



# Principled Negations & NAI Tools Guided A Difficult CLOMR Review

*Floodplain Legal & Sustainable Development  
Workshop  
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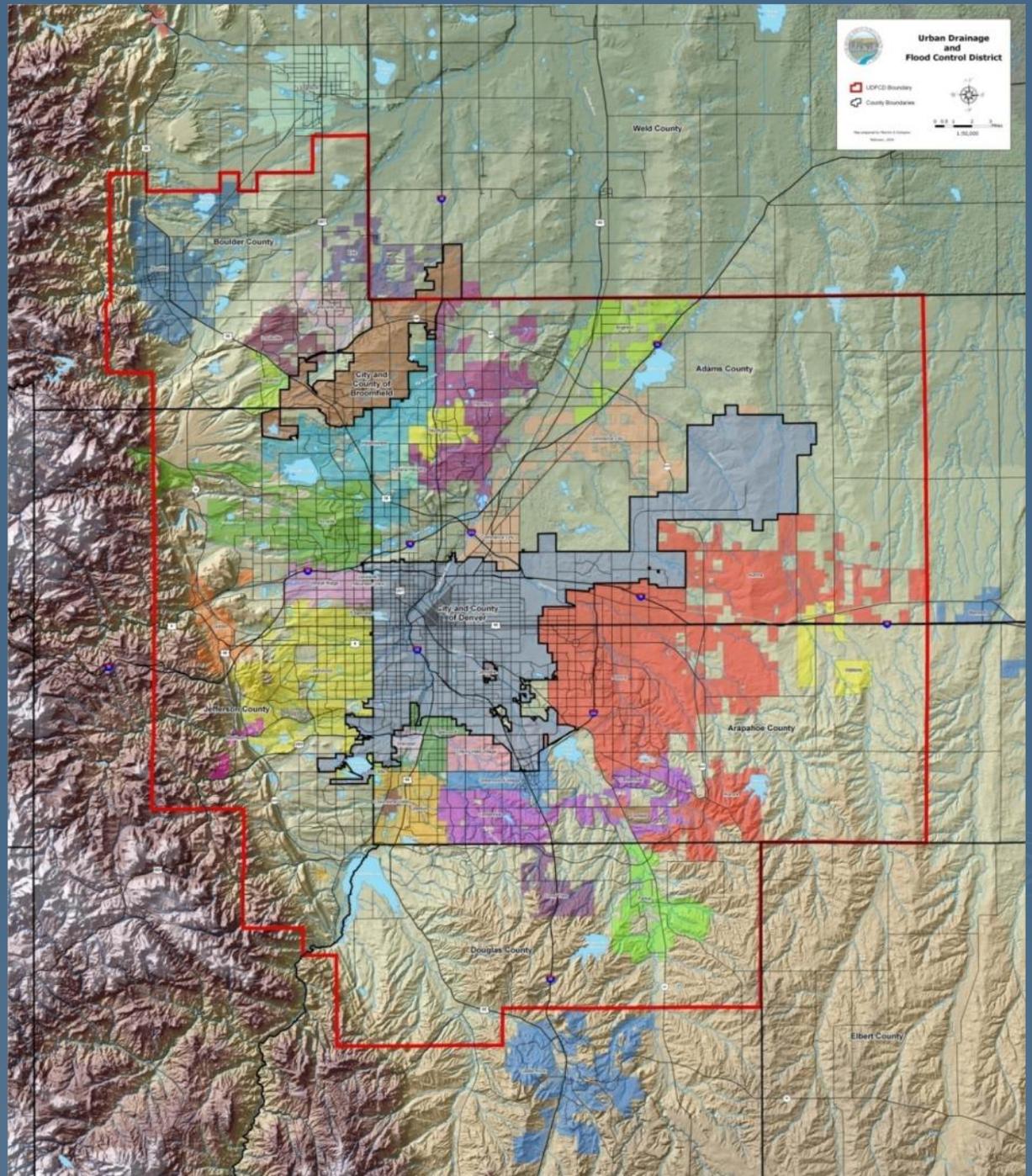


# Overview

- Introduce UDFCD
- Maintenance Eligibility Program
- Floodplain Preservation Brochure
- FEMA Cooperating Technical Partnership
- Case Study



# MAP OF DISTRICT





# PHYSICAL FEATURES

- 1,608 Square Miles
- 1,600 Miles of Major Drainageways
- 2.8 Million Population
- Elevation 5,280 Ft. (plus or minus)
- Seven Counties and 33 Incorporated Entities
- Annual Precipitation – 14.5 inches
- Flood Threat – High Intensity Rainfall from Mid-April Through Mid-Sept



# Floodplain Management Program

- Created in 1974 to prevent new damage potential from being built in the floodplain
- Current Staff:
  - Manager
  - Two Senior Project Engineers
  - Construction Manager
  - Two on-call consulting firms
  - Other consultants as needed



# Floodplain Management

- **National Flood Insurance Program**
- **Floodplain Regulation**
- Flood Hazard Area Delineation (FHAD)
- **Development Reviews**
- **Maintenance Eligibility**
- Master Plan Implementation
- Public Information



# GILBERT WHITE TAUGHT US

*“Floods are Acts of Nature;  
But Flood Losses are largely Acts of Man.”*

**Dr. Gilbert Fowler White 1911-2006**

Gustavson Distinguished  
Professor Emeritus of Geography  
University of Colorado

70 Years of Leadership in the  
Field of Floodplain Management

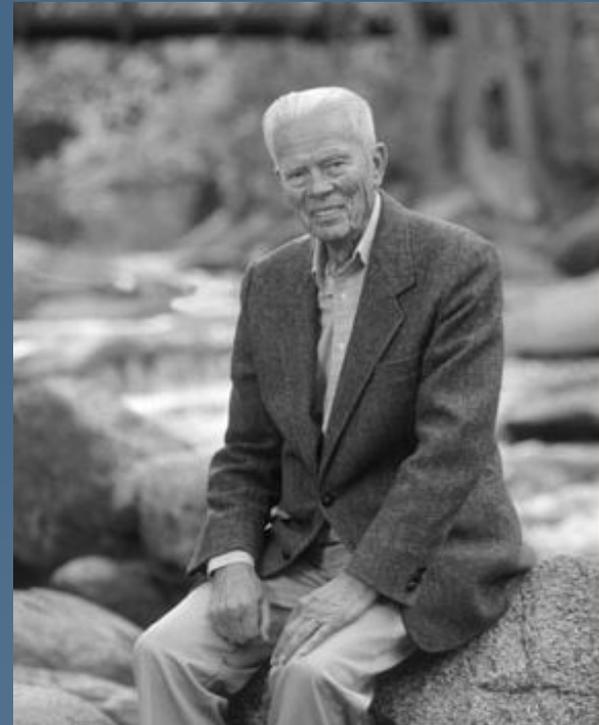
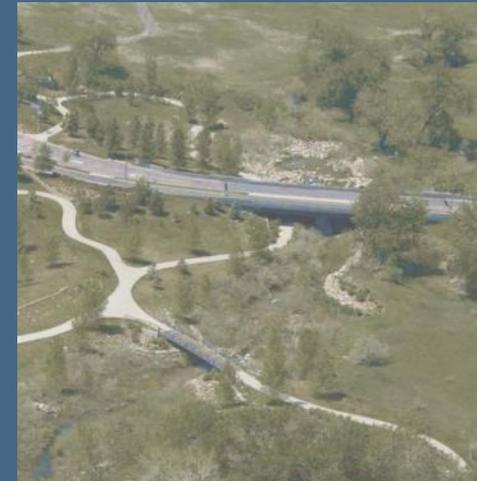


Photo: Ken Abbott/UCB



# Floodplain Preservation Brochure

- We had a “good examples” page on our web site where we tried to direct developers but with limited success
- We saw the opportunity to prepare a brochure which would market the floodplain as an asset to developers and communities that could be distributed early in the planning process, for instance, at a pre-application meeting



*Preserving the natural and beneficial values of floodplains adjacent to development projects*

*A guide for creating project value and selection of amenity enhancements.*





# Maintenance Eligibility Program

- Originally established to offer communities assistance in maintaining major drainageways constructed after March 1, 1980.
- Projects are submitted through local government referrals and reviewed for conformance with District design criteria.
- Construction must complete the approved design, and satisfactory maintenance access provided.



# FEMA's CTP Program

- Part of FEMA's Map Modernization Program
- District signed first CTP agreement in May, 1999
- LOMC Delegation began July, 2001
- Engineering consultants provide technical review support
- Close coordination with local Baker office



# The Case Study

- Uncovering and Expressing Your Yes
- Empowering & Asserting Your No
- Know Your Stuff Before You Say No
- The Balcony
- Plan B
- Proposing & Negotiating to Yes



# The Cornerstar Project





# Proposed Development

- The site was almost entirely in the 100-year floodplain.
- A significant portion was in the floodway.
- The floodplain and floodway encroachments would have produced nearly 1-foot water surface increases on upstream properties.
- Potential for impacts to insurable structures.



# Why the Concern?

- Cherry Creek 100-year discharge rate is nearly 50,000 cfs, highest in the District.
- Arapahoe Road overtops by 5 feet due to a restricted bridge.
- Development benefits would accrue to one community while adverse impacts would occur in adjacent communities.
- Significant stream corridor impact with no Corps of Engineers oversight.







# Quote From The Original Drainage Study

“The Cherry Creek floodplain makes a considerable encroachment onto the development site.”



# Initial Maintenance Eligibility Review

- Wrote a strongly worded review letter
- My boss and his boss were summoned to the Mayor's office for a discussion of municipal finance
- Agreed more negotiations were in order



# Initial Negotiating Position

“The project is 100%  
financed and 80% leased.”  
Please get out of the way.



# NFIP Section 65.12

- CLOMR is required prior to construction.
- All properties affected by an increase in BFE's must receive individual legal notification.
- Viable alternatives must be evaluated.
- Certification of no impacts to insurable structures.
- No clear guidance on adjacent community obligations and responsibilities.





# Review Partners

- District enlisted Baker's assistance as a review partner and for a second opinion.
- Baker helped with the 65.12 conundrum and floodway dilemma.
- Baker helped with FEMA HQ coordination.



# Initial Review

- Initially thought the CLOMR should be denied.
- Modeling and split flow issues.
- Recommended denial for District's Maintenance Eligibility Program.





# STYMIED!

- They enlisted the services of a CU professor to argue the hydraulic analysis
- Refused to consider site modifications
- Our side had no option but deny the CLOMR
- The other side reiterated their property rights
- No cooperation between the communities



# February 21, 2007

- FEMA & CASFM sponsored NAI Workshop taught by my mentor, Ed Thomas
- Figured out our **YES**
- Figured out our **PLAN B**, cleared the CLOMR denial through FEMA HQ
- Learned to cite public safety in all correspondence
- Provided guidelines for revisions that would get to **YES**



# Principled Negotiations

- We presented a convincing and unified public safety stance,
- Backed up by a legal opinion,
- Faced with certain denial, a reasonable alternative, and community pressure,
- Developer entered full-faith negotiations



# The Deal

- Reduce adverse impacts in terms of flood elevations and floodway delineation.
- Acquire the landscape parcel.
- Lower the soccer complex.
- Reduce the development encroachment.
- Conduct a geomorphology study and design for Cherry Creek.
- Landowner acceptance for each adversely affected parcel.







# Property Owner Approval









# NAI Principles

- ✓ Identify ALL the Impacts of a Proposed Development
- ✓ Determine ALL the Properties Which Will be Impacted
- ✓ Notify Potentially Affected Persons of the Impact of Any Proposed Development



# NAI Principles

- ✓ Design or Re-Design the Project to Avoid Adverse Impacts
- ✓ Require Appropriate Mitigation Measures Acceptable to the Community and the Affected Members of the Community



# Time Line

- Original submittal was received May 24, 2006
- Next 12 months were spent working on the final deal.
- Processing began May 18, 2007.
- Property owner negotiations began.
- Adjacent communities signed.
- CLOMR issued August 2007.
- Community floodplain permits issued.









# Bottom Line

- The project was significantly revised for less adverse impact.
- Project gained support from all affected communities.
- Stream corridor is eligible for District maintenance assistance in the future.
- Set a precedent for enhanced floodplain management using NAI principals.



# Thank You!



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