, I wanted to provide a brief update on version-two of the draft 1041 regulations and the intention to reconvene stakeholder groups before the end of the year. Supporting me with outreach is the team at Logan-Simpson (cc'd). In the coming days look for a doodle poll with potential times to meet and discuss the outcomes of the City Council Work Session, November 7; and, specific feedback related to geographic-based thresholds, adding a "Natural Resources" definition, and the 1041 permit application approval process with City Council as the sole decision maker.

If you did not have a chance to review version-two of the draft regulations I'm including a few links that may be helpful:

- [November 7 Work Session Summary](#)
- [Work Session Recording - Video](#)
- Version-two draft regulations - <https://www.fcgov.com/planning/1041-regulations>

I will be out of office November 24 & 25, but if you have a light week and would like to connect, please do not hesitate to reach out.

Warm regards,  
Kirk

.....  
**Kirk Longstein, AICP**  
(he/him/his)  
Senior Environmental Planner  
City of Fort Collins  
Direct: 970-416-2865

## Fort Collins Regulations Suggestions

This suggestion will facilitate review and understanding between the applicant and the city council and make for a more efficient process.

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### Division 2- 313

#### Approval or Denial of Permit Application

- (A) The burden of proof shall be upon the applicant to show compliance with all applicable standards of the Regulations. To the extent a permit application may not comply with a particular standard, the applicant may demonstrate compliance with such standard by proposing mitigation measures that sufficiently offset the extent of noncompliance.
- (B) A permit application to conduct a designated activity of state interest or develop in a designated area of state interest may not be approved unless the applicant satisfactorily demonstrated that the proposal, in consideration of all proposed mitigation measures, complies with all the applicable criteria. The permit shall be denied unless City Council determines that reasonable conditions can be imposed on the permit which will enable the permit to comply with the applicable criteria. *Whenever City Council determines that a permit will be denied, the denial must specify the criteria used in evaluating the proposal, the criteria the proposal fails to satisfy, the reasons for denial, and the action the applicant would have to take to satisfy the permit requirements. The denial document will be served upon the applicant and the applicant may, within sixty (60) days of such service, be allowed to modify the proposal. The City Council will then re- consider the proposal with such modifications.*
- (C) If City Council finds that there is insufficient information concerning any of the applicable standards, City Council may deny the permit, may approve the permit with conditions which if fulfilled, would bring the development plan into compliance with applicable standards, or may continue the public hearing or reopen a previously closed public hearing for additional information to be received. However, no such continuance to receive additional evidence may exceed sixty (60) days unless agreed to by City Council and the applicant.
- (D) City Council shall approve the permit application if the proposed development plan satisfies all applicable review standards in consideration of proposed mitigation measures, of these Regulations. City Council may also impose additional considerations pursuant to Section 2-314 on any permit.
- (E) City Council may close the public hearing and make a decision, or it may continue the matter for a decision only. However, City Council shall make a decision by majority vote

- (F) City Council shall adopt by resolution findings of fact in support of its decision and if approved, the written permit shall be attached to such resolution. To the extent a permit is deemed approved because City Council has not made a decision, adoption of such resolution is not required.
- 

### **Third Party Consultant**

Section 2-302 provides for a third-party consultant review at the applicant's cost. The consultant may favor the City as they were hired by the City and seek to substitute their judgement for that of the applicant. Section 2-302 can and should outline the consultant's responsibilities and provide transparency. For example, a consultant is not to generate siting and design alternatives nor to seek to generate conditions to impose on the proposal. To guard against that outcome, I suggest the following:

Section 2-302 Application fee; financial security waiver.

- (A) Each pre-application area of activity review application and development application for a permit submitted must be accompanied by the fees established pursuant Section 2.2.3(D). The Director may determine any time during the pre-application review and development application review process that it is necessary to retain a third-party consultant to assist in reviewing the application Pursuant to Section 6.3.3(D). *The consultant shall not act as an advocate for either the City or the applicant.*
1. *If the Director determines that a third party consultant will be used, the applicant shall be notified within 3 working days of such decision including the name and contact information for the consultant.*
  2. *The Director shall schedule an initial meeting with the applicant and the consultant to facilitate the pre-application review including scope of review and anticipated time line.*
  3. *All communications of the consultant shall be simultaneously sent to both the Director and the applicant, including any analysis or evaluation of the application by the consultant.*
- (B) A referral agency may impose a *reasonable* fee for the review of a development application and the applicant shall pay such fee *which shall detail the basis for the fee imposed*. No hearings by the Permit Authority will be held if any such referral agency's reasonable fee has not been paid.
- 

### **Definition of Development**

During the course of stakeholder meetings there have been numerous discussions about the definition of development. The following is the definition in the 1041 statute. I suggest this be the definition used in the regulations.

“Development” means any construction or activity which changes the basic character or the use of the land *on which the construction or activity occurs*. CRS 24-65.1-102

I suggest this be the definition used in the regulations.





## Land Use

Courthouse Annex • 2045 13th Street • Boulder, Colorado 80302 • Tel: 303.441.3930 • Fax: 303.441.4856  
Mailing Address: P.O. Box 471 • Boulder, Colorado 80306 • [www.bouldercounty.org](http://www.bouldercounty.org)

July 16, 2012

Southern Water Supply Enterprise  
Attn: Carl Brouwer  
220 Water Avenue  
Berthoud, CO 80513

Dear Applicant:

This letter certifies that a hearing of the Board of County Commissioners, County of Boulder, State of Colorado, was duly called and held on January 10, 2012 continued to April 17, 2012 and June 21, 2012, in consideration of the following request:

**Docket SI-11-0001: SOUTHERN WATER SUPPLY PIPELINE II**

**Request:** Areas and Activities of State Interest (1041) for the construction of a water pipeline which would deliver Windy Gap and Colorado-Big Thompson water from Carter Lake to the project participants which include the City of Boulder, Left Hand Water District, Longs Peak Water District, and the Town of Frederick. The project consists of a north-south pipeline which will serve the City of Boulder and Left Hand Water District and an east-west pipeline that will branch from the north-south alignment to serve the Longs Peak Water District and the Town of Frederick.

**Location:** Northeastern Boulder County, the proposed pipeline enters the County at the north approximately 1.0 mile west of N 83rd St. and runs south past the City of Longmont to Boulder Reservoir; the eastern branch of the pipeline is proposed along Vermillion Road beginning approximately 0.5 mile west of N 87th St running east to County Line Road, in Sections 1,12,13,25,36, of Range 3N, Township 70W, and Sections 1,12,13,24,23,26,34,35 of Range 2N, Township 70W, and Section 3 of Range 1N, Township 70W, Sections 7,13,14,15,16,17,18,19, 20, 21, 22, 23, 24, 30, 31 of Range 3N, Township 69W, and Section 6 of Range 2N, Township 69W.

**Zoning:** Estate Residential (ER), Rural Residential (RR) and Agricultural (A) Zoning Districts

The Board of County Commissioners has determined that the request is CONDITIONALLY APPROVED, subject to the terms in the attached resolution.

Your approval may have included certain conditions that must be met. Please contact the planner who processed your docket for more information on any requirements that will need to be met. If you have any additional questions, please feel free to contact me at (303) 441-3930 or via email at [hhippely@bouldercounty.org](mailto:hhippely@bouldercounty.org)

Sincerely,

Hannah Hippely, AICP, Senior Planner  
Planning Division

c.c. Rosi Dennett, Strategic Planning, Inc.

RESOLUTION 2012-70

A RESOLUTION CONDITIONALLY APPROVING BOULDER COUNTY LAND USE DOCKET #SI-11-0001 ("SOUTHERN WATER SUPPLY PIPELINE II"): A REQUEST FOR AN ACTIVITIES OF STATE INTEREST ("SI" OR "1041") REVIEW FOR THE BOULDER COUNTY PORTION OF A NEW PIPELINE TO BE CONSTRUCTED TO DELIVER WINDY GAP AND COLORADO-BIG THOMPSON WATER FROM CARTER LAKE TO THE PROJECT PARTICIPANTS (CITY OF BOULDER, LEFT HAND WATER DISTRICT, LONGS PEAK WATER DISTRICT, AND TOWN OF FREDERICK), CONSISTING OF A NORTH-SOUTH ALIGNMENT TO SERVE THE LEFT HAND WATER DISTRICT AND THE CITY OF BOULDER, AND AN EAST-WEST ALIGNMENT BRANCHING FROM THE NORTH-SOUTH PIPELINE TO SERVE THE LONGS PEAK WATER DISTRICT AND TOWN OF FREDERICK, ON PROPERTY LOCATED IN NORTHEASTERN BOULDER COUNTY (ENTERING BOULDER COUNTY FROM THE NORTH APPROXIMATELY ONE MILE WEST OF N. 83<sup>RD</sup> STREET AND RUNNING SOUTH PAST THE CITY OF LONGMONT TO THE BOULDER RESERVOIR, WITH THE EASTERN PIPELINE BRANCHING TO EXTEND ALONG VERMILLION ROAD BEGINNING APPROXIMATELY 0.5 MILE WEST OF N. 87<sup>TH</sup> STREET AND EXTENDING EAST TO COUNTY LINE ROAD), IN SECTIONS 1, 12, 13, 25, AND 36 OF RANGE 3N, TOWNSHIP 70W; SECTIONS 1, 12, 13, 23, 24, 26, 34, AND 35 OF RANGE 2N, TOWNSHIP 70W; SECTION 3 OF RANGE 1N, TOWNSHIP 70W; SECTIONS 7, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 30, AND 31 OF RANGE 3N, TOWNSHIP 69W; AND SECTION 6 OF RANGE 2N, TOWNSHIP 69W, UNINCORPORATED BOULDER COUNTY

WHEREAS, the Board of County Commissioners of the County of Boulder ("the Board") has duly approved and adopted regulations to designate areas and activities of state interest and to govern the administration of any designated activities and areas of state interest in unincorporated Boulder County pursuant to Article 65.1 of Title 24, as amended, commonly referred to as House Bill 1041 ("the 1041 Regulations"), which are codified as Article 8 of the Boulder County Land Use Code ("the Land Use Code"); and

WHEREAS, the 1041 Regulations designate the following activities of state interest which require application for and approval of a County permit, all as further set forth in the Regulations:

- (1) Site selection and construction of major new domestic water and sewage treatment systems, and major extension of existing domestic water and sewage treatment systems, as defined in Sections 25-9-102(5) ("wastewater treatment plant"), 25-9-102(6) ("water supply system"), and 25-9-102(7)



("water )treatment plant"), C.R.S. (see Sections 24-65.1-104(5) and 24-65.1-203(1)(a)); and

(2) Efficient utilization of municipal and industrial water projects (see Section 24-65.1-203(1)(h)); and

**WHEREAS**, the 1041 Regulations also designate areas of state interest constituting flood hazard and geologic hazard areas, which portions of the subject project/activity of state interest involved here will cross; and

**WHEREAS**, the Northern Colorado Water Conservancy District, acting by and through the Southern Water Supply Project Water Activity Enterprise ("Applicant"), has applied to the County for a 1041 ("state interest") permit to construct a buried raw water pipeline ("Southern Water Supply Pipeline II"), to transport Windy Gap/Colorado-Big Thompson supplies from Carter Lake in Larimer County, into and through unincorporated Boulder County, to serve the project/enterprise participants (City of Boulder, Left Hand Water District, Longs Peak Water District, and Town of Frederick) for the purposes of improving water quality, providing year-round supply, and meeting increased demand; and

**WHEREAS**, the Boulder County portion of the new pipeline is proposed to run along the Applicant's preferred alternative route which is generally described in the caption to this Resolution, above, and affects unincorporated lands located in the Estate Residential, Rural Residential, and Agricultural Zoning Districts; and

**WHEREAS**, the proposed project is the second such pipeline to be constructed in Boulder County by the Applicant, with the original Southern Water Supply Pipeline having been built in 1995, though the original pipeline was not reviewed under the County's 1041 Regulations since the Board of County Commissioners ("the Board") determined that the project was substantially initiated before the 1041 Regulations' effective date in January, 1994; and

**WHEREAS**, the proposed project consists of a main north-south pipeline route, along with the so-called "Eastern Turnout" which is a smaller pipeline branching off from the main route to head east to the Boulder County-Weld County line; and

**WHEREAS**, the City of Boulder would own 25 of the total 45 cubic feet per second (cfs) capacity of the new pipeline, with the Left Hand Water District to own 11 cfs, the Longs Peak Water District to own 3 cfs, and the Town of Frederick to own 6 cfs; and

**WHEREAS**, in order to convey the 45 cfs capacity required by the project participants, a 45-inch-diameter pipe will generally be necessary, though as water is diverted from the main pipe the size of the pipe required would diminish; and

**WHEREAS**, where the proposed pipeline enters Boulder County at the northern County line a 45-inch-diameter pipe would be installed, and extended south to the point where the Eastern Turnout diverts water from the main pipeline, with a 36-inch-diameter pipe then being run south from the Eastern Turnout to the Left Hand Water District's Dodd Water Treatment Plant, from which the point south to the City of Boulder's water treatment plant the pipeline would be 30 inches in diameter; and

**WHEREAS**, the Eastern Turnout is proposed to be constructed using 24-inch to 26-inch-diameter pipe; and

**WHEREAS**, construction of the project requires not only that the Applicant secure a permanent easement for the pipeline and its appurtenances, but also that enough of a construction corridor be obtained to provide adequate space for the various components of the construction, with the total construction corridor to be made up of a combination of permanent easements, temporary construction easements, and use of existing rights of way; and

**WHEREAS**, the alternatives analysis provided by the Applicant for the southern portion of the main pipeline route (which, unlike the northern portion, does not use the existing easement of the original Southern Water Supply Pipeline), considers three potential alternative alignments, in addition to the Applicant's proposed (preferred) alignment for this pipeline portion; and

**WHEREAS**, construction of the pipeline is anticipated to begin between 2014 and 2015, with construction generally proceeding from north to south, though seasonal constraints may require some construction to be done out of sequence; and

**WHEREAS**, the pace for pipeline construction likely will range between 200 to 400 feet per day, with the rate significantly slowing in areas where the corridor is constrained by features such as stream crossings (where construction is expected to take 7-14 days), or at other locations (such as highway or road crossings)

where boring methods rather than trenching methods may be required; and

**WHEREAS,** the success of long-term surface restoration following construction depends in large part on the care taken during the excavation process, to separate topsoil from subsoil and stockpile the layers so that they may be replaced in their proper order during the backfill portion of the project, so that the mixing of less productive soils with productive soils can be avoided; and

**WHEREAS,** the above-described water pipeline project was processed and reviewed as Boulder County Land Use Docket #SI-11-0001 ("the Docket"), all as further set forth in the written memoranda and recommendations of the County Land Use Department Planning Staff to the Board dated January 10, May 24, and June 21, 2012, with their attachments (collectively, "the Staff Recommendation"); and

**WHEREAS,** on January 10, 2012, as continued to April 17 and June 21, 2012, the Board held a duly-noticed public hearing on the Docket ("the Public Hearing"), at which time the Board considered the Staff Recommendation as well as the documents and testimony presented by the County Land Use Department Planning Staff, representatives of the Applicant and the project participants, a representative of the City of Longmont, and several members of the public, all as reflected on the official record of the Public Hearing; and

**WHEREAS,** based upon the Public Hearing, the Board finds that the Docket (specifically, as proposed by the Applicant, including its preferred alternative ("Alternative 1") for the southern portion of the main pipeline route), meets the applicable criteria for a permit pursuant to the 1041 Regulations, and can be approved, subject to the conditions imposed below which the Board finds are reasonable conditions capable of effectively mitigating the impacts of the proposed water pipeline project as identified on the record of the Public Hearing; and

**WHEREAS,** in reaching this conclusion, the Board finds, based on the entire record of the Public Hearing, that given the conditions of approval proposed in the May 24 and June 21 Staff Recommendation, as reviewed and revised by the Board at the June 21, 2012 Public Hearing, the project can satisfy the applicable 1041 criteria regarding preservation of productive agricultural land and compliance with the Boulder County Comprehensive Plan, and finds further that the project participants possess the requisite financial capability to undertake the project; and

**WHEREAS**, the proposed project thus meets the above-referenced 1041 requirements, which the initial January 10 Staff Recommendation had found were not fulfilled, and the Docket is authorized to proceed in accordance with the conditions of this approval.

**NOW, THEREFORE**, based upon the findings made in this Resolution, above, as supported by the record of the Public Hearing, **BE IT RESOLVED** that the Docket is hereby approved, subject to the following conditions:

**General Approval Conditions:**

1. The Applicant shall be subject to the terms, conditions, and commitments of record and in the file for the Docket, including but not limited to the prevention of degradation to environmental resources, the restoration of the surface to preconstruction conditions, the minimization of impacts to recreation facilities, and the preservation of cultural resources.
2. The Applicant shall provide the public with means to find information about the project and have questions answered by the Applicant. The Applicant shall create a website related to the project and shall notice that website to impacted property owners, County agencies, and Fire Districts. An updated schedule and construction phasing plan shall be maintained on this website. In addition, the Applicant shall create a hotline where the public may raise concerns or ask questions and expected a response within 24 hours.
3. Engineering and construction plans for 50% and 95% project completion must be submitted for review and approval by the County Land Use, Parks and Open Space, and Transportation Departments prior to permit issuances. Final plans shall include, but not be limited to, a staging plan, temporary and permanent erosion control plans, stormwater management plan, and fugitive dust control plan.
4. All phases of construction shall be done in compliance with applicable federal, state, and local statues and regulations, including fulfilling all legal obligations to identify, protect, and re-establish public and private survey markers and monuments that exist within proximity to the construction area, and these conditions of approval. Prior to any construction-related activity associated with any individual phase of pipeline construction, the Applicant shall meet with County Land Use, Transportation and Parks and Open Space personnel to ensure all the necessary conditions related to

each phase of construction have been completed and all permits have been obtained.

**Easements, Permissions, and Other Permits:**

5. Prior to any construction activities or issuance of any permits, the Applicant shall obtain all easements or other property rights and approvals necessary for the proposal, including crossing agreements or otherwise satisfying the requirements of all ditch companies impacted by the pipeline construction. The Applicant shall provide the County Land Use, Parks and Open Space, and Transportation Departments with GIS shapefiles showing the finalized full length of the pipeline route. The Applicant shall provide detailed information (on a parcel/property specific basis or pipeline segment basis) regarding the associated easement widths and types (permanent versus construction) and shall identify the linear footage of pipeline construction that will parallel Boulder County road rights-of-way, as well as identify any areas where the construction will encroach into the rights-of-way.
6. Any activity involving existing Public Service Company right-of-way will require Public Service Company approval. Encroachments across Public Service Company's easements must be reviewed for safety standards, operational and maintenance clearances, and liability issues, and be acknowledged with a Public Service Company License Agreement to be executed with the property owner.
7. Development within mapped floodplains will require a separate floodplain development permit, when the Applicant proposes an open cut to place the pipeline across the stream channel, or install permanent structures that extend above the current ground surface within the floodplain boundaries.
8. Prior to any construction activities, the Applicant must obtain federal Endangered Species Act clearances for threatened and endangered species, including Preble's meadow jumping mouse, *Spiranthes diluvialis* (Ute ladies' tresses orchid) and *Gaura neomexicana coloradensis* (Colorado butterfly plant), through the entire length of the pipeline. Any necessary *Spiranthes* field surveys should follow USFWS protocols as to timing windows.
9. The U.S. Army Corps of Engineers shall be consulted to ensure that construction of the project is in compliance with applicable federal regulations. Wetland delineations, defined and required by the US Army Corps of Engineers, may be needed on some properties; such delineations shall be completed in the proper season. Additionally the Applicant shall review

Colorado SB 40 (regarding wildlife certification from the Colorado Division of Wildlife (DOW) when an agency of the state plans construction in any stream or its bank or tributaries) and ensure that certification requirements are being met as applicable.

10. All practicable methods (including watering, re-vegetation, synthetic cover, and/or chemical stabilization) shall be used to minimize fugitive particulates. The contractor will be responsible for developing and implementing a fugitive dust control plan. The plan shall be submitted and approved by Boulder County Health and/or the Colorado Division of Public Health and Environment prior to construction-related activities.
  11. The Applicant shall obtain a storm water discharge and construction dewatering permit from the Colorado Department of Public Health and Environment for construction at drainage crossings. These permits will include the preparation of a Storm Water Management Plan (SWMP) and Best Management Practices (BMPs) to prevent storm water runoff and sediment in disturbed areas from reaching nearby waterways or otherwise leaving the site. BMPs will be consistent with the Urban Drainage and Flood Control District's Urban Storm Drainage Criteria Manual, Volume 3. Typical measures employed may include detention basins, silt fences, hay bales, wattles, and hydro mulch. These measures will deflect runoff, collect sediment, and allow infiltration. Storm water and erosion control measures will be carefully monitored during construction and examined after each storm event to ensure their effectiveness. All project access points shall incorporate vehicle-tracking devices to prevent tracking onto adjacent roads.
  12. Prior to construction-related activities and through project completion, the Applicant shall comply with all adopted fire codes, and in addition shall provide the final route alignment and schedule to the Fire Districts. The Applicant shall communicate with the Fire Districts regarding potential impacts to emergency response routes, including but not limited to road or lane closures. The Applicant shall ensure that a contact person is designated with whom the representatives of the Fire District may communicate during the construction of the project.
- County Rights-of-Way:**
13. When construction activity is taking place within Boulder County rights-of-way, a Utility Construction Permit is required. The Applicant shall abide by the Utility Construction Standards and comply with the conditions of the

Utility Construction Permit, including but not limited to restrictions on hours of operation. The Applicant should also note that when construction activity is parallel to Boulder County rights-of-way, the rights-of-way shall not be utilized for any construction-related activity including, but not limited to, stockpiling of material, staging construction materials, and parking for workers or construction vehicles, unless the use of the right-of-way has been approved under a Utility Construction Permit.

14. A preconstruction meeting is required prior to the commencement of construction activities. At this meeting, the hours of work, access points, snow removal in the construction zone, traffic management and traffic control and construction and inspection schedules will be finalized.
15. The Applicant shall submit a Traffic Control Plan and Traffic Management Plan for review and approval by the County Engineer prior to the initiation of any construction-related activity. The items addressed in these plans should include, but are not limited to, traffic control devices/personnel, i.e. warning signs, flaggers, traffic control supervisors, etc., any specific delay times, adjacent neighboring property owner notifications, use and placement of any message boards, and similar items.
16. As part of any Traffic Control Plan, the Applicant shall identify all proposed access points for ingress/egress to the project from County rights-of-way. Where possible, the Applicant should utilize existing roads, driveways and other access points. The Applicant will be required to submit a schedule of construction traffic detailing information that should include, but not be limited to, the amount of traffic trips generated during construction of the proposed facilities, type of equipment/vehicles accessing the County Road, anticipated haul routes, period of time (i.e. "x" number of days, weeks) it will take to bring in any and all equipment for construction of the proposed facilities, placement of excess haul material, and the like.
17. Heavy equipment traffic will be subject to any and all weight limit restrictions along adjacent roadways, and the Applicant will be responsible for repair of the adjacent roads should there be any damage as identified by the County Engineer. If necessary, the Applicant will need to obtain Oversize/Overweight Permits from the appropriate jurisdictions.

18. The Applicant should note that any construction within the rights-of-way or damage to the rights-of-way resulting from construction activities related to this project will require restoration to the pre-construction conditions. The pre-construction conditions shall be documented by photograph or video and submitted to the County Transportation Department. If photographic documentation of pre-existing conditions is not provided, restoration will be to the level specified by the County Engineer. Furthermore, any disturbance of the actual paved portion of the roadway, including the shoulders, will require a full-width overlay. Road closures should be avoided where possible and the Applicant will be required to provide emergency vehicle and residential access to adjacent properties at all times.
19. All crossings of paved roadways shall be bored beneath the roadway surface. Any proposed road crossings by open cut shall flow fill to a depth of 2-feet of the surface.
20. When crossing or encroaching into Boulder County rights-of-way, all existing utilities shall be identified, which will include the depth of each utility, type of utility, and proximity of proposed construction to all existing utilities. The Applicant will be required to locate, identify and show all existing utilities in the Boulder County rights-of-way.

**Project Coordination and Oversight:**

21. The Applicant will be required to fund a project overseer, retained by the County, to monitor and inspect the project and ensure compliance with permit conditions and county requirements. This overseer must be both independent of the primary construction contractor and project engineer and have the authority to alter, direct and/or stop any activity that will result in adverse environmental or safety conditions or violates the conditions of the permit, County approval, or accepted construction standards. The project overseer shall not exercise its authority arbitrarily, and, prior to ordering any work stoppage, shall consult with the Applicant's construction manager in an attempt to obtain corrective action. The Applicant may request that the Land Use Director, in consultation with applicable County departments, review any work stoppage ordered by the project overseer.

The project overseer/inspector shall provide reports to the Land Use and Transportation Department on a weekly basis during construction activity. Weekly reports shall consist of a diary of observations throughout the construction process and progress.



22. In Addition, the Applicant shall fund an individual retained by the Boulder County Parks and Open Space Department (POS), to represent the County as landowner during construction and reclamation on County open space lands (including fee-owned, conservation easement-encumbered, trail easement areas, etc.) to ensure that the Applicant addresses any construction and reclamation issues promptly and adequately to the County's satisfaction.

**Natural Resource, Land, Wildlife, and Agricultural Protection:**

23. The Applicant shall route the pipeline within or along road rights-of-way in areas where the County open space lands have critical wildlife habitat, agricultural lands of high productivity, or other important characteristics identified by the County that may be compromised by pipeline construction. The Applicant shall work cooperatively with the Parks and Open Space and Transportation Departments to route the pipeline through any affected County open space properties in such a way as to minimize impacts to those properties.
24. The Applicant shall use cutoff trenches and cutoff walls wherever the pipeline will cross under or near any water, such as any irrigation ditch, stream, river, wetland, pond or other water body.
25. The Applicant shall design construction windows and plan construction schedules around sensitive times for agricultural and open space lands. For example:
  - a. Work on County agricultural open space lands should only occur from September to the following mid-late March to minimize impacts on crops and the growing season. The Applicant shall notify POS each year before August regarding which properties the Applicant will be working on during that year's September-to-March window. This will enable POS to alert agricultural lessees before they make fall and winter investments in those properties. (For example, POS will need to notify dry land farmers not to plant winter wheat in August and September in areas that will be affected by the Applicant's activities.) This will also give POS the opportunity to provide the Applicant with any necessary, specific requirements to protect and restore the affected properties.
  - b. Work on ecologically important lands should likewise only occur between September and the following mid-late March. This will give POS the opportunity to provide the Applicant with specific requirements to protect and restore the affected properties.
  - c. Work should also only occur outside of nesting and migratory bird seasons, e.g., the osprey platform on the

south side of Lagerman Reservoir (if that route is approved) should only occur during the window from September 1st to March 14th, and work at the Lohr and Bragg-Spangler properties should only occur during the window from July 16th to May 14th.

26. The Applicant shall meet these general requirements from POS on County lands:
  - a. The Applicant shall follow specific POS requirements for restoring agricultural lands and ecologically valuable lands, which have separate protocols. General guidelines are attached as Exhibit A to this Resolution. POS staff will provide specific requirements for specific properties when the Applicant's site-specific planning is underway. Specific requirements may include, but may not necessarily be limited to, seed mix requirements appropriate for restoring the affected properties, if POS deems that necessary.
  - b. The Applicant shall obtain POS approval for reclamation and restoration procedures for all affected County open space properties. The Applicant shall also allow for POS oversight of the Applicant's maintenance and weed control activities following reclamation and restoration.
  - c. The Applicant shall pay POS for damages if restoration work does not restore the affected properties to their original conditions (or better) within a period of time acceptable to POS, in its sole discretion.
  - d. The foregoing requirements (a-c) shall be incorporated into any new easements the Applicant may need across any County open space lands to be affected by the pipeline, and the Applicant shall compensate the County for those easements.
  
27. The Applicant shall provide POS with up-to-date GIS shapefiles showing the proposed full length of the pipeline route from the north Boulder County line to the terminus of the pipeline and along the eastern portion of the pipeline before beginning negotiations with POS about easements across County open space properties, and at regular intervals during negotiations to keep POS informed of the intended specific pipeline route through County open space properties. The data shall show existing easement lengths and widths, as well as new temporary and permanent easements needed and their respective widths. The County's granting of new easements over County open space, including through private properties covered by County-held conservation easements, shall be contingent upon compensation to POS and shall be subject to property-specific conditions to minimize damages and produce prompt restoration.

28. The Applicant shall work with the Boulder County Parks and Open Space Department on the timing, location, and phasing of construction of sections of the pipeline that coincide with the trail corridors shown in the approved Lagerman-Imel-AHI Open Space Complex Management Plan. In general, these sections are located between Nelson Road and Oxford Road. Since the timing of pipeline construction is unknown, if the trail is constructed prior to installation of the pipeline, the Applicant shall replace the trail to the same or better pre-installation conditions following pipeline installation. If the pipeline is constructed before the trail is constructed, the Applicant shall make every effort possible to construct the pipeline within these corridors and then shall build the trail on top of the pipeline. The Applicant shall construct or reconstruct these trail sections to the Parks and Open Space Department's specifications and satisfaction.
29. In order to ensure existing and new active raptor nests are not disturbed, raptor surveys shall be conducted prior to construction and recommended seasonal and spatial buffer zones shall be established and maintained.
30. Black tailed prairie dog colonies exist throughout Boulder County. If the route requires construction through prairie dog colonies, the prairie dogs should either be: (1) passively relocated or dispersed (i.e., temporarily removed from the construction zone by fencing, barriers, or other appropriate measures, so that the prairie dogs may return to their original habitat when construction/reclamation is concluded), with this option being acceptable so long as prairie dogs are not temporarily dispersed into new territory/habitat; (2) permanently moved to another location alive; or (3) humanely euthanized before onset of construction. A permit must be obtained from the Colorado Division of Wildlife prior to implementation of any trap/transplant effort. Burrowing owl surveys are required if destruction or poisoning of prairie dog burrows will occur between March 15 and October 31 of any year.
31. The removal of large mature trees shall be avoided, and other trees removed in construction shall be replaced at a 3 to 1 level. A tree removal and replacement plan shall be provided with the 90% construction drawings: this plan shall be reviewed and approved by the Land Use Department prior to any construction activities.
32. A reclamation plan shall be developed on a site-specific basis so that lands disturbed by the construction of the pipeline shall be fully restored to pre-construction

conditions. The reclamation plan shall include a description of the current condition of the lands to be disturbed sufficient to enable an assessment of adequate post-project restoration. Documentation of pre-disturbance conditions for agricultural lands shall include a detailed description of the agricultural operations/practices, irrigation and drainage systems, soil composition and profiles, and any other features pertinent to agricultural productivity. The Specifications for Soil Handling and Reclamation provided by Parks and Open Space for County properties (see Exhibit A to this Resolution) may be used for guidance on private properties, in addition to the Sample Reclamation Plan in the application materials; however, the final plan should reflect the unique nature of the individual property and the goals of the property owner.

**Invasive Species:**

33. If heavy equipment to be used for the project has previously been used in another stream, river, lake, reservoir, pond, or wetland, appropriate disinfection practices are necessary prior to construction to prevent the spread of New Zealand mud snails, zebra mussels, quagga mussels, whirling disease, and any other aquatic invasive species into the drainage. These practices are also necessary after project completion, prior to this equipment being used in another stream, river, lake, reservoir, pond, or wetland.
34. The application materials describe the plan for preventing the spread of noxious weed species. The Applicant shall work with Boulder County's weed specialist when developing and implementing any containment or revegetation work to ensure that noxious weeds do not spread from the project site, or become established in areas disturbed by construction.

A motion to approve the Docket (#SI-11-0001), subject to the conditions stated above, was made by Commissioner Toor, seconded by Commissioner Gardner, and passed by a 3-0 vote of the Board.

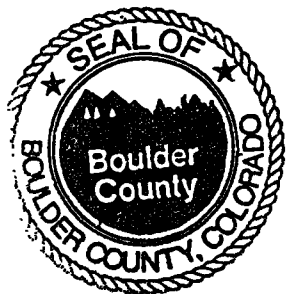
Adopted as a final decision of the Board on this 12<sup>th</sup> day of July, 2012.

**BOARD OF COUNTY COMMISSIONERS OF THE  
COUNTY OF BOULDER**

Cindy Domenico  
Cindy Domenico, Chair

Will Toor  
Will Toor, Vice Chair

Deb Gardner  
Deb Gardner, Commissioner



ATTEST:

Mike Ryde  
Clerk to the Board



## Parks and Open Space

5201 St. Vrain Road • Longmont, Colorado 80503  
303.678.6200 • Fax: 303.678.6177 • [www.bouldercounty.org](http://www.bouldercounty.org)



### Reclamation

Of primary concern to the Parks & Open Space Department is the long-term impact of the project on the composition and productivity of the plant community within the chosen pipeline alignment. Parks & Open Space has reviewed the Reclamation section of the 1041 permit application (pages 11-14 of Attachment 2-1041 Application Addendum, dated August 2011) and appreciates NCWCD's recognition of these impacts and willingness to reclaim and revegetate the site to its pre-existing condition. In particular, Parks & Open Space supports the following terms as committed to by NCWCD and outlined in the application:

1. Hiring an independent revegetation contractor that will be involved in project planning, construction meetings, revegetation efforts, and remedial actions.
2. Preparing and following a site specific revegetation/reclamation plan that is prepared with the help of and receives final approval of the relevant property owner.
3. Commitment to taking necessary remedial actions following construction and reclamation to the satisfaction of the landowner

Parks & Open Space also generally supports the "Sample Reclamation Plan", which is provided in the 1041 application. This plan would need to be completed for each County-owned property managed by the department and approved by the Parks & Open Space Department. Each site will have its own unique pre-existing conditions including plant species composition, soil types and conditions, water management and infrastructure, and land uses, and each will have its own unique reclamation needs and desired post-reclamation conditions. At the appropriate time following project approval, Parks & Open Space is willing to work with NCWCD and their revegetation contractor on preparation of these site-specific reclamation plans.

Attached we provide some general specifications for reclamation/revegetation that will be required on all County-owned land. These specifications may also be applicable to other lands within the pipeline corridor. Please note site-specific reclamation details will be worked out in the above mentioned site-specific reclamation plans.

**Specifications for Soil Handling and Reclamation  
On Boulder County Parks & Open Space Properties  
Including Irrigated Cropland, Dryland Cropland, and Rangeland**

**For the Northern Colorado Water Conservancy District's  
Southern Water Supply Project II**

**October 2011**

This document addresses procedures for soil handling and reclamation following any impacts of the Northern Colorado Water Conservancy District's Southern Water Supply Project II. The specifications are requirements for work on Boulder County Parks & Open Space properties, but may also be adopted for private properties within the project alignment.

The following procedures are general and provide the minimum requirements for reclamation. Specific reclamation procedures shall be developed in site-specific Reclamation Plans completed for each property within the approved alignment. The Reclamation Plans will be prepared in conjunction with and approved by Parks & Open Space.

The following procedures can be summarized into the following categories:

1. Topsoil Removal and Storage
2. Backfilling, Grading, and Ripping
3. Relieving Compaction
4. Topsoil Redistribution
5. Seedbed Preparation
6. Seeding
7. Mulch
8. Post- Reclamation Weed Control
9. Timeframe and Success of Reclamation

An Inspection Personnel funded by NCWCD and hired by Boulder County will oversee and be involved with the entire reclamation process.

To ensure compliance with all reclamation requirements, a pre-construction meeting will be held with the contractor prior to each phase of the project.

Before any construction activities proceed, the construction area should be delineated with a temporary, orange construction fence on the boundary between the construction easement and remaining Parks and Open Space land, and silt fencing to serve as a visual reference for the construction area. All traffic and construction activity shall be restricted to within the easement area only. Areas impacted outside of the easement area shall be restored to the Inspection Personnel's specifications. The orange construction fence and silt fence shall remain until the project is finished.

## **1.0 Topsoil Removal**

After the construction area and its access have been delineated, the vegetation should be mowed to a maximum height of 4 inches over the area to be disturbed. If the amount of vegetation exceeds what can be incorporated into the soil without interfering with establishing a proper seedbed, then excess vegetation shall be removed.

Topsoil should be removed by a front-end loader (preferred method) or grader. **Under no circumstances should topsoil be removed under wet soil moisture conditions.** The County's Inspection Personnel can provide assistance in determining topsoil depth and proper removal. The depth of the topsoil layer may vary. Topsoil may be delineated from the subsoil by a higher organic matter content (usually, but not always, indicated by a darker color) and a relatively loose and friable soil structure. The Inspection Personnel should be present at the site as topsoil removal is initiated to determine average topsoil depth. Typically, topsoil is between 4 and 8 inches in depth. Topsoil should be placed to one side of the construction area and demarcated with a silt fence to avoid impacts.

Any subsoil removed should be placed separate from the topsoil. **Under no circumstances shall subsoil be mixed with topsoil, and subsoil shall not be placed on top of the topsoil.** The topsoil shall be protected from contamination by subsoil material, weeds, etc. and from compaction by construction equipment and vehicles.

## **2.0 Backfilling and Grading**

Contractor shall replace backfill material as close as possible to the depth from which it was removed. Compaction of the backfill must prevent settling that will cause the profile of the disturbed areas to be significantly lower than the grade of undisturbed adjacent land. Also, overall compaction of the top 24" of the disturbed area should not be restrictive to root growth of plants.

## **3.0 Relieving Compaction**

Following compaction of the backfill, the Inspection Personnel will determine if ripping and chiseling is necessary to relieve soil compaction in the root zone to accommodate root growth and soil water storage capacity. If it is deemed necessary, the contractor must rip and chisel the soil to relieve compaction. Contractor must rip the entire length of the pipeline that is compacted to a minimum depth of 18 inches (deeper is desirable) with no more than 20 inches between ripped intervals. Contractor shall follow ripping with chiseling to a minimum depth of 12 inches, with no more than 10 inches between chiseled intervals. At this point, depending upon the size of soil clods left after ripping, discing, culti-packing or other operations may be required to reduce the size of the clods. Contractor shall consult with the Inspection Personnel to inspect the site at this time to make that determination.

Final grading of areas that are irrigable cropland is of particular importance. The overall grade of land to be irrigated must provide for uniform coverage by flood irrigation.



#### **4.0 Redistribution of Topsoil and Application of Amendments**

The salvaged topsoil should be redistributed uniformly over the disturbed areas, minimizing compaction by equipment. **Topsoil redistribution shall not occur under wet soil conditions.** If topsoil is contaminated, compacted or otherwise improperly handled, topsoil should be amended with compost at a rate of 3 cubic yards per 1000 square feet of disturbed area to provide a suitable seedbed. Compost shall consist of at least 40 % organic matter, with a pH not to exceed 8.0, and soluble salts not greater than 10 Mmhos/cm. The carbon to nitrogen ratio of the compost shall be between 10:1 and 20:1. Compost shall be incorporated evenly throughout topsoil.

#### **5.0 Seedbed Preparation**

Following redistribution of topsoil and application of amendment, the disturbed areas shall be chiseled again to a minimum depth of 10 inches, with no more than a 10 inch interval between chiseled furrows.

On disturbed areas, further seedbed preparation such as discing, harrowing and/or firming operations will be necessary to reduce soil clods that are greater than 4 inches in diameter, and to provide a seedbed that is firm and friable.

#### **Irrigated and Dryland Cropland**

On cropland, final grading and seedbed preparation will be performed by the agricultural tenant on the property. NCWCD shall reimburse the tenant at a negotiated hourly rate to cover equipment and operator time. Reimbursement shall be made upon presentation of an invoice to NCWCD by the agricultural tenant.

#### **6.0 Seeding**

##### **Irrigated and Dryland Cropland**

The agricultural tenant will perform seeding operations on irrigated and dryland cropland. NCWCD shall reimburse tenant for any seed that has been planted prior to disturbance by NCWCD's construction activities and for seeding operations at a negotiated hourly rate. All other seed on cropland will be provided by Boulder County or tenant. Reimbursements for seeding operations shall be made upon presentation of an invoice to NCWCD by the agricultural tenant.

##### **Rangeland**

Seed mix and planting rates for rangelands will vary amongst sites. An example seed mix and planting rate specification are provided below. Seed should be provided by NCWCD or its contractor according to specifications for each property. Each bag of seed must have its original seed tag attached at the time of delivery and should remain attached until the seed is used. All seed tags must be saved and provided to the Inspection Personnel.

Seed shall be drilled with a drill that is capable of placing the specified seed at the specified rate, at a 1/2" - 3/4" depth. The drill should have an 8" or less drill row spacing and be equipped with packer wheels to firm the soil over the drill row. Dragging chains behind the drill to cover seed is not an acceptable substitute. Seed drills must be clean of seed from previous seeding jobs prior to any seeding on County-owned lands.

Seeding should be completed between October 1 and March 31. In between these dates a cover crop may be used, until the appropriate time to seed specified mix. Seeding shall not occur in extremely windy conditions, or when the soil is frozen or wet.

Areas that cannot be drilled may be broadcast seeded. Hydroseeding is not acceptable. The specified seeding rate in these areas shall be doubled. Broadcast seed shall be raked, harrowed or otherwise covered by soil to a depth of 1/2" to 3/4".

**Example Rangeland Seed Mix**

Species	Common Name – Variety	PLS/ Acre
Bouteloua gracilis	Blue grama, Native	0.48
Bouteloua curtipendula	Sideoats grama, Vaughn	2.33
Buchloe dactyloides	Buffalograss, Native	3.73
Elymus trachycaulus	Slender wheatgrass, Pryor	4.11
Pascopyrum smithii	Western wheatgrass, Arriba	8.32
Stipa viridula	Green Needlegrass, Lodorm	2.31
<b>Total PLS/Acre</b>		<b>21.27</b>

PLS lb/ac = Pure Live Seed pounds per acre

**7.0 Mulch**

**Irrigated and Dryland Cropland**

Mulching is not necessary on irrigated or dryland cropland.

**Rangeland**

After seeding has been completed, mulch should be applied within 24 hours after seeding to all rangeland seeded areas to protect the seed and conserve soil moisture, which will aid in seedling germination and establishment. The following types of mulch are recommended for 3:1 slopes or flatter. Slopes steeper than 3:1 will need additional erosion control.

- A. Colorado Certified Weed Free Hay or Straw Mulch: Applied evenly at a rate of 3000 to 4000 lbs. per acre over the seeded areas. Hay or straw may be crimped in or sprayed with a tackifier according to the project plans. Guara gum tackifier is recommended.

B. Wood fiber hydromulch with guara gum tackifier: A standard rate of 2000 lbs. per acre of hydromulch and 80 lbs. per acre of guara gum tackifier will be appropriate for most projects unless otherwise specified on the project plans. The operator shall spray apply the slurry of wood fiber mulch according to the manufacture's specifications in a uniform manner over the designated seeded areas. **Seed shall not be incorporated and applied simultaneously with the hydromulch slurry.**

## **8.0 Post-Reclamation Weed Control**

To prevent damage to young seedlings, no herbicides will be used through the first growing season following seeding. Reclaimed areas with slopes not exceeding 3:1 will be mowed to prevent flowering and weed seed development. Hand methods will be implemented on steep slopes. Mowing will be undertaken no more than twice during each growing season to prevent desiccation of the grass seedlings with an ideal mowing height of 6 to 8 inches.

## **9.0 Timeframe and Success of Reclamation**

### **Irrigated and Dryland Cropland**

The reclamation success of irrigated and dryland croplands largely depends on the soil condition post-reclamation and is determined by the level of productivity of the crop grown within reclaimed area versus the crop productivity within surrounding undisturbed areas. If the site is properly reclaimed, then reclamation success should occur in year-1 or 2 following reclamation.

Each year the site will be reviewed by Parks & Open Space's Resource Management and/or Agricultural Staff, at which time NCWCD will be advised as to the management practices that are expected to ensure reclamation success. If within that time period the reclamation process is deemed successful by Parks & Open Space, the obligation incurred by the responsible party will be released. Reclamation success is defined by the level of crop productivity compared to surrounding undisturbed locations. Reclamation will be considered a success if the difference in productivity between disturbed and undisturbed locations is less than 10%.


### **Rangeland**

Reclamation with native and some non-native species requires three to five years to determine stand establishment and productivity. It should be expected that early successional species (such as summer and winter annuals) will occupy the area before the desired perennial stand dominates.

Each year the site will be reviewed by Parks & Open Space's Resource Management and/or Agricultural Staff, at which time NCWCD will be advised as to the management practices that are expected to ensure reclamation success. If within that time period the reclamation process is deemed successful by Parks & Open Space, the obligation incurred by the responsible party will be released. Reclamation success is defined by the percentage of desired species compared to weedy annual broadleaf species (which usually requires no less than three years). Reclamation will be considered a success if there is 75% cover of the desired species present.


**DRAFT SUBJECT TO FURTHER REVIEW AND REVISION**

~~(E) All issued permits shall require that the permittee notify all fee owners of real property to be used in completing the approved development plan that failure of the permittee to comply with permit conditions may result in foreclosure of a City lien.~~



*Division 2  
Permits  
Section 4  
Common Review Standards* 

**2-401 Review Standards for All Applications.**

In addition to the review standards for specific activities listed at Divisions 3 and 4, all applications under these Regulations, including proposed mitigation measures, shall be evaluated against the following general standards, to the extent applicable or relevant to the development plan, in the Permit Authority City Council's reasonable judgment. To the extent a permit application may not comply with a particular standard, the applicant may demonstrate compliance with such standard by proposing mitigation measures that sufficiently offset the extent of noncompliance.


- (A) ~~All of the provisions of the permit application procedure have been complied with~~ The applicant has obtained or will obtain all property rights, permits and approvals necessary for the proposal, including surface, mineral and water rights.
- (B) The health, welfare and safety of the community members ~~citizens~~ of the City will be protected and served.
- (C) The proposed activity is in conformance with the Fort Collins Comprehensive Plan and ~~other~~  duly adopted plans of the City, or other applicable regional, state or federal land development or water quality plan.
- (D) ~~The development plan is financially feasible. The determination of financial feasibility of the development plan may include but is not limited to the following considerations:~~
  - ~~(1) The business plan submitted by the applicant.~~
  - ~~(2) Relevant bond issue, loan and other financing approval or certifications including an approved bond issue or bond counsel opinion.~~
- (E) ~~The development plan will not create an undue financial burden on existing or future residents of the City.~~
- (D) ~~(F)~~ The development plan is not subject to significant risk from natural or human caused environmental hazards. The determination of risk from natural hazards to the development plan may include but is not limited to the following considerations:
  - (1) Unstable slopes including landslides and rock slides.


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- (2) Expansive or evaporative soils and risk of subsidence.
  - (3) Wildfire hazard areas.
  - (4) Floodplains.
- (E) ~~(G)~~ The development plan will not have an **significant** adverse effect **impact** on the capability of local governments affected by the development plan to provide local infrastructure and services or exceed the capacity of service delivery systems. The determination of the effects of the development plan on local government services may include but is not limited to the following considerations:
- (1) Current and projected capacity of roads, schools, infrastructure, drainage and/or stormwater infrastructure, housing, and other **local government facilities and** services necessary to accommodate development, and the impact of the development plan upon the current and projected capacity.
  - ~~(2) Changes caused by the development plan in the cost of providing education, transportation networks, water treatment and wastewater treatment, stormwater drainage, channel stabilization, bridges, emergency services, or other governmental services or facilities.~~
  - (2) ~~(3)~~ Need for temporary roads **or other infrastructure** to ~~access~~ **serve** the development plan for construction and maintenance.
- (F) ~~(H)~~ The development plan will not ~~have a significant adverse effect~~ **adversely impact** on the quality or quantity of recreational opportunities and experience. ~~The determination of effects~~ **impacts** of the development plan on recreational opportunities ~~and experience~~ **may** include but is not limited to the following considerations:
- (1) Changes to existing and projected visitor days.
  - (2) Changes in quality and quantity of fisheries.
  - (3) Changes in instream flows  reservoir levels.
  - (4) Changes in access to recreational resources .
  - (5) Changes to quality and quantity of hiking, biking, **multi-use** or horseback riding trails.
  - (6) Changes to regional open space.
  - (7) Changes to existing conservation easements.
  - (8) Changes to City parks, ~~trails, natural areas, or recreation facilities~~ **playgrounds, community gardens, recreation fields or courts, picnic areas, and other City park amenities.**


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(G) ~~(F)~~ The development plan **when completed** will not ~~significantly degrade~~ **adversely impact** existing visual quality. The determination of visual ~~impacts~~ effects of the development plan may include but is not limited to the following considerations:

- (1) Visual changes to ground cover and vegetation, ~~waterfalls and streams~~  other natural features.
- (2) Interference with viewsheds and scenic vistas.
- (3) Changes in landscape character ~~types~~ of unique land formations.
- (4) Compatibility of structure size and color with scenic vistas and viewsheds.
- (5) Changes to **the visual character of** regional open space.
- (6) Changes to **the visual character of** existing conservation easements.
- (7) Changes to **the visual character of** City parks, trails, natural areas, or recreation facilities.


(H) ~~(J)~~ The development plan will not **adversely impact** ~~significantly degrade~~ air quality  the determination of effects of the development plan on air quality may include but is not limited to the following considerations:

- (1) Changes in visibility and microclimates.
- (2) Applicable air quality standards.
- (3) Increased emissions of greenhouse gases.**
- (4) Emissions of air toxics.**



(I) ~~(K)~~ The development plan will not ~~significantly degrade~~ **adversely impact** surface water quality.  determination of ~~effects~~ **impacts** of the development plan on surface water quality may include but is not limited to the following considerations:

- (1) Changes to existing water quality, including patterns of water circulation, temperature, conditions of the substrate, extent and persistence of suspended particulates and clarity, odor, color or taste of water;
- (2) Applicable narrative and numeric water quality standards.
- (3) Changes in point and nonpoint source pollution loads.
- (4) Increase in erosion.
- (5) Changes in sediment loading to waterbodies.
- (6) Changes in stream channel or shoreline stability.

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- (7) Changes in stormwater runoff flows.
  - (8) Changes in trophic status or in eutrophication rates in lakes and reservoirs.
  - (9) Changes in the capacity or functioning of streams, lakes or reservoirs.
  - (10) Changes to the topography, natural drainage patterns, soil morphology and productivity, soil erosion potential, and floodplains.
  - (11) Changes to stream sedimentation, geomorphology, and channel stability.
  - (12) Changes to lake and reservoir bank stability and sedimentation, and safety of existing reservoirs.
- (J) ~~(L)~~ The development plan will not significantly degrade **adversely impact** groundwater  quality. The determination of **impacts** ~~effects~~ of the development plan on groundwater quality may include but is not limited to the following considerations:
- (1) Changes in aquifer recharge rates, groundwater levels and aquifer capacity including seepage losses through aquifer boundaries and at aquifer-stream interfaces.
  - (2) Changes in capacity and function of wells within the impact area.
  - (3) Changes in quality of well water within the impacted area.
- (K) ~~(M)~~ The development plan will not significantly degrade **adversely impact** wetlands and riparian areas **of any size regardless of jurisdictional status**. In determining impacts to wetlands and riparian areas, the following considerations shall include but not be limited to:
- (1) Changes in the structure and function of wetlands.
  - (2) Changes to the filtering and pollutant uptake capacities of wetlands and riparian areas.
  - (3) Changes to aerial extent of wetlands.
  - (4) Changes in species' characteristics and diversity.
  - (5) Transition from wetland to upland species.
  - (6) Changes in function and aerial extent of floodplains.
- (L) ~~(N)~~ The development plan shall not significantly degrade **adversely impact** the quality of terrestrial and aquatic animal life. In determining impacts to terrestrial and aquatic animal life, the following considerations shall include but not be limited to:
- (1) Changes that result in loss of oxygen for aquatic life.
  - (2) Changes in flushing flows.

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- (3) Changes in species composition or density.
  - (4) Changes in number of threatened or endangered species.
  - (5) Changes to habitat and critical habitat, including calving grounds, mating grounds, nesting grounds, summer or winter range, migration routes, or any other habitat features necessary for the protection and propagation of any terrestrial animals.
  - (6) Changes to habitat and critical habitat, including stream bed and banks, spawning grounds, riffle and side pool areas, flushing flows, nutrient accumulation and cycling, water temperature, depth and circulation, stratification and any other conditions necessary for the protection and propagation of aquatic species.
  - (7) Changes to the aquatic and terrestrial food webs.
- (M) ~~(O)~~ The development plan shall not significantly degrade **adversely impact** the quality of terrestrial and aquatic plant life. In determining impacts to terrestrial and aquatic animal life, the following considerations shall include but not be limited to:
- a. Changes to habitat of threatened or endangered plant species.
  - b. Changes to the structure and function of vegetation, including species composition, diversity, biomass, and productivity.
  - c. Changes in advancement or succession of desirable and less desirable species, including noxious weeds.
  - d. Changes in threatened or endangered species.
- (N) ~~(P)~~ The development plan will not significantly degrade or **adversely impact** natural habitats and features as defined in Land **Development** Use Code Section **5.6.13.4.1**.
- (O) ~~(Q)~~ **The development plan will not adversely impact historic resources.**
- (P) **The development plan will not adversely impact significant trees as defined in Land Development Code Section 5.10.1.**
- (Q) The development plan will not significantly deteriorate **adversely impact** soils and  ologic conditions. The determination of ~~effects~~ **impacts** of the development plan on soils and geologic conditions may include but is not limited to the following considerations:
- (1) Loss of topsoil due to wind or water forces. 
  - (2) Changes in soil erodibility.
  - (3) Physical or chemical soil deterioration.



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- (4) Compacting, sealing and crusting.
- (R) The development plan will not cause a nuisance. The determination of nuisance **impacts** effects of the development plan may include but is not limited to the following considerations: increase in odors, dust, fumes, glare, heat, noise, vibration or artificial light.
- (S) The development plan will not result in ~~unreasonable~~ risk of releases of, or exposures to, hazardous materials or regulated substances. The determination of the risk of release of, or increased exposures to, hazardous materials or regulated substances caused by the development plan may include but is not limited to the following considerations:
- (1) Plans for compliance with federal and state handling, storage, disposal, and transportation requirements.
  - (2) Use of waste minimization techniques.
  - (3) Adequacy of spill **and leak** prevention and response plans.
- ~~(T) For applications requiring an evaluation of alternatives, the proposed development plan must, to the extent reasonably feasible, be the least environmentally impactful alternative among the alternatives analyzed.~~
- (T) The development plan will not have negative impacts that fall disproportionately on disproportionately impacted communities within the City considering, for example, the distribution of impacts to the following:**
- a. Air quality.
  - b. Water quality.
  - c. Soil contamination.
  - d. Waste management.
  - e. Hazardous materials.
  - f. Access to parks, natural areas, trail and other recreational or natural amenities.
  - g. Nuisances.

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*Division 3*

*Regulations for Site Selection and Construction of Major New Domestic Water and Sewage Treatment Systems and Major Extension of Such Systems*

**Section 1      General Provisions**

3-101      Applicability

3-102      Purpose and Intent Designation of Site Selection and Construction of Major New Domestic Water and Treatment Systems and Major Extension of Such Systems

**Section 2      Specific Review Standards**

3-201      Specific Review Standards for Major New Domestic Water or Sewage Treatment Systems or Major Extensions