



Water Adequacy Determination Review
Land Use Code Update

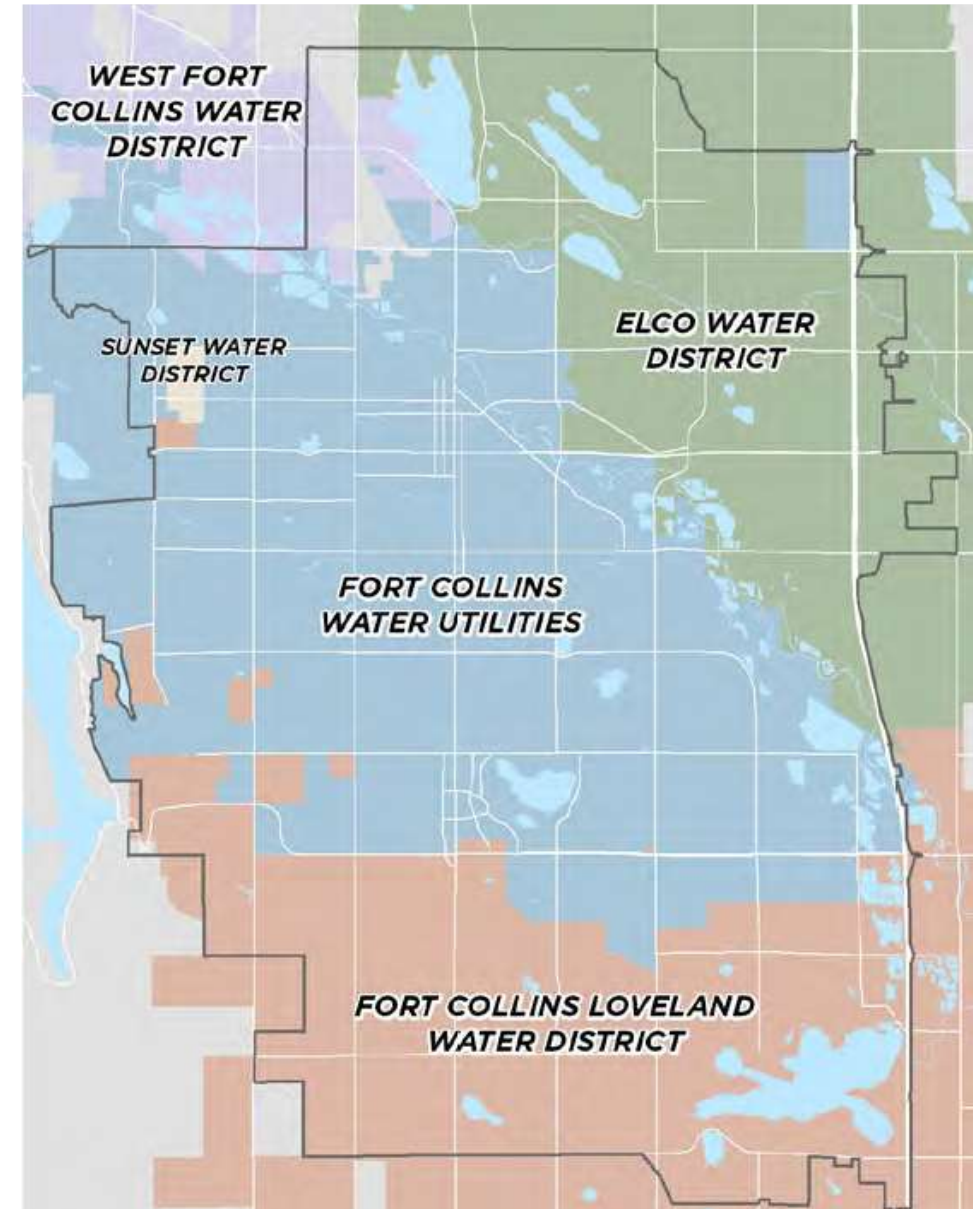
- Water Adequacy Determination Review Program supports the goals of
 - City Plan
 - Housing Strategic Plan
 - Climate Action Plan
- Viewed as a tool kit to look at water affordability and support sustainable development patterns
- Neighborhood Livability & Social Health - 1.6 - Align land use regulations and review procedures to guide development consistent with City Plan.

- Water is a critical resource and its cost and availability impact new development
- Existing review process
- Need for a more robust process
 - More complicated development
 - Potential for creation of new water providers

This review process is being proposed to further effectuate Section 29-20-301, et seq., C.R.S. which states:

A local government shall not approve an application for a development permit unless it determines in its sole discretion, after considering the application and all of the information provided, that the applicant has satisfactorily demonstrated that the proposed water supply will be adequate. A local government shall make such determination only once during the development permit approval process unless the water demands or supply of the specific project for which the development permit is sought are materially changed. A local government shall have the discretion to determine the stage in the development permit approval process at which such determination is made.

- Development occurs within the district boundaries of existing water providers
- Will Serve Letter issued by provider
 - Part of the building permit process



- Other Agency Review
 - Other agencies have the authority to review new providers
 - CDPHE
 - Requires public water systems demonstrate adequate capacity to construct, operate and manage the new public waterworks.
 - Water Court
 - There is also likely a role for Water Court to plan in validating claims for water under Colorado Law.

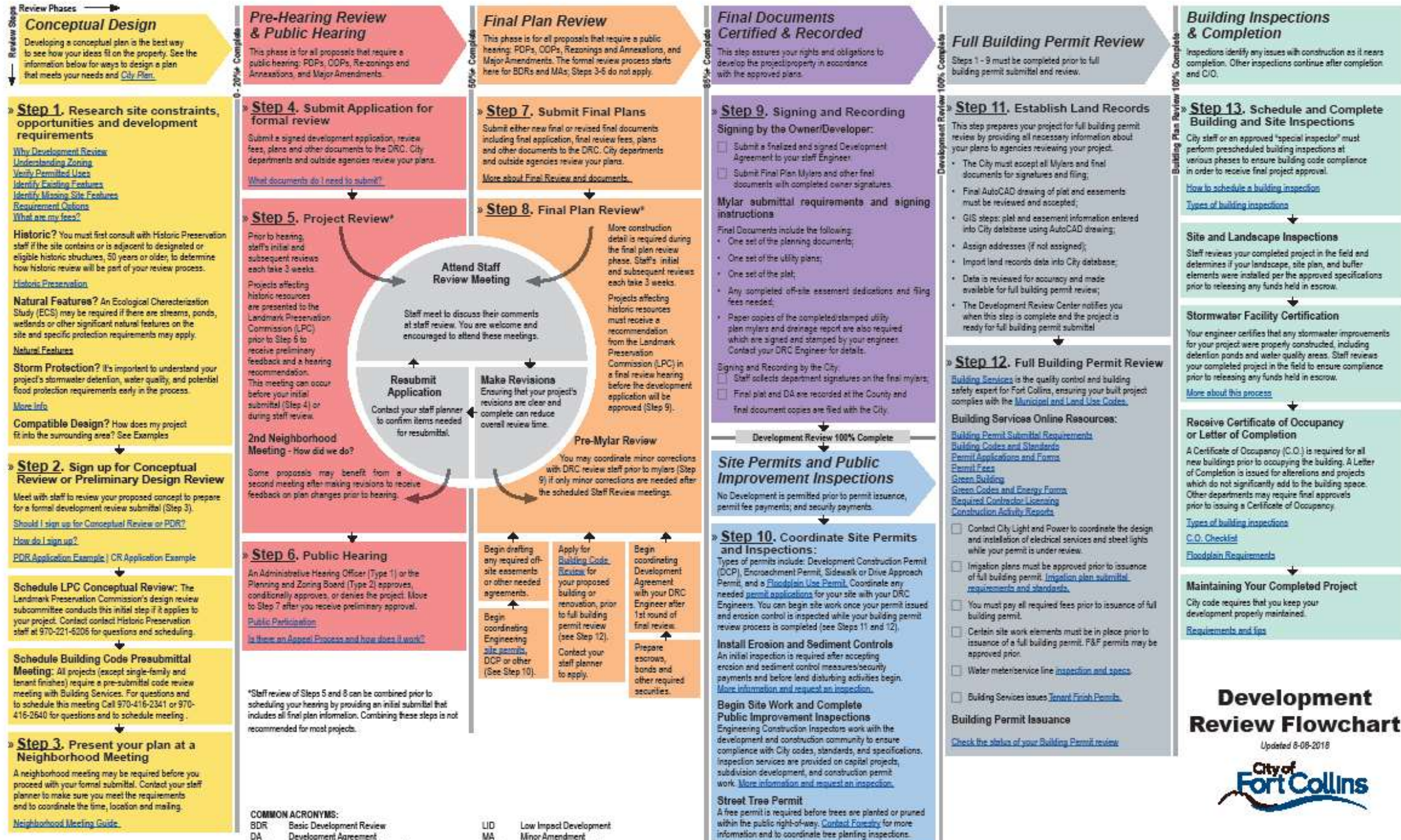
- Water Adequacy is a new code division, 3.13 that builds off of existing adequate public facilities section 3.7.3.
- Creates 3 determination processes for different providers:
 - Established potable water supply entities, such as Fort Collins-Loveland Water District and East Larimer County Water District
 - Other potable water supply entities such as new private water supplies or metro districts
 - Non-potable water supply entities, such as irrigation water supplied by metro districts

- Timing

- The state statute leaves the determination timing during the development process up to the purview of the local jurisdiction however they limit making the determination to **only once** unless something materially changes.
- The draft code identifies the milestone in the development review process when this determination will be made for each of the three different processes.

- Approval

- The determination of adequacy would be made administratively subject to a review and recommendation by a qualified water consultant.



COMMON ACRONYMS:

BDR	Basic Development Review	LID	Low Impact Development
DA	Development Agreement	MA	Minor Amendment
DCP	Development Construction Permit	ODP	Overall Development Plan
DRC	Development Review Center	PDP	Project Development Plan
FDP	Final Development Plan	PDR	Preliminary Design Review

- Keep similar process for existing providers
 - Will Serve Letter
 - Director can differ timing to building permit for review
 - Director as the decision maker
- Includes opportunities to
 - Review proposed updates to water supply plans by Council
 - Improve letters
 - Increase consistency between different providers

- Evaluation criteria for new providers
 - Water Quality
 - Quantity of Water
 - Dependability of Supply and Supplier
 - Supply Resiliency
 - System Redundancy
 - Maintenance and Outages
 - Availability of Supply
 - Financial Sustainability of Supplier
 - Capitalization

- Overall Standards Equivalent to Municipal Utility
 - Allows for a Modification of Standard for noncompliance
- Review Timing
 - At the time of Final Development Plan or Basic Development Review
 - Initial review anticipated to be done by a consultant
 - Cost agreement with applicant
- Final decision maker is CDNS Director

- Non-potable Entities
- Criteria:
 - Supply has enough quantity and;
 - Quality to support the associated uses such as irrigation for landscape.
- Review Timing
 - At the time of Development Construction Permit
 - Initial review anticipated to be done by a consultant
 - Cost agreement with applicant
- Final decision maker is CDNS Director

- Article Five, Division 5.1.2 – Definitions
- The proposed change to Division 5.1.2 is to add the following definitions that relate to the water adequacy determination review process and provide additional clarity on specific terms used in that section.
 - Adequate
 - Established Potable Water Supply Entities
 - Non-Potable Water
 - Non-Potable Water Supply
 - Other Potable Water Supply Entities
 - Potable Water
 - Water Adequacy Determination
 - Water supply entity
 - Water supply system

- Stakeholder Meetings:
 - Water Commission
 - West Fort Collins Water District
 - East Larimer County Water District
 - Fort Collins Loveland Water District
 - Hartford Homes/Bloom
 - HF2M/Montava
 - Polestar Gardens/Polestar Village
- Additional Feedback (no concerns):
 - Sunset Water District
 - Save the Poudre

- Requirement for new supply entities to petition out of existing water district or seek permission from existing water district.. There was both support and concern over this concept.
- The disparity between review criteria for established providers and new providers.
- The perception that the City was trying to regulate Special Districts through the review of a water supply plan or letter establishing the District's resources.
- A desire for more cooperation and consistency between all water suppliers.
- Concerns about duplicative review processes, especially for non-potable systems.
- Concerns over review costs
- Feedback that some metrics were vague.
- Feedback on the review timing proposed (FDP versus DCP) with a desire to complete the determination sooner.
- Feedback that there is a desire to be able to review new service for an entire development and then true up each phase at the time of final plan or BDR.
- Concerns on tight review timing for code update.

Staff is confident in the structure of the adequacy determination approach but incorporated feedback since the P&Z hearing that:

- Increased clarity
- Increased review efficiency
- Reduced duplication of efforts
- Provided additional review timing options
- Incorporated technical suggestions

Staff has identified 3 Decision Points for Council

1. Section 3.13.3 (A) Determination Timing
2. Section 3.13.4 (A) (1) Established Provider Review
3. Section 3.13.5(C)(5)(c) New Providers in Existing Service Areas

Alternatives outlined in subsequent slides.

In all three cases, staff is recommending to adopt the code as proposed and to not make any changes.

Decision Point 1 - Section 3.13.3 (A) Determination Timing

Entity	Current	Proposed	Deferred
Established	Building Permit	FDP/BDR	Building Permit
Other (New)	N/A	FDP/BDR	DCP All in Phase 1
Non-Pot	N/A	FDP/BDR	DCP

Alternatives:

- Move Earlier in Dev Review Process
- Move Later in Dev Review Process

Staff is recommending to adopt the code as proposed

Alternative 1 - Move the determination timing for any or all the three entity types to earlier in the development review process such as at the project development plan.

- Pros: Provide assurance that water supply issues are being addressed earlier in the development review process so that unrealistic projects don't waste resources.
- Cons: Projects can change, potentially significantly, as they go through the development process and those impacts could change the amount of water the development ultimately needs to be successful. For example, a commercial space could change from a retail store to a restaurant or brew pub, all having different water supply requirements.

Alternative 2 - Move the determination timing for any or all the three entity types to later in the development review process such as at building permit.

- Pros: Gives Staff the most accurate and detailed information on the water supply requirements to make the determination.
- Cons: Allows projects with unrealistic water supply proposals to move through the development review process to the point of having created detailed construction drawings and incurred those design expenses.

Section 3.13.4 (A) (1) Established Provider Review

Requires Established Providers to provide a letter or water supply plan to Council outlining their water resources prior to submitting will serve letters.

Established Providers have indicated concerns with this approach

Alternatives:

- Remove the requirement
- Increase the level of required review

Staff is recommending to adopt the code as proposed

Alternative 1 - Remove this requirement from both subsections (a) and (b).

- Pros: Allows established potable water supply entities to continue submitting will serve letters, as they have previously done with minimal changes to the current process.
- Cons: There is a missed opportunity for education for both parties on how these established potable water supply entities provide services within the City and how these services impact the community.

Alternative 2 - Require a greater level of review for these documents such as a presentation before Council, or another City Board or Commission, during a meeting or work session.

- Pros: Allows for greater dialogue and understanding on how water resources are provided to all parts of the Fort Collins community.
- Cons: Established potable water supply entities would likely feel that this infringes on their quasi-governmental entity's rights to serve their established purpose, and could create a misunderstanding that the City has some oversight over the districts, when the City does not.

Section 3.13.5(C)(5)(c) New Providers in Existing Service Areas

- Provision requires new (other) providers to exclude from established providers service area or get their consent to operate.
- Potential new providers have indicated significant concerns with this approach.
- Established providers have indicated substantial support for the approach.

Alternatives:

- Remove the requirement
- Alter the code requirement

Staff is recommending to adopt the code as proposed

General requirement. All proposed development within four hundred (400) feet of a water main of a public water system or designated regional public water system shall connect to such system, unless the applicable provider certifies, in writing, that the system lacks sufficient capacity to serve the proposed development; or the connection would be technically impracticable; or the provider otherwise refuses to serve the proposed development.

Alternative 1 - Remove this requirement from the proposed code.

- Pros:

- Removes the City from the middle of the issue of whether privately-owned potable water supply entities should also be excluded / get consent from established potable water supply entities.
- Potentially allows new, privately-owned water supply entities to innovate, provide cheaper water supply alternatives, and supply water in a manner that makes denser development in accordance with the vision of City Plan possible where it might not otherwise be economically feasible.

Alternative 1 - Remove this requirement from the proposed code.

Cons:

- From the perspective of the established potable water providers, including the City, removing this requirement would allow the potential for new, privately-owned potable water supply entities to operate within the established potable water provider's service area. Various policy concerns are raised by the prospect of small potable water supply entities in the GMA.
- This more easily allows additional water providers in the Grown Management Area (GMA), adding additional complexity for water supply, including regional coordination on various issues, including drought response, and fees and rates. That some new potable water supply entities could be small and privately-owned, thus perhaps lacking economies of scale and elected representation adds potential additional considerations.
- This could harm the established potable water supply providers and their ratepayers by eliminating service in areas where service was already planned for and where expenses such as infrastructure or other less obvious costs such as treatment capacity have already been accrued by the established potable water supply entity. In some instances, bonds may have been issued based, in part, on this service area. This could affect future rates and fees.
- Offers less certainty and transparency regarding where and when privately-owned water supply entities can operate.

Alternative 2 - Alter the code requirement.

- Pros: Staff was unable to find a reasonable compromise that would satisfy all parties with the concerns of this proposed code provision, however staff would be open to exploring alternative language if there is a desire to do so.
- Cons: The proposed language is based on an existing municipal code provision (Sec. 26-4) that gives general policy direction with the respect to the City respecting the service area boundaries of established potable water supply entities. The current language achieves the desired purpose as written.

Decision	Alternative 1	Alternative 2	Staff Recommendation
1. Determination Timing	Earlier in the process	Later in the process	FDP/BDR as currently proposed
2. Established Provider Review	Remove requirement	Increase requirement	Adopt as currently proposed
3. New Providers in Existing Service Areas	Remove requirement	Alter the requirement	Adopt as currently proposed

Planning and Zoning Commission recommends that Council not adopt the proposed code to allow for

- additional time to consider the impacts of the timing of the determination
- staff to further study section 3.13.5C(5) to fully understand implications for both applicants and supplier, particularly for an applicant's ability to appeal the decision of a district

Staff recommends the Council approve the proposed Land Use Code changes.