

**ARTICLE 5**  
**ADMINISTRATION**



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**ARTICLE 5**

**ADMINISTRATION**

**DIVISION 5-1.DUTIES AND RESPONSIBILITIES OF DECISION-MAKING, ADMINISTRATIVE AND ADVISORY BODIES**

The following decision-making, administrative, and advisory bodies shall have the following duties and responsibilities in the administration of these Land Use Regulations.

**SECTION 5-100. BOARD OF COUNTY COMMISSIONERS**

- A. Powers and Duties.** In addition to any authority granted the Board of County Commissioners by general or special law, the Board of County Commissioners shall have the following powers and duties under the provisions of these Land Use Regulations:
- 1. Amendment to Text of These Land Use Regulations.** To initiate, hear, consider, and approve or disapprove applications to amend the text of these Regulations.
  - 2. Amendment to Official Zone District Map.** To initiate, hear, review, consider, and approve or disapprove applications for amendment to the Official Zone District Map of these Land Use Regulations.
  - 3. PUD.** To hear, review, consider, and approve or disapprove applications for Sketch/Preliminary Plan for Planned Unit Development (PUD) District.
  - 4. Exemptions from Subdivision.** To hear, review, consider, and approve or disapprove applications for exemption to Plats for Subdivision.
  - 5. Subdivision.** To hear, review, consider, and approve, approve with conditions, or disapprove applications for development permit for Sketch Plan/Preliminary Plan and Final Plat for Subdivision.
  - 6. Minor Subdivisions.** To hear, review, consider and approve, approve with conditions, or disapprove applications for Minor Subdivision.
  - 7. Special Uses.** To hear, review, consider and approve, approve with conditions or disapprove Special Use Permits.
  - 8. Beneficial Use Determination.** To hear, review, consider and approve, approve with conditions or disapprove Appeals for Beneficial Use Determinations.

9. **Public Way Vacations.** To hear, review, consider and approve, approve with conditions or disapprove vacations of public ways and easements.
10. **Variance on Improvement Standards.** To hear, review, consider and approve, approve with conditions, or disapprove variances to improvement standards.
11. **Appeal Decision/Interpretation of Planning Director.** .To hear, review, consider, and affirm, modify, or reverse appeals of interpretations or decisions made under these Land Use Regulations by the Planning Director.
12. **Extensions/Expirations.** To hear, review, consider and determine whether to approve an extension of a Special Use Permit, Sketch Plan/Preliminary Plan for PUD, or Sketch Plan/Preliminary Plan/Final Plat for Subdivision.
13. **Expiration of Permits.** When appropriate, to initiate and determine when to take action to expire the life of a Special Use Permit, Sketch/Preliminary Plan for PUD, or Sketch Plan/Preliminary Plan/Final Plat for Subdivision.
14. **Special Districts.** To hear, review, consider, and approve or disapprove the service plans for Special Districts.
15. **Appoint Hearing Officers.** To designate and appoint Hearing Officers to make decisions as the Board of County Commissioners may deem appropriate.
16. **Other Action.** To take such other action not delegated to the Planning Commission, the Zoning Board of Adjustment, or Hearing Officers or heads of County departments, as the Board of County Commissioners may deem desirable and necessary to implement the provisions of the Master Plan and these Regulations.

## SECTION 5-110. PLANNING COMMISSION *(am.11/08/05)*

### A. EAGLE COUNTY PLANNING COMMISSION

1. **ESTABLISHMENT.** There is hereby established the Eagle County Planning Commission.
2. **Powers and Duties.** The Eagle County Planning Commission shall have the following powers and duties under the provisions of these Land Use Regulations for all matters within the unincorporated portions of Eagle County.
  - a. **Prepare Comprehensive Plan.** To prepare or cause to be prepared or amended the Comprehensive Plan, or any element or portion thereof, for adoption by the Planning Commission. The Eagle County Planning Commission shall be responsible for the preparation, adoption and amendment of the countywide comprehensive plan and community plans for areas of Eagle County that are not within the boundaries of a regional planning commission.

- b. Prepare These Land Use Regulations.** To prepare or cause to be prepared Land Use Regulations to implement the Comprehensive Plan, for adoption by the Board of County Commissioners.
- c. Recommend amendments to text of these Land Use Regulations.** To initiate, hear, review, consider, and make recommendations to the Board of County Commissioners to approve or disapprove applications to amend the text of these Land Use Regulations.
- d. Recommend amendments to Official Zone District Map.** To initiate, hear, review, consider, and make recommendations to the Board of County Commissioners to approve or disapprove amendments to the Official Zone District Map of these Land Use Regulations.
- e. Recommend Planned Unit Development (PUD) District.** To hear, review, consider, and make recommendations to the Board of County Commissioners to approve or disapprove applications for a Sketch/Preliminary Plan for a Planned Unit Development (PUD) District.
- f. Special Uses.** To hear, review, consider, and make recommendations to the Board of County Commissioners to approve, approve with conditions, or disapprove Special Use Permits.
- g. Subdivision.** To hear, review, consider, and make recommendations to the Board of County Commissioners to approve, approve with conditions, or disapprove applications for development permit for Sketch/Preliminary Plans for Subdivision.
- h. Special Districts.** To hear, review, consider, and recommend approval, approval with conditions, or disapproval to the Board of County Commissioners of service plans for Special Districts.
- i. Make Expertise Available.** To make its special knowledge and expertise available upon written request and authorization of the Board of County Commissioners to any official, department, board, commission or agency of the County, a City within the County, the State or Federal governments.
- j. Recommend Rules of Procedure.** To recommend to the Board of County Commissioners additional or amended rules of procedure not inconsistent with this Section to govern the Planning Commission's proceedings.
- k. Make Additional Studies.** To make studies of the resources, possibilities and needs of the County upon the authorization of the Board of County Commissioners, and to report its findings and recommendations, with reference thereto, to the Board of County Commissioners.

3. **Planning Commission membership.**
  - a. **Qualifications.** Members and associate members of the Eagle County Planning Commission shall be residents of Eagle County prior to appointment, and registered voters. No member of the Board of County Commissioners shall serve on the Eagle County Planning Commission. Although no specific experience requirements shall be necessary as a prerequisite to appointment, consideration should be given to applicants who have experience or education in planning, law, architecture, natural resource management, real estate, and related fields.
  - b. **Appointment.** The Eagle County Planning Commission shall be composed of seven (7) voting members and associate members as necessary, to be appointed by a majority vote of the Board of County Commissioners by Resolution.
4. **Terms of office.** All members and associate members serving on the Planning Commission on the effective date of these Land Use Regulations shall complete their terms according to their prior appointments. The term of office of each member appointed under these Land Use Regulations shall be for three (3) years. The term of office for each associate member appointed under these Land Use Regulations shall be for one (1) year. When a person is appointed to fill out the term of a departing member or associate member, that person's term shall end at the time the departing member's or associate member's term would have ended.
5. **Removal from office.** Any member of the Eagle County Planning Commission may be removed for cause (misconduct or nonperformance of duty) by the Board of County Commissioners upon written charge and after a public hearing.
6. **Vacancy.** Whenever a vacancy occurs on the Eagle County Planning Commission, the member's or associate member's position shall remain vacant until a new member or associate member can be appointed by the Board of County Commissioners.
7. **Officers; Quorum; Rules of Procedure.**
  - a. **Chairman and Vice-Chairman.** At an annual organizational meeting, the members of the Eagle County Planning Commission shall elect a Chairman and Vice-Chairman from among its members. The Chairman's and Vice-Chairman's term shall be for one (1) year. No member shall serve as Chairman for more than two (2) consecutive terms. The Chairman shall administer oaths, shall be in charge of all proceedings before the Eagle County Planning Commission and shall take such action as shall be necessary to preserve order and the integrity of all proceedings before the Planning Commission. In the absence of the Chairman, the Vice-Chairman shall act as Chairman. In the absence of both the Chairman and Vice-Chairman, a temporary Chairman shall be elected by a majority of the quorum present, who shall act as Chairman.
  - b. **Secretary.** The Planning Director shall serve as Secretary of the Eagle County Planning Commission. The Secretary shall keep minutes of all proceedings,



which shall summarize all proceedings before the Planning Commission, which shall include the vote of all members upon every question, and be attested to by the Secretary. The minutes shall be approved by a majority of the Planning Commission members voting. In addition, the Secretary shall maintain all records of Planning Commission meetings, hearings, proceedings, and the correspondence of the Planning Commission.

- c. **Staff.** The Planning Department shall be the professional staff of the Eagle County Planning Commission.
- d. **Quorum and Voting.** The presence of four (4) or more members or alternate members substituting for members shall constitute a quorum of the Eagle County Planning Commission necessary to take action and transact business. All actions shall require a simple majority vote of the quorum.
- e. **Rules of Procedure.** The Eagle County Planning Commission shall, by a majority vote of the entire membership, adopt rules of procedure for the transaction of business, and shall keep a record of resolutions, findings, and determinations, and a record of meetings.

## 8. Meetings.

- a. **General.** Meetings of the Eagle County Planning Commission shall be held on the first and third Wednesdays of each month to dispense of matters properly before the Planning Commission. Additionally, meetings may be called by the Chairman or at the request of three (3) members of the Planning Commission. The location of all Planning Commission meetings shall be in the County in a place accessible to the public.
- b. **Meetings Open to Public.** All meetings and public hearings of the Eagle County Planning Commission shall be open to the public in a place accessible to the public, except that meetings held in executive session pursuant to Colorado law shall not be open to the public.
- c. **Notice.** Public hearings shall be set for a time certain after due public notice pursuant to Section 5-210.E, Notice of Public Hearings.

- 9. **Compensation.** The members of the Eagle County Planning Commission shall serve without compensation, but may be reimbursed for such travel, mileage and continuing education expenses as may be authorized by the Board of County Commissioners.

**B. Regional Planning Commission.** *(am.11/08/05)*

1. **Establishment.** Pursuant to C.R.S.30-28-105, as amended, the Board of County Commissioners may cooperate with other municipalities to create a regional planning commission.
2. **Powers and Duties.** A regional planning commission shall be responsible for the preparation, adoption and amendment of community plans within its boundaries and for review and recommendation to the Eagle County Planning Commission regarding the countywide Comprehensive Plan and Land Use Regulations. A regional planning commission shall also have the power and duty to review all land use applications within its boundaries and to make recommendations on said applications to the Board of County Commissioners. The Regional Planning Commission protocol shall be pursuant to Section 5-110.A.3-9.

**SECTION 5-120. ZONING BOARD OF ADJUSTMENT**

**A. Establishment.** There is hereby established a Zoning Board of Adjustment.

**B. Powers and duties.** The Zoning Board of Adjustment shall have the following powers and duties under the provisions of these Land Use Regulations.

1. **Variance.** To hear, review, and approve, approve with conditions or disapprove applications for Variance Permits to Section 3-340, Zone District Dimensional Limitations, of these Land Use Regulations.
2. **Make Expertise Available.** To make its special knowledge and expertise available upon written request and authorization of the Board of County Commissioners to any official, department, board, commission or agency of the County, the cities of the County, the State or Federal governments.
3. **Recommend Rules of Procedure.** To recommend to the Board of County Commissioners additional or amended rules of procedure not inconsistent with this Section to govern the Zoning Board of Adjustment's proceedings.
4. **Make Additional Studies.** To make studies of the resources, possibilities and needs of the County upon the authorization of the Board of County Commissioners, and to report its findings and recommendations, with reference thereto, from time to time, to the Board of County Commissioners.

**C. Zoning Board of Adjustment membership.**

1. **Qualifications.** Members and associate members of the Zoning Board of Adjustment shall be residents of the County prior to appointment, and registered voters. No member of the Board of County Commissioners shall serve on the Zoning Board of Adjustment. Although no specific experience requirements shall be necessary as a prerequisite to appointment, consideration should be given to applicants who have experience or education in planning, law, architecture, natural resource management, real estate, and related fields.

- 2. Appointment.** The Zoning Board of Adjustment shall be composed of five (5) members, to be appointed by a majority vote of the Board of County Commissioners by Resolution. The Zoning Board of Adjustment shall also be composed of four (4) associate members, to be appointed by a majority vote of the Board of County Commissioners by Resolution.
- D. Terms of office.** All members and associate members serving on the Zoning Board of Adjustment on the effective date of these Land Use Regulations shall complete their terms according to their prior appointments. The term of at least one (1) member and associate member shall expire each year. The term of office of each member appointed under these Land Use Regulations shall be for two (2) years. The term of office of each associate member shall be for one (1) year. There shall be no limit on the number of terms a person may serve on the Zoning Board of Adjustment. When a person is appointed to fill out the term of a departing member or associate member, that person's term shall end at the time the departing member's or associate member's term would have ended.
- E. Removal From Office.** Any member of the Zoning Board of Adjustment may be removed for cause by the Board of County Commissioners upon written charge and after a public hearing.
- F. Vacancy.** Whenever a vacancy occurs on the Zoning Board of Adjustment, the member's or associate member's position shall remain vacant until a new member or associate member can be appointed by the Board of County Commissioners.
- G. Officers; Quorum; Rules of Procedure.**

  - 1. Chairman and Vice-Chairman.** At the first meeting of each calendar year, the members of the Zoning Board of Adjustment shall elect a Chairman and Vice-Chairman from among its members. The Chairman's and Vice-Chairman's term shall be for one (1) year. No member shall serve as Chairman for more than two (2) consecutive terms. The Chairman shall administer oaths and compel the attendance of witnesses by application to the District Court, shall be in charge of all proceedings before the Zoning Board of Adjustment and shall take such action as shall be necessary to preserve the order and integrity of all proceedings before the Zoning Board of Adjustment. In the absence of the Chairman, the Vice-Chairman shall act as Chairman. In the absence of both the Chairman and Vice-Chairman, a temporary Chairman shall be elected by a majority of the quorum present, who shall act as Chairman.
  - 2. Secretary.** The Planning Director shall serve as Secretary of the Zoning Board of Adjustment. The Secretary shall keep full and complete minutes of all proceedings, which minutes shall be a summary of all proceedings before the Zoning Board of Adjustment, which shall include the vote of all members upon every question, its examination and other official actions, and be attested to by the Secretary. The minutes shall be approved by a majority of the Zoning Board of Adjustment members voting. In addition, the Secretary shall maintain all other records of Zoning Board of Adjustment meetings, hearings, proceedings, and the correspondence of the Zoning Board of Adjustment, which shall be immediately filed and kept in the offices of the Zoning Board of Adjustment as public records.
  - 3. Staff.** The Planning Department shall be the professional staff of the Zoning Board of Adjustment.

4. **Quorum and voting.** The presence of four (4) or more members or associate members substituting for a member of the Zoning Board of Adjustment shall constitute a quorum of the Zoning Board of Adjustment necessary to take action and transact business. All actions shall require a vote of four (4) concurring members of the Zoning Board of Adjustment.
5. **Rules of procedure.** The Zoning Board of Adjustment shall, by a majority vote of the entire membership, adopt rules of procedure for the transaction of business, and shall keep a record of resolutions, findings, and determinations, and a record of meetings.

#### H. Meetings.

1. **General.** Meetings of the Zoning Board of Adjustment shall be held on the second Wednesday of each month by call of the Chairman, to dispense of matters properly before the Zoning Board of Adjustment. Additionally, meetings may be called by the Chairman or at the request of three (3) members of the Zoning Board of Adjustment. The location of all Zoning Board of Adjustment meetings shall be in the County in a place accessible to the public.
2. **Meetings Open to Public.** All meetings and public hearings of the Zoning Board of Adjustment shall be open to the public in a place accessible to the public, except that meetings held in executive session pursuant to Colorado law shall not be open to the public.
3. **Notice.** Public hearings shall be set for a time certain after due public notice pursuant to Section 5-210.E, Notice and Public Hearings.

- I. **Compensation.** The members of the Zoning Board of Adjustment shall serve without compensation, but may be reimbursed for such travel, mileage and continuing education expenses as may be authorized by the Board of County Commissioners.

### SECTION 5-130. HEARING OFFICER

- A. **Creation and Appointment.** The Board of County Commissioners shall appoint one (1) or more Hearing Officers to hear Appeals for Beneficial Use Determinations and Abatements, and recommend approval, approval with conditions, or disapproval to the Board of County Commissioners, and to conduct hearings on expiration of Special Use Permits, Sketch/ Preliminary Plan for PUD, or Sketch Plan/Preliminary Plan or Final Plat for Subdivision and make recommendations to the Board of County Commissioners to expire or extend the development permit. In addition, the Board of County Commissioners may appoint one (1) or more Hearing Officers to hear and consider such matters as may be required under any provision of these Land Use Regulations or as may be determined to be appropriate by the Board of County Commissioners from time to time. The Hearing Officers shall serve at the pleasure of the Board of County Commissioners for such period as is determined by the Board of County Commissioners. Such Hearing Officers shall be compensated at a rate to be determined by the Board of County Commissioners, which amount shall be reimbursed to the County by the applicant. Any person who shall accept an appointment as a Hearing Officer shall, for a period of one (1) year from the date of termination as holder of such office, not act as agent or attorney in any proceeding, application or other matter before any decision-making, administrative, or advisory body of the County in any matter involving land that was the subject of a proceeding which was pending during the time served as a Hearing Officer.

- B. Minimum Qualifications.** A Hearing Officer shall have the following minimum qualifications:
- 1. Administration, Environmental and Land Use Law.** Demonstrated knowledge of administrative, environmental and land use planning and law and procedures; and
  - 2. Hold No Appointive or Elective Office.** Hold no other appointive or elective public office or position in the County during the period of appointment.
- C. Duties.** A Hearing Officer shall have the following duties:
- 1. Hearings on Beneficial Use Determinations.** To conduct hearings on Appeals for Beneficial Use Determinations and recommend approval, approval with conditions, or disapproval to the Board of County Commissioners;
  - 2. Hearings on Abatement.** To conduct hearings on alleged Abatement actions, and recommend Abatement to the Board of County Commissioners;
  - 3. Hearings on Expirations.** To conduct hearings on whether a Special Use Permit, Sketch/Preliminary Plan for PUD, or Sketch Plan/Preliminary Plan or Final Plat for Subdivision has expired pursuant to the terms of these Land Use Regulations and/or the terms and conditions of the development approval, and recommend expiration or extension of the Special Use Permit, Sketch/Preliminary Plan for PUD or Sketch/ Preliminary Plan/Final Plat for Subdivision to the Board of County Commissioners;
  - 4. Conduct Other Hearings.** To conduct hearings on such matters as may be requested by the Board of County Commissioners;
  - 5. Written Reports.** To render to the Board of County Commissioners a written report containing a summary of the testimony and evidence given and findings and recommendations regarding the standards applicable to the particular matter; and
  - 6. Other Tasks Assigned by Board of County Commissioners.** To perform such other tasks as the Board of County Commissioners may assign.

## SECTION 5-140. PLANNING DIRECTOR

- A. Creation and Appointment.** The Planning Director shall be the agency head of the Planning Department and shall be appointed by and serve at the pleasure of the County Administrator.
- B. Jurisdiction, Authority and Duties.** In addition to the jurisdiction, authority and duties which may be conferred upon the Planning Director by other provisions of the County Code, the County Administrator, and the Board of County Commissioners, the Planning Director shall have the following jurisdiction, authorities and duties under these Land Use Regulations:
- 1. Interpretation.** To review, consider and render interpretations of the text of these Land Use Regulations or the Official Zone District Map.

2. **Zoning Compliance Certifications.** To hear, consider and approve, approve with conditions, or disapprove applications for Certificates of Zoning Compliance.
3. **Day to Day Administration.** To undertake the day to day administration of these Land Use Regulations.
4. **Process Applications.** To receive applications for development permits for processing pursuant to the terms of these Land Use Regulations.
5. **Ensure Adequate Public Notice.** To ensure that adequate public notice is provided for applications for development permits pursuant to the terms of these Land Use Regulations.
6. **Undertake Comprehensive Planning.** To undertake the current and long range comprehensive planning responsibilities of the County.
7. **Review Comprehensive Plan.** To review every five (5) years the Comprehensive Plan and these Land Use Regulations and recommend amendments to the Planning Commission.  
*(am.11/08/05)*
8. **Coordination.** To coordinate other local, regional, state, and federal planning and permitting processes affecting development in the unincorporated County and to serve as liaison to such local, regional, state, and federal planning agencies having jurisdiction over development in the unincorporated County.

#### **SECTION 5-150. CODE ENFORCEMENT OFFICER.**

In addition to the jurisdiction, authority and duties which may be conferred upon the Code Enforcement Officer by other provisions of the County Code and the Board of County Commissioners, the Code Enforcement Officer shall have the following authority and duties under these Land Use Regulations:

- A. **Inspect.** To inspect for violations of these Land Use Regulations.
- B. **Enforcement.** To assist the Board of County Commissioners and the County Attorney in the enforcement of these Land Use Regulations.

#### **SECTION 5-160. COUNTY ATTORNEY**

In addition to the jurisdiction, authority and duties which may be conferred upon the County Attorney by other provisions of the County Code, the County Attorney shall have the following authority and duties under these Land Use Regulations:

- A. **Review as to Form Written Findings of Fact and Resolutions.** To review as to form all written findings of fact, resolutions and ordinances drafted by the Planning Director, the Code Enforcement Officer, the Planning Commission, the Zoning Board of Adjustment, or the Board of County Commissioners, in connection with any requirement of these Land Use Regulations;

- B. Review as to Form All Legal Instruments.** To review as to form all Subdivision Agreements, Planned Unit Development (PUD) Agreements, Development Agreements, easements, declarations of covenants, letters of credit, performance guarantees or other such documentation in connection with any requirement of these Land Use Regulations; and
- C. Advise County Officials and Boards.** To advise the Planning Director, the County Attorney, the Code Enforcement Officer, the Planning Commission, the Zoning Board of Adjustment, and the Board of County Commissioners in regard to the legal issues which may arise during implementation of the Comprehensive Plan and these Land Use Regulations. (*am.11/08/05*)

## SECTION 5-170. COUNTY ENGINEER.

In addition to the jurisdiction, authority and duties which may be conferred upon the County Engineer by other provisions of the County Code, the County Engineer shall have the following authority and duties under these Land Use Regulations:

- A. Subdivision.** To assist the Planning Director in the review of the applications for Sketch Plans/Preliminary Plans and Final Plats for Subdivision: and
- B. Variances to Improvement Standards.** To assist the Planning Director in the review of applications for variances to improvement standards.

## DIVISION 5-2. COMMON PROCEDURES

### SECTION 5-200. GENERAL

- A. Purpose.** The purpose of Division 5-2, Common Procedures, is to establish the procedures for all legislative and administrative functions of these Land Use Regulations. This includes interpretations, amendments to the Official Zone District Map and text of these Land Use Regulations, Planned Unit Development (PUD) Districts, Special Use Permits, Variance Permits, Variances from Improvement Standards, Exemptions to Subdivision, Minor Subdivision, Subdivision, Public Way and Easement Vacations, Appeals for Beneficial Use Determinations, Certificates of Zoning Compliance, Building Permits, and Appeals from decisions/interpretations of the Planning Director.
- B. Table and Flow chart.**
- 1. Table.** Table 5-200, Development Review Procedures Summary, provides a summary of the types of development applications reviewed by Eagle County, which bodies are responsible for reviewing and acting on those development applications, whether public notice is required for the application, and whether a pre-application meeting is optional or mandatory for the application.
  - 2. Flow Chart.** A flow chart of the land development review process, illustrating the steps in the process, is provided in Figure 5-200, Land Development Review Process.

TABLE 5-200 DEVELOPMENT REVIEW PROCEDURES SUMMARY (am. 05/01/07)

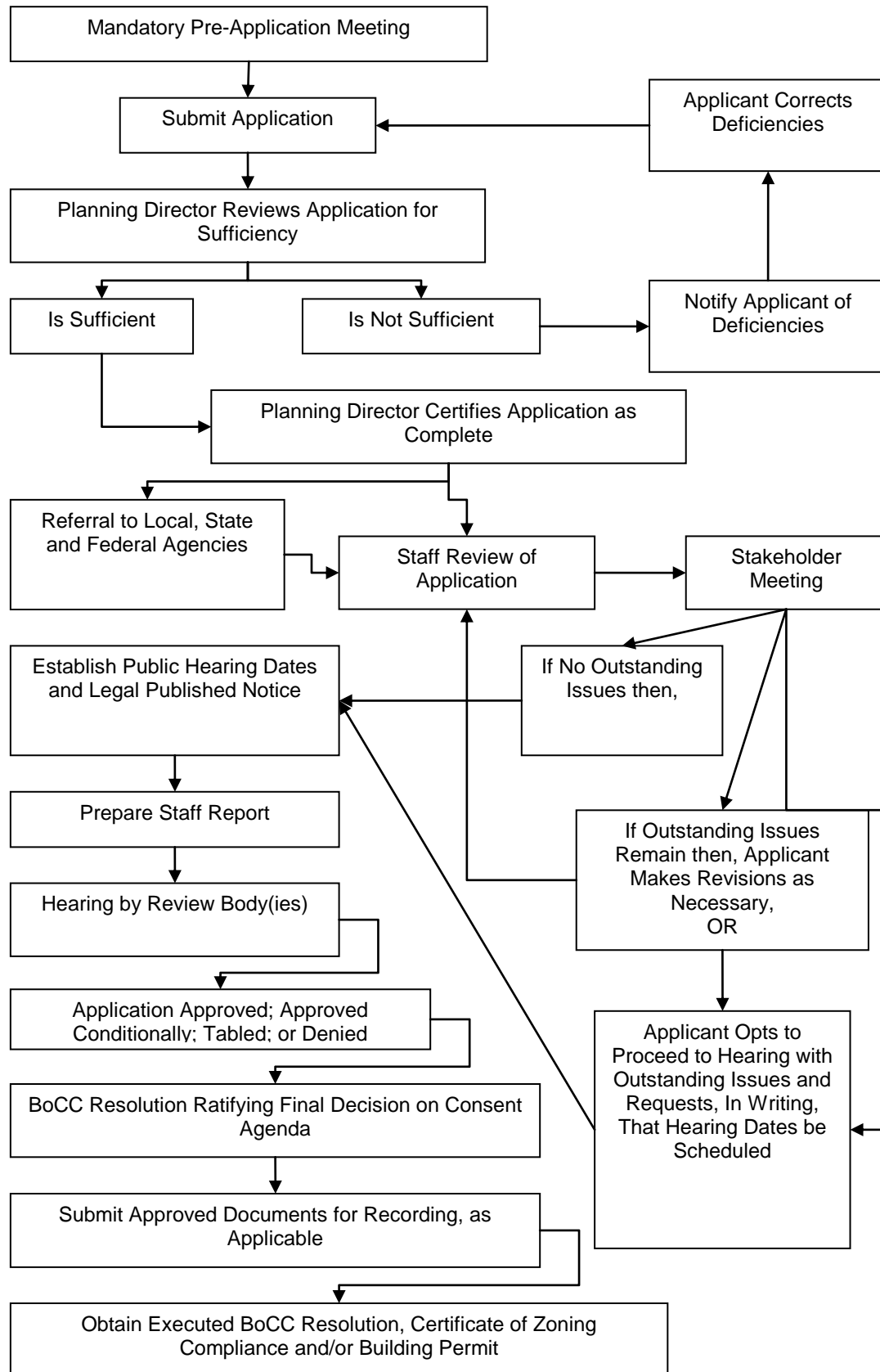
Application Type	Pre-Application Meeting?	Review (R), Decision Making (DM) and Appeal (A) Bodies					Public Notice Required?*
		Staff	Planning Commission	Board of Adjustment	Hearing Officer	BOCC	
Interpretation	Optional	DM				A	No
Amendment to Text of Regulations or Zoning Map	Mandatory	R	R			DM	Yes (Plan Comm & BOCC) **
PUD Sketch Plan	Mandatory	R	R			DM	Yes (Plan Comm & BOCC) **
PUD Preliminary Plan	Mandatory	R	R			DM	Yes (Plan Comm & BOCC) **
Special Use Permit	Mandatory	R	R			DM	Yes (Plan Comm & BOCC) **
Variance	Mandatory	R		DM			Yes (Board of Adjustment) **
Variance from Improvement Standards	Mandatory	R				DM	Yes (BOCC) **
Subdivision Exemption	Mandatory	R				DM	No**
Subdivision Sketch Plan	Mandatory	R	R			DM	Yes (Plan Comm & BOCC) **
Subdivision Preliminary Plan	Mandatory	R	R			DM	Yes (Plan Comm & BOCC) **
Subdivision Final Plat	Mandatory	R				DM	No**
Amended Final Plat	Mandatory	R				DM	No**
Minor Type A Subdivision	Mandatory	R				DM	Yes (BOCC) **
Minor Type B Subdivision	Mandatory	R				DM	Yes <sup>1</sup> (BOCC) **
Public Way/Easement Vacation	Mandatory	R	R			DM	Yes (BOCC) **
Beneficial Use Determination	Optional	R			R	DM	No
Limited Review Use	Mandatory	DM				A	Yes (BOCC on appeal only) **

**Note:** \* Notice of public hearing shall be given as specified in Section 5-210 E., Notice of Public Hearing.

\*\*File may necessitate Adjacent Property Owner notification.

<sup>1</sup>except for Minor Type B Subdivisions involving the subdivision of condominiums, townhomes and duplexes





**SECTION 5-210. PROVISIONS OF GENERAL APPLICABILITY**

- A. Application Forms.** All applications for development permits shall be submitted with the applicable County forms, which shall be available from the Planning Department. No application shall be considered complete for review unless the requested number of copies of all required materials are submitted in sufficient detail for the Planning Director to determine whether the application complies with the substantive requirements of these Land Use Regulations.
- B. Fees.** All applications shall be accompanied by the applicable fee required by the County fee schedule. The fee schedule shall be established and may be revised from time to time by the Board of County Commissioners. Its purpose shall be to defray the costs of processing applications. The fee schedule shall be available for review in the Planning Department during normal business hours.
- C. Pre-application Conference.**
- 1. General Overview.** A pre-application conference is mandatory prior to the submission of Sketch Plan, Preliminary Plan, Special Use Permit, Zone Change, Amended Final Plat, Minor Type B Subdivision proposing the subdivision of unimproved property and Minor Type A Subdivision applications. The purpose of a pre-application conference is to familiarize the applicant with those provisions of these Land Use Regulations applicable to the proposed development and to confirm that the development review procedures will be consistent with Colorado law. (*am. 05/01/07*)
  - 2. Initiation of Pre-application Conference.** An applicant requesting a mandatory pre-application conference shall make a request for a pre-application conference with the Planning Director. Along with the request for the pre-application conference, the applicant shall provide to the Planning Director a description of the character, location, and magnitude of the proposed development and the type of development permit sought.
  - 3. Scheduling of Pre-application Conference.** The Planning Director shall schedule a pre-application conference within ten (10) working days of receipt of a request for a pre-application conference, and shall notify the applicant of the time, date, and place of the pre-application conference. (*am. 05/01/07*)
  - 4. Pre-application Conference.** At the pre-application conference, the applicant, the Planning Director, and any other County staff and/or State and/or federal representatives the Planning Director deems are appropriate to attend the pre-application conference, shall discuss the proposed development, and based upon the information provided by the applicant and the provisions of these Land Use Regulations, determine in general what provisions of these Land Use Regulations apply to the proposed development. The pre-application meeting must occur within two (2) months prior to the formal application. (*am. 12/16/08*)
  - 5. Written Summary.** Within five (5) working days of completion of the pre-application conference, the Planning Director shall mail to the applicant a written summary of the pre-application conference. (*am. 05/01/07*)
- D. Common Procedure for Review of Applications.** Unless otherwise stated in this Article, the submission of an application for, determination of the completeness of, staff review of, and notice and scheduling of public hearings on all applications for development permits shall comply with the procedures of this subsection.

1. **Initiation.** Applications for development permits shall be submitted to the Planning Director by the owner, or any other person having a recognized interest in the land for which the development is proposed, or their authorized agent.
  - a. **Applicant is Not the Owner.** If the applicant is not the owner of the land, or is a contract purchaser of the land, the applicant shall submit a letter signed by the owner consenting to the submission of the application.
  - b. **Applicant is Not the Sole Owner.** If the applicant is not the sole owner of the land, the applicant shall submit a letter signed by the other owners or an association representing the owners consenting to or joining in the application for development permit.
2. **Minimum Contents of Application.** The application shall be submitted in a form established by these Land Use Regulations and made available to the public. All applications shall include, at a minimum, the following materials:
  - a. **Applicant's Identity.** The applicant's name, mailing address, telephone, email address and fax number. If the applicant is to be represented by an agent, a letter signed by the applicant granting power of attorney to the agent shall be submitted, authorizing the agent to represent the applicant and stating the representative's name, mailing address, telephone, email address and fax number. *(am 05/01/07)*
  - b. **Legal Description.** The legal description and street address, if such exists, of the parcel on which development is proposed to occur.
  - c. **Disclosure of Ownership.** A disclosure of ownership of the parcel on which the development is to occur, listing the names of all owners of the property, and all mortgages, judgments, liens, easements, contracts and agreements that run with the land. The disclosure of ownership shall be in the form of a current certificate from a title insurance company (title commitment), or ownership and encumbrance report. The title commitment or ownership and encumbrance report shall be dated within two (2) months prior to formal application submittal. *(am 05/01/07) (am. 12/16/08)*
  - d. **Vicinity Map.** An eight and one-half inch by eleven inch (8 ½" x 11") vicinity map, locating the subject parcel within Eagle County. The map shall, at a minimum, have a scale bar and clearly identify the subject parcel(s) and the nearest public road. *(am. 12/16/08)*
  - e. **Written Description.** A written description of the proposal and an explanation in written, graphic or model form of how the proposed development complies with the review standards applicable to the application.
  - f. **Environmental Impact Report,** when applicable. (See Section 4-460).
  - g. **Adjacent Property Owners.** A list of all adjacent property owners, compiled by the applicant using the most recent County ad valorem tax rolls, is required for all applications and shall be submitted to the Planning Director as part of the application for development. In addition to submitting a written list, the applicant shall also submit typed addresses on individual adhesive labels or in the form of pre-addressed envelopes. Hand written labels or envelopes are unacceptable. *(am 9/27/99) (am 05/01/07) (am. 12/16/08)*

- h. Additional Requirements.** Submittal requirements as outlined in the specific development permit section of these Land Use Regulations.
- 3. Determination of Sufficiency.** Within ten (10) working days of receipt of the application, the Planning Director shall determine if the application is sufficient and includes data in adequate detail to evaluate the application to determine whether it complies with the appropriate substantive requirements of these Land Use Regulations. Final Plat, Amended Final Plat, and Minor Type B Subdivision applications shall not be subject to Section 5-210.D.3.c. (*am 05/01/07*) (*am. 12/16/08*)
- a. Determined Insufficient.** If the Planning Director determines the application is insufficient, a written notice shall be mailed to the applicant specifying the application's deficiencies. No further action shall be taken on the application until the deficiencies are remedied. If the applicant fails to correct the deficiencies within sixty (60) calendar days, the application shall be considered withdrawn and returned to the applicant. The applicant may appeal the Planning Director's determination to the Board of County Commissioners pursuant to Section 5-2400 of these Land Use Regulations. (*am 05/01/07*)
- b. Determined Sufficient.** The Planning Director shall notify the applicant, in writing, when the application has achieved sufficiency. Depending on the application, the Planning Director may simultaneously request a specified number of application copies for referral purposes. For Final Plat, Amended Final Plat, and Minor Type B Subdivision applications, referral copies may not be necessary, and the application may be scheduled for hearing pending review of the final, executed Mylar. (*am 05/01/07*)
- c. Determined Complete.** Once the Planning Director has received the requested number referral copies, the application shall be deemed complete. (*orig. 05/01/07*) (*am. 12/16/08*)
- d. Referral Mailing.** Within five (5) calendar days from the date that the requested number of referral copies is received by the Planning Department, the Planning Director shall mail the application materials provided to the appropriate review agencies. (*am 12/16/08*)
- e. Referral Time Period.** The length of the referral period shall be a minimum of twenty-one (21) calendar days for : Sketch and Preliminary Plans for Subdivision; Minor Type 'A' Subdivisions; Sketch and Preliminary Plans for PUD; PUD Amendments; Zone Changes; Special Use Permits; Variances, and 1041 Permits.

The length of the referral period shall be fourteen (14) calendar days for: Final Plats; Minor Type 'B' Subdivisions; Amended Final Plats; Exemption Plats; and Special District Service Plans. (*am 12/16/08*)

The length of the referral period shall be thirty (30) calendar days for any amendments or changes to these Land Use Regulations or Building Resolution. (*am 12/16/08*)

The length of the referral period for any other type of application not listed herein shall be determined, as applicable, on a case-by-case basis by the Planning Director.  
(am 12/16/08)

**4. Post Referral Period Stakeholder Meeting.**

- a. Within ten (10) working days following completion of the referral period as delineated in Section 5-210.D.3.d, Referral Process, if the referral response(s) disclose deficiencies, the Planning Director or assign will schedule a stakeholder meeting with the applicant including any other County staff and/or any other applicable agency representatives the Planning Director deems appropriate, to discuss all identified concerns of the Planning Department, as well as, each referral response received and the applicant's necessary course of action to adequately respond to and remedy all concerns, deficiencies and recommendations set forth in the referral responses received. (am 12/16/08)
- b. Within ninety (90) calendar days, the applicant shall respond to and/or remedy all concerns, deficiencies and recommendations set forth in the referral responses received and shall submit a thorough response to the Planning Director or assign. If the applicant fails to submit a thorough response within ninety (90) days and has not communicated a viable reason for delay to the Planning Director or assign, then the application shall be considered withdrawn and returned to the applicant.  
(am 12/16/08)
- c. Within ten (10) working days following receipt of the applicant's response the Planning Director or assign and any other County staff and/or any other applicable agency representatives that provided referral responses shall review the resubmitted application materials and prepare written comments for the applicant clearly delineating what, if any, outstanding concerns, deficiencies and unsatisfied recommendations remain. (am 12/16/08)  
  
The written comments shall also clearly delineate which outstanding concerns, deficiencies and recommendations identified in the referral responses received have been acceptably addressed or resolved. (am 12/16/08)
- d. Within ninety (90) calendar days, the applicant shall respond to and/or remedy all concerns, deficiencies and unsatisfied recommendations remaining as set forth in the written comments provided and shall submit a thorough response to the Planning Director or assign. If the applicant fails to submit a thorough response within ninety (90) days and has not communicated a viable reason for delay to the Planning Director or assign, then the application shall be considered withdrawn and returned to the applicant. (am 12/16/08)
- e. Steps 'c' and 'd' above shall be repeated until such time that all of the initially provided referral responses have been addressed or resolved to the satisfaction of the Planning Director. (am 12/16/08)
- f. Once all outstanding concerns, deficiencies and recommendations identified in the referral responses received have been acceptably addressed and/or resolved, the application shall be scheduled for the next available public hearing for which proper

notice of public hearings can be achieved as delineated in Section 5-210.E, Notice of Public Hearings. (am 12/16/08)

- g. In the event that the Planning Director and the applicant are not able to resolve deficiencies as delineated in Section 5-210.D.4.a., above, regarding acceptable resolution of Planning Department concerns and the referral responses received then the applicant may request, in writing, that the application be scheduled for the next available public hearing. The applicant shall have the right to request, in writing, that the application be scheduled for the next available public hearing for which proper notice of public hearings can be achieved as delineated in Section 5-210.E, Notice of Public Hearings at any point in the process following the initial stakeholder meeting as delineated in Section 5-210.D.4.a., above. (am 12/16/08)

If an applicant requests, in writing, that the application be scheduled for the next available hearing prior to resolution of the referral responses received to the satisfaction of the Planning Director, it is understood by the applicant that the Staff Report shall describe, in detail, all outstanding deficiencies and whether the application complies with all appropriate standards of these Land Use Regulations. The Staff Report shall also recommend any changes in the development and/or conditions for approval necessary to bring the development into compliance with the appropriate review standards, or disapproval. Conditions for approval, if necessary, are intended to eliminate any areas of noncompliance or mitigate any adverse effects of the proposed development. (am 12/16/08)

- h. Upon the scheduling of public hearing dates, or at the submission of the written request as delineated in Section 5-210.D.4.g above, no new additional or altered information may be submitted by the applicant. (orig. 12/16/08)

5. **Staff Report by Planning Director.** The Planning Director shall prepare and distribute a detailed Staff Report evaluating the application to the applicant and make the report available to the public no later than five (5) calendar days before the first scheduled public hearing on the application. The Staff Report shall describe whether the application complies with all appropriate standards of these Land Use Regulations; it shall also recommend any changes in the development, as submitted, and the conditions for approval, if any, necessary to bring the development into compliance with the appropriate review standards, or disapproval. Conditions for approval may also be recommended to eliminate any areas of noncompliance or mitigate any adverse effects of the proposed development. (am 12/16/08)

6. **Scheduling of Public Hearing(s).** The Planning Director shall ensure that the appropriate public hearing or public hearings on the application shall be scheduled pursuant to Section 5-210.E., Notice of Public Hearings, for a regularly scheduled meeting or a meeting specially called for that purpose by the decision-making, administrative, or advisory body reviewing the application. The first public hearing shall be scheduled no later than sixty (60) days after the application has been determined to be complete, providing sufficient time for a Staff Report to be prepared, and for the public notice requirements to be satisfied. (am 9/27/99) (am 12/16/08)

- E. **Notice of Public Hearings.** All proposed amendments or updates to the Comprehensive Plan and any applications for development permits that require public hearings, unless otherwise noted, shall follow the provisions of this subsection with regard to public notice and the conduct of such public hearings. Minor Subdivisions shall comply with the provisions of this subsection except that Type Minor B Subdivisions are exempt unless the application is for the creation of three (3) or fewer lots from otherwise unimproved land. The Planning Director shall be responsible for: (1) placing notice in the

newspaper; (2) mailing notice to adjoining landowners; and (3) furnishing a copy of the sign to the applicant. The applicant shall be responsible for: (1) providing the Planning Director with a list of adjacent landowners from the most recent County ad valorem tax rolls; (2) paying for the costs of publishing notice and mailing notice; (3) posting the sign(s) on the property; and (4) submitting an affidavit that notice was properly posted on the property. (*am 9/27/99*), (*am 3/12/02*) (*am.11/08/05*) (*am 5/08/12*)

1. **Notice in Newspaper.** All proposed amendments or updates to the Comprehensive Plan and applications for development permits, with the exception of Final Plats, Amended Final Plats, Subdivision Exemptions, Minor Type B Subdivisions, and Limited Review Applications, shall be advertised in the legal notice section of an official County newspaper. Notice of an application for amendments to the text of these Land Use Regulations or the Zoning District Map, amendments to the Comprehensive Plan and all development permits requiring a public hearing except those for Subdivision shall be published no less than fourteen (14) calendar days prior to the date of the first public hearing. Notice of an application for a Sketch Plan or Preliminary Plan for Subdivision shall be published a minimum of twenty-one (21) days before the Planning Commission public hearing and thirty (30) days before the Board of County Commissioner's public hearing. In the event the Planning Commission tables a file beyond the original Board of County Commissioners published hearing date, the file must be re-advertised a minimum of 15 days prior to the reestablished Board of County Commissioners hearing unless the Board of County Commissioners at such hearing tables the file to a date certain. (*am. 3/12/02*) (*am.11/08/05*) (*am 12/16/08*) (*am 5/08/12*)

Notices shall contain the following information:

- a. **Type of Application.** The type of application sought: i.e. amendment to the Official Zone District Map, amendment to the text of these Land Use Regulations, Planned Unit Development (PUD) District, Special Use Permit, Variance Permit or Subdivision.
  - b. **Description of Action.** A short description of the proposed action requested.
  - c. **Location of Land.** The common street address and part of the County (name of community, where applicable) of the land subject to the application, a general legal description of the land, and a description of the area (size) of the land.
  - d. **Location, Date, Time.** The location, address, date, and time of the public hearing.
  - e. **Where Information May be Obtained.** Information on where the full details of the application may be obtained including, if it is a proposed amendment to the Official Zone District Map or the text of these Land Use Regulations, the place where the text or the map may be examined.
2. **Mailed Notice.** A notice containing all the information required under Section 5-210.E.1., Notice in Newspaper, shall be sent by mail, first-class postage prepaid, to all landowners of the land subject to the application and all adjacent landowners of the land subject to the application no less than fifteen (15) calendar days prior to the public hearing. All applications, except for Minor Type B Subdivisions involving the subdivision of condominiums, patio homes, townhomes and duplexes, shall comply with this section. (*am 3/12/02*) (*am 12/16/08*)

3. **Posted Notice.** All lands subject to a public hearing except for those associated with amendments or updates to the Comprehensive Plan, Minor Type B Subdivisions involving the subdivision of condominiums, patio homes, townhomes and duplexes, and Limited Review Applications, shall be posted with at least one (1) notice (a sign) of the public hearing at least fifteen (15) calendar days prior to the public hearing. The dimensions of the sign(s) shall be a minimum of two (2) feet by three (3) feet. The sign(s) shall state the type of application sought for the land, the Eagle County file name, and number, and that more detailed information is available about the application in the Planning Department. Signs are available in the Department of Community Development during regular business hours. *(am 3/12/02)(am 12/16/08) (am 5/08/12)*

The sign(s) shall be set back no more than twenty-five (25) feet from the street, and shall be erected in full view of the public on each street side of the land subject to the application. Where the land does not have frontage on a public or private street, the sign(s) shall be erected on the nearest street right-of-way with an attached notation indicating generally the direction and distance to the land subject to the application. The materials to which the sign(s) is affixed shall be sturdy and waterproof or shall have a waterproof covering.

The posting of such sign(s) will be the responsibility of the applicant, and applicant shall make every reasonable effort to maintain a sign upon the property for the duration of the posting period. Prior to public hearing, the applicant will provide a sworn certification that such notice was posted on the property in accordance with these guidelines, and that property has remained so posted for the required number of days prior to the public hearing. The sign(s) shall be removed after the decision is rendered on the application. The failure of any such posted notice to remain in place after the notice has been properly posted, without the applicant's knowledge and despite applicant's reasonable efforts to maintain the sign(s), shall not be deemed a failure to comply with the standards, or be grounds to challenge the validity of any decision made on the application. *(am 9/27/99)*

- F. **Public Hearing Procedure.** A public hearing held pursuant to these Land Use Regulations shall comply with the following procedures.

1. **Examination and Copying of Documents.** At any time upon reasonable request during normal business hours, any person may examine an application and materials submitted in support of or in opposition to an application in the Planning Department. Copies of such materials shall be made available upon reasonable notice, and payment of a fee for copying pursuant to the County's fee schedule.
2. **Request for Notification of Public Hearing.** Notification of all public hearings shall be provided by the Planning Director to any person who requests notification in writing from the Planning Director, and pays the costs of the processing and mailing of the notification.
3. **Staff Report.** A Staff Report shall be available to the applicant and the public at least five (5) calendar days prior to the public hearing. The Staff Report shall address each standard/finding required to be considered by these Land Use Regulations prior to approval of the application, and recommend approval, approval with conditions, or disapproval, whichever is appropriate.
4. **Site Visit.** As part of its hearing to consider the application for development permit, the advisory or decision-making body may inspect the site of the proposed development. Upon reasonable request of the Planning Director, the applicant shall mark the development site



before the site visit to locate property boundaries, building envelopes and other site development features.

5. **Conduct of Public Hearing.** The conduct of a public hearing shall comply with the following procedures.
- a. **Rights of All Persons.** Any person may appear at a public hearing and submit evidence, either individually or as a representative of an organization. Upon request of the Chairman, anyone representing an organization shall present written evidence of their authority to speak on behalf of the organization in regard to the matter under consideration. Each person who appears at a public hearing shall be identified, state an address, and if appearing on behalf of an organization, state the name and mailing address of the organization.
- b. **Order of Proceedings.** The Chairman conducting the public hearing may exclude testimony or evidence that is found to be irrelevant, immaterial or unduly repetitious. The order of the proceedings shall be as follows:
- (1) **Description.** The Planning Director shall present a narrative and/or graphic description of the application.
  - (2) **Staff Report.** The Planning Director shall present a Staff Report which includes a written evaluation. This evaluation shall address each standard required to be considered by these Land Use Regulations prior to approval of the application. *(am 12/16/08)*
  - (3) **Applicant Presentation.** The applicant shall present any information the applicant deems appropriate.
  - (4) **Public Testimony.** Public testimony shall be heard.
  - (5) **Applicant Response.** The applicant may respond to any testimony or evidence presented by the public.
  - (6) **County Staff Response.** The Planning Director, or Planning Department staff, the County Attorney, and any other County staff may respond to any statement made by the applicant or the public.
- c. **Testimony.** If any testimony or evidence is excluded as irrelevant, immaterial or unduly repetitious, the person offering such testimony or evidence shall have an opportunity to make a proffer in regard to such testimony or evidence for the record. Such proffer shall be made at the public hearing.
- d. **Continuance of Public Hearing.** The body conducting the public hearing may, on its own motion or at the request of any person, continue the public hearing to a fixed date, time and place. All continuances shall be granted at the discretion of the body conducting the public hearing only upon good cause shown; however, no public hearing shall be continued for more than forty (40) days from the date of commencement of the public hearing without the written consent of the applicant. *(am 12/16/08) (am 5/08/12)*

- e. **Submittal of New Additional and/or Revised Information.** When an application is tabled for the purpose of allowing the applicant opportunity to respond to concerns delineated by the body conducting the public hearing, staff or any other person then, new additional and/or revised information shall be submitted to County staff no later than 15 working days in advance of the continued public hearing date. (*orig. 12/16/08*)
  - f. **Withdrawal of Application.** An applicant shall have the right to withdraw an application at any time prior to the action on the application by the decision-making body.
  - g. **Record.**
    - (1) **Recording of Public Hearing.** The body conducting the public hearing shall record the public hearing by any appropriate means, including transcription, audiotape, or videotape. A copy of the public hearing record may be acquired upon reasonable notice by any person upon application to the Planning Director and payment of a fee to cover the costs of duplication of the record, pursuant to the Eagle County fee schedule. (*am 9/27/99*)
    - (2) **The Record.** The written or taped record of oral proceedings, including testimony and statements of personal opinions, the minutes of the Clerk, all applications, exhibits and papers submitted in any proceeding before the decision-making, administrative, or advisory body, the Staff Report and the decision of the body shall constitute the record.
    - (3) **Location of Record/Inspection.** All records of decision-making, administrative, or advisory bodies shall be public records, open for inspection. Persons may determine the location of particular records by coming to the offices of the Planning Director during normal business.
- G. Actions by Decision-Making, Administrative, and Advisory Bodies.** All decision-making, administrative, and advisory bodies and persons shall act in accord with the time limits established in these Land Use Regulations.
- 1. **Findings.** All decisions shall include at least (a) a clear statement of specific findings of fact and a statement of the basis upon which such facts were determined, with specific reference to the relevant standards set forth in these Land Use Regulations; and (b) a clear statement of approval, approval with conditions, or disapproval.
  - 2. **Notification.** Notification of a decision-making or administrative body's decision shall be provided by the Planning Director to the applicant by mail. A copy of the decision shall also be made available to the applicant at the offices of the Planning Department, during normal business hours, within a reasonable period of time after the decision
  - 3. **Substantial change from Planning Commission Recommendation.**
    - a. **Submittal to Planning Commission/Public Hearing.** If, after the initial public hearing on an application for an amendment to the Official Zone District Map or the text of these Land Use Regulations or an application for Preliminary Plan for PUD, the Board of County Commissioners proposes to consider approval of an application that constitutes a substantial change in or departure from the initial application

recommended by the Planning Commission which is not made solely to satisfy Planning Commission recommendations or conditions, the matter may, at the discretion of the Board of County Commissioners, be submitted back to the Planning Commission for consideration at a public hearing. Public notification shall be provided pursuant to Section 5-210.E., Notice of Public Hearings, and the public hearing shall be conducted pursuant to Section 5-210.F., Public Hearing Procedure. The Planning Commission shall consider the matter within thirty (30) calendar days of its submission from the Board of County Commissioners. At the public hearing, the Planning Commission shall consider the submitted materials, any Staff Report, and the testimony given at the public hearing. After the close of the public hearing, the Planning Commission shall recommend to the Board of County Commissioners either to approve or disapprove the application based on the standards applicable to the application and forward the application back to the Board of County Commissioners. (am 5/08/12)

- b. Action by Board of County Commissioners.** After receipt of the recommendation from the Planning Commission, the Board of County Commissioners shall conduct another public hearing on the application. Public notification shall be provided pursuant to Section 5-210.E., Notice of Public Hearings, and the public hearing shall be conducted pursuant to Section 5-210.F., Public Hearing Procedure. At the public hearing, the Board of County Commissioners shall consider the application, the relevant support materials, the Staff Report, the Planning Commission recommendation and the public testimony given at the public hearing. After the close of the public hearing, the Board of County Commissioners, by a majority vote of the quorum present, shall approve or disapprove the application based on the standards applicable to the application. The Board of County Commissioner's determination shall be memorialized by Resolution, adoption of which shall constitute final action of the Board of County Commissioners on the application. Finalization of the Resolution must occur within 90 days of the Board of County Commissioner's vote to approve, approve with conditions or disapprove the application. (am 04/04/06) (am 5/08/12)

- 4. Dormant Applications.** Any land use application request that has been dormant for a period of ninety (90) calendar days, without a substantive and sufficient response by the Applicant to pending requests by the County for additional information and other changes in the application, or other, similar failure of the Applicant to demonstrate due diligence in pursuing the application in a timely manner without communicating a viable reason for delay to the Planning Director or assign, shall be deemed to be formally withdrawn. The land use application file and its contents will be archived or returned to the applicant. (orig. 12/16/08) (am 5/08/12)

- H. Extinguishment of Approvals.** If a Sketch Plan for PUD, Preliminary Plan for PUD, Sketch Plan for Subdivision, Preliminary Plan for Subdivision, Final Plat for Subdivision, or a Special Use Permit is not extended pursuant to the applicable procedures for that type of application, then the Board of County Commissioners shall initiate a hearing pursuant to the following procedures to determine whether to extinguish the approved Preliminary Plan for PUD, Preliminary Plan for Subdivision, or Special Use Permit. (am 5/08/12)

- 1. Establishment of hearing date before Hearing Officer.** This process shall be initiated by the Board of County Commissioners directing the Planning Director to notify the permitted person by mail and at least thirty (30) calendar days in advance that a hearing has been

scheduled before a Hearing Officer on whether the applicable approval should be extinguished.

2. **Hearing by Hearing Officer.** At the hearing before the Hearing Officer, the County shall be represented by the Planning Director or his delegate and the applicant shall be represented by himself or his representative. All evidence shall be presented under oath, and the parties involved shall be permitted to cross-examine witnesses. The sworn testimony and evidence shall pertain to the standards set forth below.
3. **Findings of the Hearing Officer.** Within thirty (30) calendar days of the close of the hearing, the Hearing Officer shall prepare recommended findings of fact and a proposed order for consideration by the Board of County Commissioners. The findings and recommendations of the Hearing Officer shall be based on the evidence submitted and the standards in Section 5-210 H.5., Standards. The Hearing Officer's recommended findings of fact and proposed order shall be in writing and shall detail the basis of the conclusions from the record of the hearing.
4. **Action by Board of County Commissioners.** The Board of County Commissioners shall schedule a hearing on the application within thirty (30) calendar days of the date the Hearing Officer issues the recommended findings of fact and proposed order. The Planning Director shall provide the applicant and adjacent landowners at least twenty (20) calendar days notice of the hearing by mail. At the hearing, the Board of County Commissioners shall approve, approve with conditions, or disapprove the findings of fact and proposed order of the Hearing Officer, based on the standards below. If the Board of County Commissioners attaches conditions, modifies, or reverses the findings of fact or proposed order, it shall do so only when the record of the hearing indicates that the Hearing Officer is unsupported by the record, or that the proposed order is not in conformance with the standards below.
5. **Standards for Extension of Land Use Application Approval.** A Sketch Plan for PUD, Preliminary Plan for PUD, Sketch Plan for Subdivision, Preliminary Plan for Subdivision, Final Plat for Subdivision, or a Special Use Permit for which an extension has not been granted shall be voided and extinguished unless the applicant can demonstrate by competent substantial evidence that failure to proceed with the development of the application was:
  - a. Beyond the applicant's control;
  - b. The development complies with these Land Use Regulations and the Comprehensive Plan; and
  - c. There is reasonable likelihood the next step in the development application will be submitted, or the development itself will be initiated in the next two (2) years.  
*(am.11/08/05) (am 5/08/12)*
6. **Reversion to Former Zoning.** When a Preliminary Plan for PUD is extinguished, the Board shall concurrently initiate and amend the Official Zone District Map to the zone district classification of the land that was in effect prior to the time that the Preliminary Plan for PUD was originally approved. The Board of County Commissioners shall consider the requirements of Section 24-67-106.1 Colorado Revised Statutes prior to ordering any PUD Plan extinguished and shall make any finding required by law prior to extinguishing the PUD Plan. Should the Board find that extinguishment of the plan is contrary to law, the plan shall not be extinguished. *(am 5/08/12)*

- I. Consolidation.** This land development review process is intended to encourage the efficient processing of applications. Applicants may request, and the Planning Director may permit, the simultaneous submission and review of all necessary development applications for a parcel of land. The Planning Director is authorized to waive any overlapping application submission requirements in the consolidated review.
- J. Subsequent Permits.** Development shall not be carried out until the applicant has secured all permits required by these Land Use Regulations. An applicant who obtains a development permit shall not have assurance the development will receive approval for subsequent permits, unless the relevant and applicable portions of these Land Use Regulations are met.
- K. Successive Applications.** Unless otherwise stated in this Division, whenever any application (except for a Certificate of Zoning Compliance) is denied by the Board of County Commissioners for failure to meet the substantive requirements of these Regulations, no application for the same or a similar development proposal shall be accepted or considered for all or a part of the same or substantially the same land for a period of one (1) year after the date of disapproval, unless the applicant can demonstrate to the Planning Director that there has been a change of circumstances or conditions that affect the proposed development, or unless a majority of the membership of the Board of County Commissioners determines that the prior disapproval was based on a material mistake of fact.

## SECTION 5-220. INTERPRETATIONS

- A. General.** The Planning Director shall be responsible for interpreting these Land Use Regulations, based upon an understanding of the purposes intended by the Board of County Commissioners in their adoption.
- B. Findings to be Considered in Rendering Interpretations.** In making interpretations to these Regulations, the Planning Director shall consider the following:
- 1. Public Purpose.** Before any interpretation is made, the purposes for which the regulation was initially adopted by the County Commissioners shall be identified.
  - 2. Prevent the sacrifice of legitimate goals.** These Land Use Regulations have been carefully designed by the County to avoid regulations that either sacrifice legitimate public goals, including the protection of adjoining landowners, or require undue limitations on the ability of landowners to use their land in a manner consistent with the goals, objectives and policies of the Comprehensive Plan or the FLUM of the Comprehensive Plan. Great care has been taken to both balance the rights of competing groups and achieve maximum protection with flexibility and a range of use options. In interpreting these Regulations, the Planning Director's judgment should not be substituted for the legislative intent of the Board of County Commissioners. (*am.11/08/05*)
- C. Procedure.**
- 1. Initiation.** An interpretation may be requested by any landowner or citizen in the unincorporated County, or any person that has submitted a development application to the County pursuant to the procedures and standards of these Regulations.
  - 2. Submission of request for interpretation.** Before an interpretation shall be provided by the Planning Director, a Request for Interpretation shall be submitted to the Planning Director.

3. **Rendering of interpretation.** Within twenty one (21) calendar days of the receipt of a Request for Interpretation, the Planning Director shall evaluate the request in light of the Comprehensive Plan, these Land Use Regulations, and the Official Zone District Map, as applicable, consult with the County Attorney, and then render an interpretation. The Planning Director shall mail the written interpretation to the person submitting the Request for Interpretation. *(am.11/08/05)*
- D. **Record.** The Planning Director shall maintain a record of all interpretations rendered. This record shall be available for public inspection in the Planning Department, upon reasonable request, during normal business hours.

**SECTION 5-230. AMENDMENTS TO THE TEXT OF THESE LAND USE REGULATIONS OR THE OFFICIAL ZONE DISTRICT MAP**

All amendments to the text of these Land Use Regulations or amendments to the Official Zone District Map shall meet the standards set forth in this Section.

- A. **Purpose.** The purpose of this Section is to provide a means for changing the boundaries of the Official Zone District Map or any other map incorporated in these Regulations by reference, and for changing the text of these Land Use Regulations. It is not intended to relieve particular hardships, or to confer special privileges or rights on any person, but only to make necessary adjustments in light of changed conditions.
- B. **Initiation.**
  1. **Map Amendment.** An application for an amendment to the Official Zone District Map or any other map incorporated in these Regulations may be proposed by the Board of County Commissioners, the Planning Commission, the Planning Director, or the owner or another person having a recognized interest in the land affected by a proposed amendment or their authorized agent.
  2. **Text Amendment.** An application for an amendment to the text of these Land Use Regulations may be proposed by the Board of County Commissioners, the Planning Commission, the Planning Director, the owner or another person having a recognized interest in land in the unincorporated County or their authorized agent, or any citizen of the County.
  3. **Application Contents.** An application for an amendment to the Official Zone District Map or any other map incorporated in these Regulations or an application for an amendment to the text of these Land Use Regulations shall contain the materials specified in Section 5-210 D.2., Minimum Contents of Application, and the following additional materials: *(am 04/04/06)*
    - a. **Precise Wording.** If the application is for an amendment to the text, the precise wording of the proposed change shall be provided.
  4. **Application Contents for a Map Amendment.** An application for an amendment to the Official Zone District Map or any other map incorporated in these Regulations shall contain the materials specified in Section 5-210 D.2., Minimum Contents of Application, and the following additional materials: *(orig 04/04/06)*

The Director of Community Development may waive one or more of the submittal requirements when the submittal information would not be relevant to whether the Zone Change proposed complies with the approval criteria.

- a) Application filing fee pursuant to the current fee schedule;
- b) A companion Subdivision Preliminary Plan; companion Planned Unit Development Preliminary Plan; companion Minor Subdivision, or; companion Special Use Permit shall accompany all Zone Change Applications and shall become a condition of the zone change application.
- c) If the requested zone change is for a Planned Unit Development, the applicant shall also include a companion application for a Planned Unit Development Preliminary Plan as delineated under Chapter II, Section 5-240 of the Eagle County Land Use Regulation and certification of notice to mineral estate owners of record pursuant to Section 24-65.5-103, Colorado Revised Statutes. Such notice shall include all information required by such statute, as well as the time and place of the initial public hearing, the nature of the hearing, the location of the property that is the subject of the hearing and the name of the applicant;
- d) A Certified boundary survey of the parcel under consideration, showing all bearings and distances outside the perimeter boundary lines. The closure error of the survey may not exceed one to five thousand (1:5,000).
- e) A statement of how the proposed zone change complies with Section 5-230.D.1.a. of these Regulations. *(am 5/08/12)*
- f) A statement of how the proposed zone change complies with Section 5-230.D.1.b. of these Regulations. *(am 5/08/12)*
- g) Statements from public water and sewer utilities which indicate that they are able to provide service for the site. If public utilities are not to be used, the applicant shall submit information which documents the availability of water and suitability of the site for the sewage disposal system chosen by the applicant. The evidence shall document the adequacy of the proposed utility service for the uses permitted in the proposed zone district.
- h) An Engineering Geology Report/Geotechnical Study of the site proposed for Zone Change with a statement of the suitability of soils to support all uses allowed in the proposed zone district. If the Engineering Geology Report/Geotechnical Study indicates soils which present moderate or severe limitations to the construction of structures or facilities on the site, the applicant shall submit information which demonstrates that the limitations can be reasonably and practicably overcome.
- i) If road, intersection, or highway facilities which provide access to the property are not adequate to meet the requirements of the proposed zone district, the applicant shall supply information which demonstrates willingness and financial capability to upgrade the road or highway facilities in conformance with the County's road standards. In addition, the applicant shall provide information which demonstrates that no significant impact will occur to other roads, intersections or highway

facilities as a result of the proposed change, with consideration given to all potential changes in the vicinity or how the applicant intends to mitigate the impact.

- j) If the proposed Zone Change is located within an Overlay District identified by maps officially adopted by the County, the applicant shall submit information which either documents how the County regulations concerning Overlay Districts have been satisfied or documents how the applicant intends to meet the requirements of the County regulations concerning Overlay Districts.

**C. Procedure.**

1. **Review of Applications.** The submission of an application for an Amendment, determination of its sufficiency, staff review of, and notice and scheduling of a public hearing for an application for amendment to the Official Zone District Map or any other map incorporated in these Regulations or the text of these Land Use Regulations shall comply with Section 1.15 of these Land Use Regulations and those procedures established in Section 5-210.D, Common Procedure for Review of Applications, deemed applicable by the Planning Director. (am.11/08/05)
2. **Review and Recommendation of Planning Commission.** The Planning Commission shall conduct a public hearing on an application for amendment to the Official Zone District Map or any other map incorporated in these Regulations or on an application for an amendment to the text of these Land Use Regulations. At the public hearing, the Planning Commission shall consider the application, the relevant support materials, the Staff Report, and the public testimony given at the public hearing. After the close of the public hearing, the Planning Commission shall recommend to the Board of County Commissioners either to approve or disapprove the application based on the standards in Section 5-230.D and forward the application to the Board of County Commissioners.
3. **Action by Board of County Commissioners.**
  - a. **General.** After receipt of the recommendation from the Planning Commission, the Board of County Commissioners shall conduct a public hearing the application. At the public hearing, the Board of County Commissioners shall consider the application, the relevant support materials, the Staff Report, the Planning Commission recommendation, and the public testimony given at the public hearing. After the close of the public hearing, the Board of County Commissioners by a majority vote of the quorum present, shall either approve or disapprove the application based on the standards in Section 5-230.D. However, if the Planning Commission has recommended disapproval of a zone change application the zone change application shall only be approved by a majority vote of the entire membership of the Board of County Commissioners. Any amendment to the Official Zone District Map or any other map incorporated in these Regulations or the text of these Land Use Regulations approved by the Board of County Commissioners shall be adopted by Resolution. (am.04/04/06)

**D. Standards for Zone Change.**

1. No change in zoning shall be allowed unless in the sole discretion of the Board of County Commissioners, the change is justified in that the advantages of the use requested substantially outweigh the disadvantages to the County and neighboring lands. In making such a determination, the Planning Commission and the Board of County Commissioners



shall consider the application submittal requirements and the following standards:  
(am.04/04/06)

- a. **Conformance with the Comprehensive Plan.** The proposed change in zoning is in substantial conformance with the purposes, intents, goals and policies of the Comprehensive Plan, including but not limited to: (am.04/04/06) (am 5/08/12)

Section 3.2	<u>General Development</u>	Policies a, c, e, f, g, h, i and k
Section 3.3	<u>Economic Resources</u>	Policies b, c, d, e, f, h, j, m and o
Section 3.4	<u>Housing</u>	Policies a, d, e, g and n
Section 3.5	<u>Infrastructure and Services</u>	Policies a, c, g, i, j, k, m and o
Section 3.6	<u>Water Resources</u>	Policies a, b, c, d, e, f, g, h and i
Section 3.7	<u>Wildlife Resources</u>	Policies a, b, c, d, e, f and i
Section 3.8	<u>Sensitive Lands</u>	Policies a, c, e and g
Section 3.9	<u>Environmental Quality</u>	Policies a, c and d
Section 3.10	<u>Future Land Use Map</u>	Policy a
Section 4	<u>Adopted Area Community Plans</u>	All relevant goals, policies and FLUM designations

- b. The proposed change in zoning is in substantial conformance with the goals, policies, and intents of any applicable Area Community Plan. (am 5/08/12)

- c. The proposed change in zoning is in substantial conformance with the goals, policies, and intents of any applicable ancillary County adopted documents pertaining to natural resource protection, affordable housing or infrastructure management, including but not limited to: (am 5/08/12)

Eagle County Open Space Plan  
 Eagle River Watershed Plan  
 Eagle Valley Regional Trails Plan  
 Eagle County Trails Plan (Roaring Fork)  
 Eagle County Local Resident Housing Guidelines  
 Eagle County Airport Sub-Area Master Plan

- 2. **Compatible with Surrounding Uses.** The proposed change in zoning is compatible with the type, intensity, character and scale of existing and permissible land uses surrounding the subject property. Dimensional limitations of the proposed zone district, when applied, should result in development that will be harmonious with the physical character of existing or permissible uses surrounding the subject property. (am.04/04/06) (am 5/08/12)

- 3. **Public Benefit.** The proposed change in zoning addresses a demonstrated community need or otherwise result in one or more particular public benefits that offset the impacts of the proposed uses requested, including but not limited to: Affordable local resident housing; childcare facilities; transportation efficiencies, public recreational opportunities; infrastructure improvements; preservation of lands of high conservation value, senior housing, or medical facilities. (am.04/04/06) (am 5/08/12)

- 4. **Change of Circumstances.** The proposal change in zoning addresses or responds to a beneficial material change that has occurred to the immediate neighborhood or to the greater Eagle County community. (am.04/04/06) (am 5/08/12)

- 5. Adequate Infrastructure.** The property subject to the proposed change in zoning is, or may be served by adequate roads, water, sewer and other public use facilities. (*am.04/04/06*) (*am 5/08/12*)
- E. Zone Change Conditions of Approval.** The Board of County Commissioners may establish conditions for any approval of a change in zoning as deemed necessary to ensure that the justification and standards for the zoning change will be satisfied. (*orig. 04/04/06*)
- F. Resubmittal If Zone Change Is Denied.** If a request for a zone change is denied, no person may submit a request to change the zoning of the same property within one year from the date of such denial. (*orig. 04/04/06*)

## SECTION 5-240. PLANNED UNIT DEVELOPMENT (PUD) DISTRICT

- A. Purpose.** The purpose of the Planned Unit Development (PUD) zone district is to permit variations from the strict application of the standards of the County's other zone districts in order to allow flexibility for landowners to creatively plan for the overall development of their land and thereby, to achieve a more desirable environment than would be possible through the strict application of the minimum standards of these Land Use Regulations. This is done through the application of performance standards that:
- 1. Permit Integration of Uses.** Permit the integration, rather than separation of uses, so that necessary facilities are conveniently located in relation to each other;
  - 2. Efficient Land Use Patterns.** Establish land use patterns that promote and expand opportunities for public transportation and for safe, efficient, compact street and utility networks that lower development and maintenance costs and conserve energy;
  - 3. Preserve Lands.** Preserve valued environmental resource lands and avoid the development of natural hazard areas;
  - 4. Maintain Water Quality and Quantity.** Maintain and enhance surface and ground water quality and quantity;
  - 5. Contribute to Trails System.** Provide applicants the opportunity to contribute to the County's multi-use trail system and maintain access to public lands and rivers;
  - 6. Incentives for Affordable Housing.** Establish incentives for applicants to encourage the provision of long term affordable housing; and
  - 7. Comprehensive Plan.** The PUD shall be in substantial conformance with the Eagle County Comprehensive Plan, Area Community Plans and any applicable ancillary County adopted documents pertaining to natural resource protection, affordable housing or infrastructure management. (*am.11/08/05*) (*am.5/08/12*)
- B. Authority.** This Section is adopted pursuant to Sec. 24-67-101, *et. seq.*, C.R.S., the Planned Unit Development Act of 1972.
- C. General Applicability.** Before any development shall be designated as a Planned Unit Development (PUD) zone district on the Official Zone District Map, it shall receive approval pursuant to the terms of this Section.

- D. Minimum Land Area.** There shall be no minimum land area limitation on the designation of lands with a Planned Unit Development (PUD) zone district designation, provided that a PUD designation should not be granted solely to permit variances for development of a single lot, building or use.
- E. Location.** A Planned Unit Development (PUD) zone district designation may be established on any land located in unincorporated Eagle County that complies with all of the applicable standards of this Section.
- F. Procedure.**
- 1. Overview of Development Review.** An applicant proposing to develop a Planned Unit Development (PUD) shall obtain approval for a Sketch Plan and a Preliminary Plan for PUD pursuant to the procedures and standards of this Section. Following the approval of the Preliminary Plan for PUD, the applicant shall submit an application for Final Plat for Subdivision, in compliance with the requirements of Section 5-280, Subdivision.
    - a. Sketch Plan.** The purpose of sketch plan review is for the applicant, the County and the public to evaluate and discuss the basic concepts for development of the proposed PUD, and to consider whether development of the property as a PUD will result in a significant improvement over its development as a conventional subdivision. It is the time when determinations should be made as to whether the proposed PUD substantially complies with these Land Use Regulations and is in substantial conformance with the Eagle County Comprehensive Plan, Area Community Plans and any applicable ancillary County adopted documents pertaining to natural resource protection, affordable housing, or infrastructure management, and is generally compatible with the existing and currently permissible future uses of adjacent land and other lands that may be substantially impacted.

It is also the opportunity to reach general agreement on such issues as the appropriate range of units and commercial space for development; the types of use, dimensional limitations and other variations that may be considered; the general locations intended for development and the areas planned to remain undeveloped; the general alignments for access; and whether water supply and sewage disposal will be provided via on-site systems or through connection to public systems. The outcome of sketch plan review should be an identification of issues and concerns the applicant must address if the project is ultimately to receive approval for a Preliminary Plan for PUD from the County. (am.11/08/05) (am.05/08/12)
    - b. Preliminary Plan.** The purpose of preliminary plan review is for the applicant to respond to the issues and concerns identified during sketch plan review and to formulate detailed, properly engineered solutions to those issues and concerns that conform to the approved sketch plan. The preliminary plan stage is when the applicant is to provide detailed information and mitigation proposals to be evaluated by the County. The preliminary plan shall include a guide to the development of the PUD (hereinafter, the "PUD Guide"), specifying the limitations that will guide the future development of the property.
    - c. Zone District Map Amendment.** The preliminary plan application shall be accompanied by an application for an Amendment to the Official Zone District Map,

submitted pursuant to Section 5-230, Amendments to the Text of These Land Use Regulations or the Official Zone District Map.

- d. Subdivision.** Where the PUD proposes activities that constitute a subdivision, the applications for Sketch Plan and Preliminary Plan for PUD shall also be required to meet the requirements of Section 5-280, Subdivision, regarding procedures for Sketch Plan and Preliminary Plan for Subdivision, respectively.

## 2. Sketch Plan for PUD.

- a. Initiation.** Applications for development permits for a Sketch Plan for PUD may be submitted at any time to the Planning Director by the owner, or any other person having a recognizable interest in the land for which the Sketch Plan for PUD is proposed, or their authorized agent. The application shall contain the materials specified in Section 5-210.D.2., Minimum Contents of Application, and the following information:

- (1) Reasons PUD procedure is more desirable than conventional plan.
- (2) Proposed land uses, commercial, industrial and multi-family building locations, residential densities, and commercial square footages.
- (3) Proposed vehicle circulation pattern indicating the status of street ownership.
- (4) Proposed pedestrian circulation, and links to other external path systems.
- (5) Proposed open space.
- (6) Proposed grading and drainage pattern.
- (7) Proposed method of water supply and sewage disposal. Including: Proposed water augmentation plan (if applicable); or an ‘ability to serve’ letter from applicable water and/or wastewater provider. Information regarding existing water rights including, but not limited to: Evidence of ownership or right of acquisition of or use of existing and proposed water rights; historical use and estimate yield of claimed water rights; and Amenability of existing rights to a change in use. If the water supply is proposed to be an existing well, a copy of a current valid well permit and location map identifying the location of the existing well must be provided. If individual wells are proposed, an alternatives assessment performed by a qualified Registered Professional Engineer must be submitted and include the following minimum information: Anticipated dependability of source; anticipated yield of source; anticipated depth to groundwater; anticipated water quality; estimated cost of individual well construction; and anticipated rate of water delivery. If sewage disposal is proposed to be via on-site, On-site Wastewater Treatment Systems (OWTS), an alternatives assessment must be prepared by a qualified Professional Engineer evaluating the ability of the natural environment to support on-site systems with commensurate levels of sewage treatment,

along with the physical ability of each property to support a site and an alternate site for wastewater disposal. The applicant must be prepared to estimate cost of installation and maintenance and state how the systems are proposed to be maintained. (*am. 03/28/06*) (*am.05/08/12*)

- (8) Proposed PUD Guide setting forth the proposed land use restrictions.
- (9) Wildlife Analysis pursuant to Section 4-410.
- (10) Geologic Hazards Analysis pursuant to Section 4-420.
- (11) Ridgeline Visual Analysis pursuant to Section 4-450.
- (12) Conceptual Landscape Plan pursuant to Section 4-220.
- (13) Environmental Impact Report pursuant to Section 4-460.
- (14) Vegetation Management Plan pursuant to Section 4-430. (*orig. 12/17/02*)
- (15) Any or all of the following requirements, as determined by the Planning Director, based on the complexity of the proposal:
  - (a) Supporting data to justify any proposed commercial and industrial elements in an area not so zoned;
  - (b) Proposed schedule of development phasing;
  - (c) Statement as to the impact of the proposed PUD upon the County school system;
  - (d) Statement of estimated demands for County services;
  - (e) Statement of projected County tax revenue based upon the previous year's County tax levy and a schedule of projected receipts of that revenue;
  - (f) Conceptual site plans, and conceptual architectural plans;
  - (g) Proposed method of fire protection. Including information demonstrating a legal, adequate water supply for fire fighting purposes; (*am. 03/28/06*)
  - (h) Employee housing plan.

- b. **Review of Applications.** The submission of an application for Sketch Plan for PUD, determination of its sufficiency, staff review of, and notice and scheduling of a public hearing for the application shall comply with the procedures established in Section 5-210.D, Common Procedure for Review of Applications.

- c. Recommendation by Planning Commission.** The Planning Commission shall conduct a public hearing on an application for a Sketch Plan for PUD. At the public hearing, the Planning Commission shall consider the application, the relevant support materials, the Staff Report, and the public information given at the public hearing. The Planning Commission may confer with the applicant on changes deemed advisable and the kind and extent of such changes, and request Planning Department input. After the close of the public hearing, the Planning Commission shall recommend approval, approval with conditions, or disapproval of the Sketch Plan for PUD, considering whether conceptually it is consistent with the applicable standards in Section 5-240.F.3.e, Standards. (*am.05/08/12*)
- d. Action by Board of County Commissioners.** After receipt of the recommendation from the Planning Commission, the Board of County Commissioners shall conduct a public hearing on an application for a Sketch Plan for PUD. At the public hearing, the Board of County Commissioners shall consider the application, the relevant support materials, the Staff Report, the Planning Commission recommendation, and the public information given at the public hearing. The Board of County Commissioners may confer with the applicant on changes deemed advisable and the kind and extent of such changes, and request Planning Department input. After the close of the public hearing, the Board, by a majority vote of the quorum present, shall approve, approve with conditions or disapprove the application for Sketch Plan for PUD, considering whether conceptually it is consistent with the applicable standards in Section 5-240.F.3.e, Standards. Action approving a Sketch Plan for PUD shall be by Resolution, adoption of which shall constitute final action of the Board of County Commissioners on the application. Finalization of the Resolution must occur within 90 days of the Board of County Commissioner's vote to approve, approve with conditions or disapprove the Sketch Plan for PUD application. (*am.05/08/12*)
- e. Effect of Approval of Sketch Plan for PUD.**
- (1) Limitation of Approval.** Approval of a Sketch Plan for PUD shall be deemed to authorize the applicant to submit to the County an application for a Preliminary Plan for PUD. It shall not constitute final approval for the PUD. Sketch Plan for PUD approval vests no development rights. (*am.05/08/12*)
  - (2) Preliminary Plan Conformance with Sketch Plan.** Where such Preliminary Plan departs from a condition of the Sketch Plan approval, the Applicant shall identify any and all such inconsistencies and shall set forth its justification for them. (*orig. 05/08/12*)
  - (3) Length of Approval.** A Sketch Plans for PUD is valid for two (2) years from the date of its issuance. (*am.05/08/12*)
  - (4) Expiration of Approval.** The Resolution for approval of a Sketch Plan for PUD by the Board of County Commissioners shall be null and void unless an application for a Preliminary Plan for PUD is submitted and deemed sufficient by the Planning Director within two (2) years after the date of approval of the Sketch Plan for PUD. (*am.05/08/12*)

- (5) **Extension of Sketch Plan Approval.** Approval of a Sketch Plan for PUD shall be voided and extinguished unless the applicant can demonstrate by competent substantial evidence that failure to proceed with the development of the application was:
- a. Beyond the applicant's control;
  - b. The development complies with these Land Use Regulations and the Comprehensive Plan; and
  - c. There is a reasonable likelihood the next step in the development application will be submitted in the next two (2) years.

No request for extension shall be considered unless a written application requesting the extension is submitted to the Planning Director no later than thirty (30) calendar days prior to the date the Sketch Plan for PUD is to expire. The permit shall be deemed extended until the Board of County Commissioners has acted upon the request for extension. *(am.11/08/05)*  
*(am.05/08/12)*

### 3. Preliminary Plan for PUD.

- a. **Application Contents.** An application for a Preliminary Plan for PUD shall contain the materials specified in Section 5-210.D.2., Minimum Contents of Application, and the following information:
- (1) Overall development plan.
  - (2) Application for zone amendment.
  - (3) PUD guide setting forth the proposed land use restrictions and standards of development.
  - (4) Wildlife Analysis pursuant to Section 4-410.
  - (5) Geologic Hazards Analysis pursuant to Section 4-420.
  - (6) Ridgeline Visual Analysis pursuant to Section 4-450.
  - (7) Detailed Landscape Plan pursuant to Section 4-220.
  - (8) Environmental Impact Report pursuant to Section 4-460.
  - (9) Vegetation Management Plan pursuant to Section 4-430. *(orig. 12/17/02)*
  - (10) Any other information required with Sketch Plan approval and the following application materials: *(am. 03/28/06)*
    - a. Preliminary Utility Plan, pursuant to Section 4-430, 4-670, 4-680 and 4-690. Plans shall be prepared at the same scale as the Preliminary Plan including: *(orig. 03/28/06)*

- (i)** Water Supply - If a central water supply and distribution system is to be provided, the details of the system shall be provided demonstrating that: *(orig. 03/28/06)*
- aa.** Source - Adequate evidence prepared by a Registered Professional Engineer verifying that the quality and quantity of the water supply is sufficient to supply the subdivision proposed. Physical evidence may be required including but not limited to: aquifer pump testing in addition to appropriate geotechnical studies or investigations *(orig. 03/28/06)*
- i.** Evidence of ownership, right of acquisition or use of existing and proposed water rights. *(orig. 03/28/06)*
- ii.** Final, water court-approved augmentation plan. *(orig. 03/28/06)*
- iii.** Evidence confirming the potability of the proposed water supply for the subdivision. *(orig. 03/28/06)*
- iv.** Evidence from the local fire jurisdiction confirming that the proposed water supply for fire fighting purposes is sufficient. *(orig. 03/28/06)*
- bb.** The nature of the legal entity which will own and operate the water system shall be provided as well as the proposed method of financing. *(orig. 03/28/06)*
- cc.** If connection to an existing system is proposed, the following information shall be provided: *(orig. 03/28/06)*
- i.** The nature of the public or private legal entity which will supply water to the proposed subdivision; *(orig. 03/28/06)*
- ii.** Agreement with the above entity to service the proposed subdivision; *(orig. 03/28/06)*
- iii.** Information on the water supplier's present service requirements, future



commitments and present water supply capabilities, including but not limited to: *(orig. 03/28/06)*

- (aa)** A summary of water rights owned and controlled by the entity *(orig. 03/28/06)*
- (bb)** The anticipated yield of the rights in an average and a dry year *(orig. 03/28/06)*
- (cc)** The present demand and anticipated demand for current commitments not yet being supplied *(orig. 03/28/06)*
- (dd)** The uncommitted firm supply *(orig. 03/28/06)*
- (ee)** A map of the entity's service area *(orig. 03/28/06)*

**dd.** If individual well water systems are proposed, a report must be prepared by a Professional Engineer or Geologist indicating the availability of groundwater, which includes the depth to the groundwater supply throughout The report must address the water quality, rates of delivery and long-term yield of such wells. The cumulative effect upon existing water rights due to the use of individual domestic wells shall be considered in the report. *(orig. 03/28/06)*

**(ii)** Sanitary Sewage Disposal - If public collection and treatment systems or the use of On-Site Wastewater Treatment Systems (OWTS) are to be provided, the details of the collections system, treatment facilities and individual components shall be provided including: *(orig. 03/28/06) (amd. 07/29/14)*

**aa.** Public Treatment - Agreement to serve from a public sewage treatment provider and evidence to support that the provider possesses adequate sewage treatment capability and capacity to serve the proposed subdivision; *(orig. 03/28/06)*

**bb.** The nature of the legal entity which will own and operate the sewer system shall be described, as well as the proposed method of financing; *(orig. 03/28/06)*

**cc.** If sanitary sewage disposal will be accomplished by On-Site Wastewater Treatment Systems

(OWTS), a suitability analysis as determined by the Environmental Health Department must be performed. Such analyses may include but is not limited to, soil profile observations to identify soil classifications and horizons; adequate separation to bedrock or ground water; soil percolation tests, etc. Location(s) of soil analyses shall be indicated on the plan and must be performed by a Professional Engineer, Geologist or person qualified to do this work. (orig. 03/28/06) (amd. 07/29/14)

**(b) Public Water and/or Wastewater System** (orig. 03/28/06)

- (i)** If it has been determined that the proposed water and/or wastewater system is a public system, the required application for a 1041 permit (pursuant to Chapter 6: Matters of State Interest), and evidence that the associated application(s) administered by the Colorado Department of Public Health and Environment have been made, shall be submitted concurrently with the Preliminary Plan application. (orig. 03/28/06)

- b. Review of Applications.** The submission of an application for Preliminary Plan for PUD, determination of its sufficiency, staff review of, and notice and scheduling of a public hearing for the application shall comply with the procedures established in Section 5-210.D, Common Procedure for Review of Applications.
- c. Recommendation by Planning Commission.** The Planning Commission shall conduct a public hearing on an application for a Preliminary Plan for PUD. At the public hearing, the Planning Commission shall consider the application, the relevant support materials, the Staff Report, and the public information given at the public hearing. The Planning Commission may confer with the applicant on changes deemed advisable and the kind and extent of such changes, and request Planning Department input. After the close of the public hearing, the Planning Commission shall recommend approval, approval with conditions, or disapproval of the Preliminary Plan for PUD based upon whether it conforms to the approval given to the Sketch Plan for PUD and whether it complies with the standards in Section 5-240.F.3.e, Standards. (am.05/08/12)
- d. Action by Board of County Commissioners.** After receipt of the recommendation from the Planning Commission, the Board of County Commissioners shall conduct a public hearing on an application for a Preliminary Plan for PUD. At the public hearing, the Board of County Commissioners shall consider the application, the relevant support materials, the Staff Report, the Planning Commission recommendation, and the public information given at the public hearing. The Board of County Commissioners may confer with the applicant on changes deemed advisable and the kind and extent of such changes, and request Planning Department input. After the close of the public hearing, the Board of County Commissioners by a majority vote of the quorum present, shall either approve, approve with conditions or

disapprove the application for Preliminary Plan for PUD based upon whether it conforms to the approval given to the Sketch Plan for PUD and whether it complies with the standards in Section 5-240.F.3.e, Standards. Action approving, approving with conditions, or disapproving a Preliminary Plan for PUD shall require adoption by Resolution, which Resolution shall constitute final action on the application by the Board of County Commissioners. Finalization of the Resolution must occur within 90 days of the Board of County Commissioner's vote to approve, approve with conditions or disapprove the Preliminary Plan for PUD application. (am.05/08/12)

e. **Standards.** The Sketch Plan and Preliminary Plan for PUD shall comply with the following standards:

- (1) **Unified ownership or control.** The title to all land that is part of a PUD shall be owned or controlled by one (1) person. A person shall be considered to control all lands in the PUD either through ownership or by written consent of all owners of the land that they will be subject to the conditions and standards of the PUD. For the purposes of amending a PUD, written consent by the governing Home Owner's Association or Property Owner's Association shall satisfy this standard. The Home Owner's Association, or Property Owner's Association, with a majority vote of its constituents, may also apply for a PUD amendment on behalf of all individual property owners of the land subject to the conditions and standards of the PUD to be amended. (am.05/08/12)
- (2) **Uses.** The uses that may be developed in the PUD shall be those uses that are designated as uses that are allowed, allowed as a special use or allowed as a limited use in Table 3-300, "Residential, Agricultural and Resource Zone Districts Use Schedule", or Table 3-320, "Commercial and Industrial Zone Districts Use Schedule", for the zone district designation in effect for the property at the time of the application for PUD. Variations of these use designations may only be authorized pursuant to Section 5-240 F.3.f., Variations Authorized.
- (3) **Dimensional Limitations.** The dimensional limitations that shall apply to the PUD shall be those specified in Table 3-340, "Schedule of Dimensional Limitations", for the zone district designation in effect for the property at the time of the application for PUD. Variations of these dimensional limitations may only be authorized pursuant to Section 5-240 F.3.f., Variations Authorized, provided variations shall leave adequate distance between buildings for necessary access and fire protection, and ensure proper ventilation, light, air and snowmelt between buildings.
- (4) **Off-Street Parking and Loading.** Off-street parking and loading provided in the PUD shall comply with the standards of Article 4, Division 1, Off-Street Parking and Loading Standards. A reduction in these standards may be authorized where the applicant demonstrates that:
  - (a) **Shared Parking.** Because of shared parking arrangements among uses within the PUD that do not require peak parking for those uses

to occur at the same time, the parking needs of residents, guests and employees of the project will be met; or

- (b) **Actual Needs.** The actual needs of the project's residents, guests and employees will be less than those set by Article 4, Division 1, Off-Street Parking and Loading Standards. The applicant may commit to provide specialized transportation services for these persons (such as vans, subsidized bus passes, or similar services) as a means of complying with this standard.
- (5) **Landscaping.** Landscaping provided in the PUD shall comply with the standards of Article 4, Division 2, Landscaping and Illumination Standards. Variations from these standards may be authorized where the applicant demonstrates that the proposed landscaping provides sufficient buffering of uses from each other (both within the PUD and between the PUD and surrounding uses) to minimize noise, glare and other adverse impacts, creates attractive streetscapes and parking areas and is consistent with the character of the area.
- (6) **Signs.** The sign standards applicable to the PUD shall be as specified in Article 4, Division 3, Sign Regulations, unless, as provided in Section 4-340 D., Signs Allowed in a Planned Unit Development (PUD), the applicant submits a comprehensive sign plan for the PUD that is determined to be suitable for the PUD and provides the minimum sign area necessary to direct users to and within the PUD.
- (7) **Adequate Facilities.** The applicant shall demonstrate that the development proposed in the Preliminary Plan for PUD will be provided adequate facilities for potable water supply, sewage disposal, solid waste disposal, electrical supply, fire protection and roads and will be conveniently located in relation to schools, police and fire protection, and emergency medical services.
- (8) **Improvements.** The improvements standards applicable to the development shall be as specified in Article 4, Division 6, Improvements Standards. Provided, however, the development may deviate from the County's road standards, so the development achieves greater efficiency of infrastructure design and installation through clustered or compact forms of development or achieves greater sensitivity to environmental impacts, when the following minimum design principles are followed:
- (a) **Safe, Efficient Access.** The circulation system is designed to provide safe, convenient access to all areas of the proposed development using the minimum practical roadway length. Access shall be by a public right-of-way, private vehicular or pedestrian way or a commonly owned easement. No roadway alignment, either horizontal or vertical, shall be allowed that compromises one (1) or more of the minimum design standards of the American Association of State Highway Officials (AASHTO) for that functional classification of roadway.

- (b) **Internal Pathways.** Internal pathways shall be provided to form a logical, safe and convenient system for pedestrian access to dwelling units and common areas, with appropriate linkages off-site.
  - (c) **Emergency Vehicles.** Roadways shall be designed to permit access by emergency vehicles to all lots or units. An access easement shall be granted for emergency vehicles and utility vehicles, as applicable, to use private roadways in the development for the purpose of providing emergency services and for installation, maintenance and repair of utilities.
  - (d) **Principal Access Points.** Principal vehicular access points shall be designed to provide for smooth traffic flow, minimizing hazards to vehicular, pedestrian or bicycle traffic. Where a PUD abuts a major collector, arterial road or highway, direct access to such road or highway from individual lots, units or buildings shall not be permitted. Minor roads within the PUD shall not be directly connected with roads outside of the PUD, unless the County determines such connections are necessary to maintain the County's road network.
  - (e) **Snow Storage.** Adequate areas shall be provided to store snow removed from the internal street network and from off-street parking areas.
- (9) **Compatibility with Surrounding Land Uses.** The PUD shall be generally compatible with the existing and currently permissible future uses of adjacent land and other lands, services or infrastructure improvements that may be substantially impacted. *(am.05/08/12)*
- (10) **Conformance with Comprehensive Plan.** The PUD shall be in substantial conformance with the Eagle County Comprehensive Plan, Area Community Plans, and any applicable ancillary County adopted documents pertaining to natural resource protection, affordable housing or infrastructure management. *(am.11/08/05) (am.05/08/12)*
- (11) **Phasing.** The Preliminary Plan for PUD shall include a phasing plan for the development. If development of the PUD is proposed to occur in phases, then guarantees shall be provided for public improvements and amenities that are necessary or desirable for residents of the project, or that are of benefit to the entire County. Such public improvements shall be constructed with the first phase of the project as determined by the Board of County Commissioners in the Resolution of approval. *(am.05/08/12)*
- (12) **Common Recreation and Open Space.** The PUD shall comply with the following common recreation and open space standards.

- (a) **Minimum Area.** It is recommended that a minimum of 25% of the total PUD area shall be devoted to open air recreation or other usable open space, public or quasi-public. In addition, the PUD shall provide a minimum of ten (10) acres of common recreation and usable open space lands for every one thousand (1,000) persons who are residents of the PUD. In order to calculate the number of residents of the PUD, the number of proposed dwelling units shall be multiplied by two and sixty-three hundredths (2.63), which is the average number of persons that occupy each dwelling unit in Eagle County, as determined in the Eagle County Comprehensive Plan.
- (i) **Areas that Do Not Count as Open Space.** Parking and loading areas, street right-of-ways, and areas with slopes greater than thirty (30) percent shall not count toward usable open space.
- (ii) **Areas that Count as Open Space.** Water bodies, lands within critical wildlife habitat areas, riparian areas, and one hundred (100) year floodplains, as defined in these Land Use Regulations, that are preserved as open space shall count towards this minimum standard, even when they are not usable by or accessible to the residents of the PUD. All other open space lands shall be conveniently accessible from all occupied structures within the PUD.
- (b) **Improvements Required.** All common open space and recreational facilities shall be shown on the Preliminary Plan for PUD and shall be constructed and fully improved according to the development schedule established for each development phase of the PUD.
- (c) **Continuing Use and Maintenance.** All privately owned common open space shall continue to conform to its intended use, as specified on the Preliminary Plan for PUD. To ensure that all the common open space identified in the PUD will be used as common open space, restrictions and/or covenants shall be placed in each deed to ensure their maintenance and to prohibit the division of any common open space.
- (d) **Organization.** If common open space is proposed to be maintained through an association or nonprofit corporation, such organization shall manage all common open space and recreational and cultural facilities, and shall provide for access and responsibility for the maintenance, administration and operation of such land and any other land within the PUD not publicly owned, and secure adequate liability insurance on the land. The association or nonprofit corporation shall be established prior to the sale of any lots or units within the PUD. *(am.05/08/12)*
- (13) **Natural Resource Protection.** The PUD shall consider the recommendations made by the applicable analysis documents, as well as the

recommendations of referral agencies as specified in Article 4, Division 4, Natural Resource Protection Standards.

- f. Variations Authorized.** The Board of County Commissioners shall be authorized to grant the following variations as part of its approval of the Preliminary Plan for PUD. Each variation that is granted shall be shown in the PUD Guide and Preliminary Plan. (*am.05/08/12*)
- (1) **Uses.** The uses that are allowed, allowed as limited uses, or allowed as special uses, may be varied.
  - (2) **Dimensional Limitations.** The minimum lot area, minimum lot area per use, maximum lot coverage, maximum floor area, minimum yard setbacks and maximum height may be varied.
  - (3) **Basis for Granting Variations.** These variations may be granted when the Board of County Commissioners finds that the Preliminary Plan for PUD achieves one (1) or more of the following purposes and that the granting of the variation is necessary for that purpose to be achieved. The standards used in the designation of the land use categories on the Future Land Use Map, found in the Eagle County Comprehensive Plan, “Criteria Used in the Land Designation Process”, shall also be considered when determining the maximum density and allowed uses of the PUD. (*am.11/08/05*)
    - (a) **Obtain Desired Design Qualities.** A variation may be allowed that permits the integration of mixed uses or allows for greater variety in the type, design and layout of buildings. Structures shall be designed to be compatible, in terms of height, mass, scale, orientation and configuration, with other units in the PUD and the surrounding area, yet shall avoid uniformity of design. Residential and non-residential uses may be mixed together. Various types of residential uses may also be combined within the PUD, to promote more efficient land use patterns and increased open space. The Board of County Commissioners may require minimum yard setbacks, lot widths, and space between buildings of such dimensions as they are determined to be necessary to provide adequate access and fire protection; to ensure proper ventilation, light, air, and snowmelt between buildings; and to minimize the effects of transmission of noise between units and between buildings. As a general guide, twenty (20) feet between buildings shall be considered the minimum appropriate spacing.
    - (b) **Avoid Environmental Resources and Natural Hazards.** A variation may be allowed that provides necessary site planning flexibility to enable the development to avoid valued environmental resource and natural hazard lands, as these have been identified in Section 3-310.B.1., Purpose. This shall be accomplished in such a way as to maintain these lands as large, contiguous areas. Such lands shall not be fragmented into small, unconnected areas by development, unless the applicant demonstrates that this

arrangement is necessary to maintain the underlying density on the property, and the lands providing environmental resource values have been protected and lands subject to natural hazards have been avoided. Where applicable, connections of such lands on the site to such lands on adjacent properties shall be accomplished.

- (c) **Water Augmentation.** A variation may be allowed that creates incentives for applicants to commit to a water augmentation plan for their development that brings "wet" water into the Upper Eagle River Basin.
  - (d) **Trails.** A variation may be allowed that provides incentives for applicants to make contributions to the County's multi-use trail system, in accordance with the recommendations of the latest version of the **Eagle County Trails Plan**, or to provide appropriate forms of access (including summer and winter parking areas and trailheads) to public lands and to river and creek drainages in Eagle County. Proposed access shall be consistent with public land management objectives and resource protection needs for the areas to be accessed. Trails standards are identified in Section 4-630.A.
  - (e) **Affordable Housing.** A variation may be allowed that extends an incentive to applicants to assure that long term affordable housing is provided.
  - (f) **Public Facilities.** A variation may be allowed that provides incentives for applicants to develop public facilities, including but not limited to public transportation facilities, public recreation facilities and similar facilities. The facilities may be located on or off of the PUD site, and shall be facilities that meet the demands not only of project residents, but also of other residents of and visitors to Eagle County.
- g. Conditions.** The Planning Director and the Planning Commission shall have the authority to recommend and the Board of County Commissioners shall have the authority to impose such conditions on a PUD that are necessary to accomplish the purposes of this Section, this Article, these Land Use Regulations, and the Comprehensive Plan. *(am.11/08/05)*
- h. Planned Unit Development (PUD) Agreement.**
- (1) **General.** Concurrent with the approval of a Preliminary Plan for PUD, the applicant and the Board of County Commissioners shall agree to a Planned Unit Development (PUD) Guide binding the PUD to any conditions placed in the Resolution and such supplemental agreements relating to the PUD as may be appropriate and necessary. *(am.05/08/12)*
  - (2) **Common Park and Recreation Areas.** The PUD Guide shall include a Common Open Space, Park, and Recreation Area Plan. It shall outline the



area of common open space, parks, trails and recreation lands, and specify any agreement on the part of the developer to improve and preserve the open space, parks, trails and recreation lands and how this will be implemented by deeding the land to the appropriate entity. It shall also identify any deed or other restrictions against future residential, commercial, or industrial development. It shall also include the terms by which any common areas shall be maintained. (*am.05/08/12*)

- (3) **Landscape Guarantee.** The Planned Unit Development (PUD) Agreement shall set down how the landscaping proposed for the PUD will comply with Section 4-240, Installation and Maintenance Requirements. Landscaping for a phased PUD may be designed by phase, with installation occurring concurrent with development of each phase. The PUD Agreement shall include the landscaping for the entire PUD and for each phase of the PUD.
- (a) **Form of Guarantee.** The County may require the developer to provide a guarantee for no less than one hundred and twenty-five (125) percent of the current estimated cost of the landscaping improvements, and the landscape plan as estimated by the Planning Director, to ensure the installation of all landscaping shown and to ensure the continued maintenance and replacement of that landscaping for a period of two (2) years after installation. The guarantee shall be in a form acceptable to the County Attorney. At the developer's option, the guarantee may be provided for the entire PUD or for each phase. The guarantee shall be provided prior to initiation of any land clearing or infrastructure development for the phase or the PUD, whichever is applicable.
- (b) **Release.** As portions of the landscape improvements are completed, the Planning Director shall inspect them, and upon approval and acceptance, shall authorize the release of the agreed estimated cost for that portion of the improvements, except that ten (10) percent shall be withheld until all proposed improvements are completed and approved, and an additional twenty-five (25) percent shall be retained until the improvements have been maintained in a satisfactory condition for two (2) years.
- (4) **Public Improvement Guarantee.** In order to ensure installation of necessary public improvements planned to accommodate the development, the Planned Unit Development (PUD) Agreement shall provide a guarantee for no less than one hundred (100) percent of the current estimated cost of such public facility improvements, as estimated by the applicant and approved by the County Engineer. The guarantee shall be in a form approved by the County Attorney. As portions of the public facilities improvements are completed, the County Engineer shall inspect them, and upon approval and acceptance, shall authorize the release of the agreed cost for that portion of the improvements except that ten (10) percent shall be withheld until all proposed improvements are completed and approved by the County Engineer.

- (5) **Notice of Planned Unit Development Designation.** Subsequent to approval of a Resolution approving a Preliminary Plan for PUD which shall constitute a Planned Unit Development (PUD) zone district designation, the Planning Director shall file with the Clerk and Recorder Eagle County the following notice: *(am 9/27/99)*

**Notice of Planned Unit Development (PUD) Zone District Designation**

PLEASE TAKE NOTE that on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the Board of County Commissioners of Eagle County, Colorado, approved development on the following described tract as a Planned Unit Development (PUD) pursuant to the provisions of Section \_\_\_\_\_ of the County Zoning Resolution. No development shall occur on the tract except in accordance with the approved Preliminary Plan for PUD, PUD Guide and any applicable associated agreement, and under any conditions that may be imposed thereby. The above referred to land is located within unincorporated Eagle County and is more fully described as follows: *(am.05/08/12)*

(Insert legal description)

A copy of the Preliminary Plan for PUD and PUD Guide is of record in the office of the Eagle County Planning Director.

\_\_\_\_\_  
 STATE OF COLORADO    )  
   ) ss:  
 EAGLE COUNTY            )

The foregoing instrument was acknowledged before me this day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, Clerk.  
 Witness my hand and official seal.

\_\_\_\_\_  
 Notary Public

My commission expires:  
 \_\_\_\_\_.

- i. **Placement on Official Zone District Map.** After approval of a Preliminary Plan for PUD, the Planning Director shall amend the Official Zone District Map to show a PUD zone district designation.

**j. Recording.** The Preliminary Plan for PUD, PUD Guide and any applicable associated agreement shall be recorded in the office of the Eagle County Clerk and Recorder, and shall be binding upon the landowners subject to the Resolution and Preliminary Plan for PUD, their successors and assigns, and shall constitute the development regulations for the land. Development of the land shall be limited to the uses, density, configuration, and all other elements and conditions set forth on the Preliminary Plan for PUD, PUD Guide and Planned Unit Development (PUD) Agreement. Failure of the applicant to record the Resolution, Preliminary Plan for PUD, PUD Guide and PUD Agreement within one hundred and eighty (180) calendar days of its approval shall render the Resolution, Preliminary Plan for PUD, PUD Guide and PUD Agreement invalid and the property shall return to its prior zoning designation. *(am 3/12/02) (am.05/08/12)*

**k. Effect of approval of a Preliminary Plan for PUD.**

- (1) Effect.** Issuance of a Preliminary Plan for PUD shall constitute an amendment to the Official Zone District Map. It shall also authorize the applicant to submit an application for a Final Plat for Subdivision.
- (2) Length of Approval.** All single-phase Preliminary Plans for PUD are valid for five (5) years from the date of their issuance. All multi-phase Preliminary Plans for PUD are valid for ten (10) years from their date of issuance, though development of at least the first phase must have been completed within five (5) years after the date of approval of the Preliminary Plan for PUD. The Board of County Commissioners has the option to extend these time periods. Permitted time frames do not change with successive owners.
- (3) Extention of Preliminary Plan Approval.** Approval of a Preliminary Plan for PUD shall be voided and extinguished unless the applicant can demonstrate by competent substantial evidence that failure to proceed with the development of the application was:
  - a. Beyond the applicant's control;
  - b. The development complies with the Land Use Regulations and the Comprehensive Plan; and
  - c. There is a reasonable likelihood the next step in the development application will be submitted in the next two (2) years.

No request for extension shall be considered unless a written application requesting the extension is submitted to the Planning Director no later than thirty (30) calendar days prior to the date the Preliminary Plan for PUD is to expire. The permit shall be deemed extended until the Board of County Commissioners has acted upon the request for extension. *(am.11/08/05) (am.05/08/12)*

- (4) Extinguishment Hearing.** If a Preliminary Plan for PUD is not extended before it is to expire, or if a condition of Preliminary Plan for PUD is not fulfilled, then pursuant to Section 5-240.F.3.k(3), Extension, the Board of County Commissioners shall initiate a hearing pursuant to Subsection 5-

210.H., Extinguishment of Approvals, to determine whether to extinguish the Preliminary Plan for PUD. (am.05/08/12)

- (5) **Preliminary Plan for PUD Extinguishment.** When a Preliminary Plan for PUD is extinguished, the Board shall concurrently initiate and amend the Official Zone District Map to the zone district classification of the land that was in effect prior to the time that the Preliminary Plan for PUD was originally approved. The Board of County Commissioners shall consider the requirements of Section 24-67-106.1 Colorado Revised Statutes prior to ordering any PUD Plan extinguished and shall make any finding required by law prior to extinguishing the PUD Plan. Should the Board find that extinguishment of the plan is contrary to law, plan shall not be extinguished. (am.05/08/12)

- l. **Minor Deviations.** Minor deviations from a Preliminary Plan for PUD shall be approved by the Planning Director. Minor deviations that are authorized are those that appear necessary in light of technical or engineering considerations first discovered during actual development and that are not reasonably anticipated during the initial approval process, as long as they comply with these Land Use Regulations. Minor deviations shall not include reductions in the amount of required open space, or required wildlife habitat protection, or increases in the building square footage. All changes not qualifying as minor deviations shall be considered amendments and shall comply with Section 5-240.F.3.m., Amendment to Preliminary Plan for PUD.

- m. **Amendment to Preliminary Plan for PUD.** No substantial modification, removal, or release of the provisions of the plan shall be permitted except upon a finding by the County, following a public hearing called and held in accordance with the provisions of section 24-67-104(1)(e) Colorado Revised Statutes that; (am 3/12/02)

- (1) **Modification.** The modification, removal, or release is consistent with the efficient development and preservation of the entire Planned Unit Development; (am 3/12/02)
- (2) **Adjacent Properties.** The PUD Amendment does not affect, in a substantially adverse manner, either the enjoyment of land abutting upon or across a street from the Planned Unit Development or the public interest; (am 3/12/02)
- (3) **Benefit.** The PUD Amendment is not granted solely to confer a special benefit upon any person. (am 3/12/02)
- (4) **Amendment.** Amendment of a Preliminary Plan for PUD shall not have the effect of extending the vesting period absent a specific finding and declaration to that effect. (am.05/08/12)

In addition to the above requirements a Preliminary Plan for PUD may be amended, extended, varied or altered only pursuant to the standards and procedures established for its original approval.

- (5) **Standards.** PUD Amendments shall address the standards Pursuant to Section 5-240.F.3.e. Applicant shall also provide a copy of the PUD Guide clearly demonstrating what amendments are to be made. (am 3/12/02)
- (6) **Notification.** The applicant shall provide pre-addressed, stamped envelopes for every property owner in the PUD, as well as for all adjacent property owners. The applicant shall also comply with Section 5-210.E. (am 3/12/02)

## G. Enforcement of PUD.

1. **General.** The provisions of a Resolution approving a Planned Unit Development (PUD) District designation, a Preliminary Plan for PUD, PUD Guide and PUD Agreement, relating to the use of land and the location of common open space shall run in favor of the County, and shall be enforceable at law or in equity by the County, without limitation on any power or regulation otherwise granted by law.
  - a. **Residents.** All provisions of the Resolution approving a PUD District designation, Preliminary Plan for PUD, PUD Guide and PUD Agreement shall also run in favor of the residents, occupants, and owners of the PUD, but only to the extent expressly provided in the Resolution and in accordance with the terms of the Preliminary Plan for PUD. To that extent, said provisions, whether recorded by plat, covenant, easement or otherwise, may be enforced at law or in equity by residents, occupants, or owners acting individually, jointly, or through an organization designated in the Resolution to act on their behalf. However, no provision of the Resolution shall be implied to exist in favor of residents, occupants, and owners except those provisions of the Resolution which have been finally approved by the Board of County Commissioners.
  - b. **Release by County.** All those provisions of the Resolution approving a PUD District designation or a Preliminary Plan for a PUD authorized to be enforced by the County, may be modified, removed or released by the County subject to the following:
    - (1) **Enforcement.** No modification, removal or release of the provisions shall affect the rights of the residents, occupants, and owners of the Planned Unit Development (PUD) to maintain and enforce these provisions at law or equity as provided in Section 5-240.G.2., Residents.
  - c. **Procedure.** No substantial modification, removal or release of the provisions of the Resolution by the County shall be permitted except pursuant to Section 5-240.F.m., Amendment to Preliminary Plan for PUD.
2. **Release by residents.** Residents and owners of the PUD may, to the extent and in the manner expressly authorized by the provisions of the Resolution, modify, remove or release their rights to enforce the provisions of the Resolution, but no such action shall affect the right of the County to enforce the Resolution.
3. **Enforcement of Open Space and Common Area Conditions.** In the event the organization established to own and maintain common open spaces, recreation areas, communally-owned

facilities and private streets, or any successor organization shall at any time fail to maintain the common facilities in reasonable order and condition in accordance with the approved Common Open Space and Recreation Areas Plan in the Preliminary Plan for PUD, the Planning Director may cause written notice to be served upon such organization or upon the owners of land in the development setting forth the manner in which the common facilities have failed to be maintained in reasonable conditions, which notice shall include the demand that the deficiencies noted be cured within thirty (30) calendar days. The notice shall state the date and place of hearing to be held within fourteen (14) calendar days of notice.

- a. Remedies Authorized.** At the time of hearing, the Planning Director may modify the terms of the original notice as to deficiencies and may extend the time within which the same may be cured. If the deficiencies set forth in the original notice or modifications are not cured within the time set, the Planning Director, in order to preserve the taxable values of properties within the development and to prevent the common facilities from becoming a public nuisance, may enter upon such common facilities and maintain the same for a period of one (1) year. Any failure of the Planning Director to act for any period of time shall not bar his action. Such entry and maintenance shall not vest in the public any right to use the common facilities not dedicated to public use.
- b. Show Cause Hearing.** Before expiration of the one (1) year period, the Planning Director shall take the initiative, or shall upon the written request of the organization responsible for maintenance, call a public hearing and give notice of such hearing to the organization responsible for maintenance or the property owners of the Planned Unit Development (PUD). At such hearing, the organization responsible for maintenance and/or the residents of the development may show cause why maintenance by the County should not be continued for the succeeding year.
- c. Continuing Maintenance.** If the Board of County Commissioners determines that it is not necessary for the County to continue such maintenance, the County shall cease such maintenance at the time established by the Board of County Commissioners. Otherwise, the County shall continue maintenance for the next succeeding year, subject to a similar hearing and determination at the end of each year thereafter. The cost of County maintenance shall be paid by the owners of properties within the PUD that have a right of enjoyment of the common open space. The cost of County maintenance and any unpaid assessments shall become a tax lien against the common facilities of, and the private properties within, the PUD.
- d. Assessments.** The County shall have the right to make assessments against properties in the development on the same basis that the organization responsible for maintenance of the facilities could make such assessments. Any unpaid assessment shall be a lien against the property responsible for the same, enforceable the same as a mortgage against such property. The County may further foreclose its lien on the common facility by certifying the same to the County Treasurer for collection as in the case of collection of general property taxes.

## H. Applicability of PUD

- 1) **Other.** Except as expressly provided otherwise in a particular Planned Unit Development Guide, all development of property shall conform to the Eagle County Land Use Regulations. If the PUD falls silent concerning a particular standard, restriction, etc, but the Eagle County Land Use Regulations are not, the Eagle County Land Use Regulations shall be the controlling document. If the PUD conflicts with the Eagle County Land Use Regulations, the PUD shall control. (*orig.3/12/02*) (*am.05/08/12*)

## SECTION 5-250. SPECIAL USES

Special Uses are those uses that are not necessarily compatible with the other uses allowed in a zone district, but which may be determined compatible with the other uses allowed in the zone district based upon individual review of their location, design, configuration, density and intensity of use, and the imposition of appropriate conditions to ensure the compatibility of the use at a particular location with surrounding land uses. All Special Uses shall meet the standards set forth in this Section.

### A. Procedure.

1. **Initiation.** Applications for Special Use Permits may be submitted at any time to the Planning Director, by the owner or any other person having a recognizable interest in the land for which the Special Use is proposed, or their authorized agent. (*am. 10/02/2007*)

#### a. Types of Special Use Permit:

- (1) **Concept Evaluation Special Use Permit.** The Concept Evaluation Special Use Permit application is intended to provide the applicant, the County and the public the opportunity to evaluate and discuss the basic concepts for development of the proposed Special Use Permit and to consider whether said Special Use can be executed in manner consistent and compatible with other uses allowed within the governing zone district. Approval of a Concept Evaluation Special Use Permit does not vest any rights in the applicant or property owner, rather; approval of a Concept Evaluation Special Use Permit provides an opportunity to identify issues and concerns the applicant must address if the project is to receive Final Special Use Permit approval from the County. (*orig. 10/02/2007*) (*am.05/08/12*)
- (2) **Final Special Use Permit.** The Final Special Use Permit review is for the applicant to respond to the issues and concerns identified during the Concept Evaluation Special Use Permit review and to formulate detailed, properly engineered solutions to those issues and concerns that conform to the approved Concept Evaluation Special Use Permit. The Final Special Use Permit process is when the applicant is to provide detailed information and mitigation proposals to be evaluated by the County. The Final Special Use Permit shall include specific standards applicable to the development of the proposed use, specifying the geographic and duration limitations of the property upon which the Special Use is located. (*orig. 10/02/2007*) (*am.05/08/12*)

- (3) **Consolidated Concept Evaluation and Final Special Use Permit.** Applicants may request, and the Planning Director may permit, the simultaneous submission and review of the Concept Evaluation and Final Special Use Permit applications for a parcel of land. Dependent upon the scope, scale and complexity of the proposed Special Use, the Planning Director may allow the Special Use Permit application to be processed in one step. (*orig. 10/02/2007*)
- b. **Application Contents.** Concept Evaluation Special Use Permit applications, Final Special Use Permit applications and Consolidated Special Use Permit applications shall contain the materials specified in Section 5-210.D.2., Minimum Contents of Application, and the following materials: (*am. 10/02/2007*)

  - (1) **Site Plan.** A detailed site plan of the property, drawn to scale, showing all existing natural and man-made features and the proposed development of the property. The site plan shall be accompanied by a landscape plan that conforms to the requirements of Section 4-220, Landscape Plan. (*am. 10/02/2007*)
  - (2) **Written Description.** A written description of the proposal, in sufficient detail to describe the nature of the proposed use, how it will be operated, and how its impacts on surrounding properties will be minimized and mitigated. (*am. 10/02/2007*)
  - (3) **Other Materials.** Such other materials as may be necessary to fully evaluate the compliance of the proposed special use with these Land Use Regulations and as required pursuant to Article 4, Site Development Standards. (*am. 10/02/2007*)
2. **Review of applications.** The submission of an application for either form of Special Use Permit, determination of its sufficiency, staff review of, and notice and scheduling of a public hearing for an application for a Special Use Permit shall comply with the procedures and standards established in Section 5-210.D, Common Procedure for Review of Applications. (*am. 10/02/2007*)
3. **Recommendation of Planning Commission.** After receipt of the Staff Report, the Planning Commission shall conduct a public hearing on an application for a Special Use Permit. At the public hearing, the Planning Commission shall consider the application, the relevant support materials, the Staff Report, and the public testimony given at the public hearing. After the close of the public hearing, the Planning Commission, by a majority vote of the quorum present, shall recommend to the Board of County Commissioners either to approve, approve with conditions, or disapprove the application for a Special Use Permit based on the standards in Section 5-250.B, Standards. (*am.05/08/12*)
4. **Action by Board of County Commissioners.** After receipt of the recommendation from the Planning Commission, the Board of County Commissioners shall conduct a public hearing on an application for a Special Use Permit. At the public hearing, the Board of County



Commissioners shall consider the application, the relevant support materials, and the public testimony given at the public hearing. After the close of the public hearing, the Board of County Commissioners, by a majority vote of the quorum present, shall either approve, approve with conditions, or disapprove the application based on the standards in Section 5-250.B, Standards. A Resolution of the Board of County Commissioners approving such action shall constitute final action by the County on the application. Finalization of the Resolution must occur within 90 days of the Board of County Commissioner's vote to approve, approve with conditions or disapprove the Special Use Permit application. (am.05/08/12)

- B. Standards.** The issuance of a Special Use Permit shall be dependent upon findings that there is competent evidence that the proposed use as conditioned, fully complies with all the standards of this Section, this Division, this Article, and these Land Use Regulations. The Planning Commission may recommend and the Board of County Commissioners may attach any conditions deemed appropriate to ensure compliance with the following standards, including conformity to a specific site plan, requirements to improve public facilities necessary to serve the Special Use, and limitations on the operating characteristics of the use, or the location or duration of the Special Use Permit. Where the application is for a Concept Evaluation Special Use Permit, the applicant must demonstrate that there is the substantial potential to satisfy the following standards; however, final project designs are not required. (am. 10/02/07)
- 1. Consistent with Comprehensive Plan.** The proposed Special Use shall be in substantial conformance with the Eagle County Comprehensive Plan, Area Community Plans and any applicable ancillary County adopted documents pertaining to natural resource protection, affordable housing, or infrastructure management. (am 11/08/05) (am.05/08/12)
  - 2. Compatibility.** The Special Use is generally compatible with the existing and currently permissible future uses of adjacent land and other substantially impacted land, services, or infrastructure improvements. (am.05/08/12)
  - 3. Zone District Standards.** The proposed Special Use shall comply with the standards of the zone district in which it is located and any standards applicable to the particular use, as identified in Section 3-310, Review Standards Applicable to Particular Residential, Agricultural and Resource Uses and Section 3-330, Review Standards Applicable to Particular Commercial and Industrial Uses.
  - 4. Design Minimizes Adverse Impact.** The design of the proposed Special Use shall reasonably avoid adverse impacts, including visual impacts of the proposed use on adjacent lands including trash, traffic, service delivery, parking and loading, odors, noise, glare, and vibration, or otherwise create a nuisance. (am.05/08/12)
  - 5. Design Minimizes Environmental Impact.** The proposed Special Use shall minimize environmental impacts and shall not cause significant deterioration of water and air resources, wildlife habitat, scenic resources, and other natural resources.
  - 6. Impact on Public Facilities.** The proposed Special Use shall be adequately served by public facilities and services, including roads, pedestrian paths, potable water and wastewater facilities, parks, schools, police and fire protection, and emergency medical services.

7. **Site Development Standards.** The proposed Special Use shall comply with the appropriate standards in Article 4, Site Development Standards.
  8. **Other Provisions.** The proposed Special Use shall comply with all standards imposed on it by all other applicable provisions of these Land Use Regulations for use, layout, and general development characteristics.
- C. **Variations Authorized.** The Board of County Commissioners shall be authorized to grant variations to the following dimensional limitations and site development standards as part of its approval of the Final Special Use Permit or Consolidated Concept Evaluation and Final Special Use Permit. Each variation that is granted shall be itemized and shown in the Special Use Permit application and attendant site plans. *(am 05/08/12)*
1. Minimum lot area;
  2. Minimum lot area per use;
  3. Maximum lot coverage;
  4. Maximum floor area;
  5. Maximum structure size (FAR and/or Lot Coverage);
  6. Minimum yard setbacks;
  7. Stream setbacks;
  8. Maximum height;
  9. Parking standards;
  10. Landscape standards;
  11. Road, driveway and access standards.
- D. **Basis for Granting Variations.** These variations may be granted when the Board of County Commissioners finds, with recommendation from the Planning Commission, that the Final Special Use Permit or Consolidated Concept Evaluation and Final Special Use Permit achieves one (1) or more of the following purposes and that the granting of the variation is necessary for that purpose to be achieved. *(am 05/08/12)*
1. **Obtain Desired Design Qualities.** A variation may be allowed that permits the integration of mixed uses or allows for greater variety in the type, design and layout of buildings. Structures shall be designed to be compatible, in terms of height, mass, scale, orientation and configuration, with other structures in the Final Special Use Permit or Consolidated Concept Evaluation and Final Special Use Permit and the surrounding area, yet shall avoid uniformity of design. Residential and non-residential uses may be mixed together. Various types of residential uses may also be combined within the Final Special Use Permit or Consolidated Concept Evaluation and Final Special Use Permit, to promote more efficient land use patterns and increased open space. The Board of County Commissioners may require minimum yard setbacks, lot widths, and space between buildings of such dimensions as they are determined to be necessary to provide adequate access and fire protection; to ensure proper ventilation, light, air, and snowmelt between buildings; and to minimize the effects of transmission of noise between units and between buildings. As a general guide, twenty (20) feet between buildings shall be considered the minimum appropriate spacing.
  2. **Avoid Environmental Resources and Natural Hazards.** A variation may be allowed that

provides necessary site planning flexibility to enable the development to avoid valued environmental resource and natural hazard lands. This shall be accomplished in such a way as to maintain these lands as large, contiguous areas. Such lands shall not be fragmented into small, unconnected areas by development, unless the applicant demonstrates that this arrangement is necessary to maintain the underlying density on the property, and the lands providing environmental resource values have been protected and lands subject to natural hazards have been avoided. Where applicable, connections of such lands on the site to such lands on adjacent properties shall be accomplished.

3. **Water Augmentation.** A variation may be allowed that creates incentives for applicants to commit to a water augmentation plan for their development that brings "wet" water into the Upper Eagle River Basin.
  4. **Trails.** A variation may be allowed that provides incentives for applicants to make contributions to the County's multi-use trail system, in accordance with the recommendations of the latest version of the Eagle County Trails Plan or Mid Valley Trails Plan, or to provide appropriate forms of access (including summer and winter parking areas and trailheads) to public lands and to river and creek drainages in Eagle County. Proposed access shall be consistent with public land management objectives and resource protection needs for the areas to be accessed. Trails standards are identified in Section 4-630.A.
  5. **Affordable Housing.** A variation may be allowed that extends an incentive to applicants to assure that long term affordable housing is provided.
  6. **Public Facilities.** A variation may be allowed that provides incentives for applicants to develop public facilities or private commercial facilities which will provide a public benefit, including but not limited to public transportation facilities, public recreation facilities, commercial structures and similar facilities. The facilities shall be facilities that meet the demands of residents and visitors to Eagle County.
  7. **Land Preservation.** A variation may be allowed that extends an incentive to applicants to assure preservation in perpetuity of lands of high conservation value.
- E. Conditions and restrictions on a Special Use Permit.** The Planning Commission may recommend and the Board of County Commissioners may, in approving any Special Use Permit, impose such restrictions and conditions on such approval, the proposed use, and the premises to be developed or used pursuant to such approval, as it determines are required by the general purposes, goals, objectives, and policies of the Comprehensive Plan, the FLUM of the Comprehensive Plan, and these Land Use Regulations, to prevent or minimize adverse effects from the proposed development on surrounding land uses and on the general health, safety, and welfare of the County. The County shall be authorized to set limits on the length of any Final or Consolidated Special Use Permit that it issues and to obtain assurances that the ongoing operation of the use will comply with all of the applicant's representations and all conditions of approval, including, but not limited to, requiring an annual compliance review. All conditions imposed in any Special Use Permit, with the exception of conditions made applicable to such approval by the express terms of these Land Use Regulations, shall be expressly set forth in the Special Use Permit. (*am. 11/08/05*) (*am. 10/02/07*)

**F. Collateral.** As a condition for granting either a Final or Consolidated Special Use Permit, the applicant may be required to post a performance guarantee in an amount sufficient to insure completion of the development or required public improvements, including landscaping or any required off-site improvements. In such case, the applicant shall file with the Planning Director a surety or cash bond, letter of credit, or other collateral recommended by the County Engineer and approved by the County Attorney. The collateral shall be approved by the Board of County Commissioners to insure the actual construction of such development or required improvements within such period of time as may be determined by the Board of County Commissioners. Upon completion of the development or required improvements, the applicant shall obtain certification from a Colorado Registered Professional Engineer or Colorado Registered Professional Landscape Architect, whichever is appropriate, that the improvements have been constructed in accordance with the approved plan. Upon receipt of this certification, the County Engineer shall release the security within seven (7) calendar days. If the security provided by the applicant is not released, refusal to release and the reasons therefore shall be given to the applicant in writing by the County Engineer. *(am. 10/02/07) (am 05/08/12)*

**G. Effect of issuance of a Conceptual, Final or Consolidated Special Use Permit.**

- 1. Effect of Conceptual Special Use Permit Approval.** Approval of a Concept Evaluation Special Use Permit shall be deemed to authorize the applicant to submit to the County an application for a Final Special Use Permit. *(orig. 10/02/07) (am 05/08/12)*
- 2. Effect of a Final or Consolidated Special Use Permit Approval.** Approval of a Special Use Permit for a Final or Consolidated Special Use Permit shall be deemed to authorize only the particular use for which it is issued. *(am. 10/02/07) (am 05/08/12)*
- 3. Time limitations for a Concept Evaluation Special Use Permit, a Final or Consolidated Special Use Permit.** *(am 05/08/12)*
  - a. Duration and Compliance.** On a case-by-case the Board of County Commissioners shall permit such duration and require such continued compliance review process as it deems appropriate. *(am. 10/02/07) (am 05/08/12)*
    - (1)** A Concept Evaluation Special Use Permits shall expire three (3) years from the date of approval, without the ability for amendment, renewal or extension; vesting does not apply to this form of Special Use Permit as it is a conceptual form of approval only; *(orig. 10/02/07)*
    - (2)** A Final or Consolidated Special Use established and ongoing during this three year period is valid for the life of the Special Use or as limited by the Board of County Commissioners. *(am. 10/02/07) (am 05/08/12)*
    - (3)** If a Building Permit is issued during the three year period of time, the Final or Consolidated Special Use Permit shall be extended for the life of the Building Permit. *(am. 10/02/07)*

- (4) If the Final or Consolidated Special Use is established and ongoing at the conclusion of the Building Permit, then the Building Permit is valid for the life of the Final or Consolidated Special Use. *(am. 10/02/07) (am 05/08/12)*
- (5) Any Final or Consolidated Special Use Permit granted for a use that is temporary and has received conditional approval limiting the length of its approval shall only be valid for the time period specified in the Permit. Permitted time frames shall not change with successive owners. *(am. 10/02/07)*

**b. Extension of Special Use Permit Approval.** Approval of a Final or Consolidated Special Use Permit shall be voided and extinguished unless the applicant can demonstrate by competent substantial evidence that failure to proceed with the development of the application was:

- (1) Beyond the applicant's control;
- (2) The development complies with these Land Use Regulations and the Comprehensive Plan; and
- (3) There is a reasonable likelihood the next step in the development application will be submitted in the next two years.

No request for extension shall be considered unless a written application requesting the extension is submitted to the Planning Director no later than thirty (30) calendar days prior to the date the Final or Consolidated Special Use Permit is to expire. The permit shall be deemed extended until such time the Board of County Commissioners has acted upon the request for extension. *(am 11/08/05) (am. 10/02/07) (am 05/08/12)*

**c. Hearing on Permit Expiration.** If a Final or Consolidated Special Use Permit is not extended either by the issuance of a Building Permit or other development activity pursuant to Section 5-250.G., or by an extension pursuant to Section 5-250.G.3.b, Extension of Special Use Permit Approval, the Board of County Commissioners shall initiate a hearing pursuant Subsection 5-210 H., Extinguishment of Approvals, to determine whether to extinguish the Special Use Permit. *(am. 10/02/07)*

**H. Minor deviations.** Minor deviations from a Final or Consolidated Special Use Permit (Concept Evaluation Special Use Permits may not be modified from its original approval) be approved by the Planning Director. Authorized minor deviations are those that appear necessary in light of technical or engineering considerations first discovered during actual development and are not reasonably anticipated during the initial approval process, as long as they comply with the standards of these Land Use Regulations. Minor deviations shall include minor changes in the building footprint or relocation of infrastructure (roads and water or sewage lines) so long as the relocation complies with the conditions of the Special Use Permit and these Land Use Regulations. Minor deviations shall not include changes in the amount of open space, square footage, wildlife habitat protection, or buffering. All changes not qualifying as minor deviations shall be considered amendments and shall comply with Section 5-250.G., Amendment to Special Use Permit. *(am. 10/02/07)*

**I. Amendment to Special Use Permit.** A Final or Consolidated Special Use Permit may be amended, extended, varied or altered only pursuant to the standards and as set forth in this Section. *(am. 10/02/07)*

**SECTION 5-260. VARIANCES** (am 9/27/99)

This Section sets forth the procedures and conditions for a Variance Permit from certain standards of these Land Use Regulations. Variances are deviations from the terms of these Land Use Regulations that would not be contrary to the public interest when owing to special circumstances or conditions like exceptional topographic conditions, narrowness, shallowness, or the shape of a specific piece of property, the literal enforcement of the provisions of these Land Use Regulations would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owners of the property.

**A. Procedure.**

1. **Initiation.** Applications for a Variance Permit may be submitted at any time to the Planning Director by the owner, or any other person having a recognizable interest in the land for which the Variance is proposed, or their authorized agent. The application shall contain the materials specified in Section 5-210.D.2., Minimum Contents of Application, and shall also contain a drawing of the site, showing existing and proposed features and those limitations of the underlying zone district that are relevant to the review of the proposed variance.
2. **Review of Applications.** The submission of an application for a Variance Permit, determination of its sufficiency, staff review of, and scheduling of a public hearing for an application for a Variance Permit shall comply with the procedures established in Section 5-210.D, Common Procedure for Review of Applications.
3. **Decision of Zoning Board of Adjustment.** The Zoning Board of Adjustment shall conduct a public hearing on an application for a Variance Permit. At the public hearing, the Zoning Board of Adjustment shall consider the application, the relevant support materials, the Staff Report, and the public testimony given at the public hearing. After the public hearing, the Zoning Board of Adjustment shall render a decision either to approve, approve with conditions, or disapprove a Variance Permit based on the standards in Section 5-260.F.2, Standards.

**B. Conditions in Development Permit.** All conditions imposed upon any Variance Permit, with the exception of conditions made applicable to such approval by the express terms of these Land Use Regulations, shall be expressly set forth in the Variance Permit.

**C. Effect of Issuance of a Variance Permit.**

1. **General.** Issuance of a Variance Permit shall be deemed to authorize only the particular development for which it is issued. A Variance Permit shall run with the land.
2. **Time Limitations.** All Variance Permits shall expire three (3) years from the date of issuance if no Building Permit has been issued to establish the use authorized in the Variance Permit, or if the use does not require a Building Permit, the use is established, ongoing, and in operation. Permitted time frames do not change with successive owners. Upon written request, one (1) extension of time may be granted by the Zoning Board of Adjustment for a period not to exceed six (6) months for good cause shown. No request for an extension shall be considered unless a written application requesting the extension is submitted to the Planning Director no later than thirty (30) calendar days prior to the date the Variance Permit

is to expire. Failure to submit an application for an extension within the time limits established by this Section shall render the Variance Permit null and void.

- D. Subsequent Development Permits.** Development of the Variance shall not be carried out until the applicant has secured all other development permits required by these Land Use Regulations. A Variance Permit shall not ensure that the development approved as a Variance shall receive subsequent approval for other applications for development unless the relevant and applicable portions of these Regulations are met.
- E. Amendment to Variance Permit.** A Variance Permit may be amended, extended, varied or altered only pursuant to the standards and procedures for the original approval of a Variance Permit pursuant to this Section.
- F. Variance from provisions of Article 3 Zone Districts of these Land Use Regulations**
- 1. General.** The Zoning Board of Adjustment shall have the authority to approve, approve with conditions, or disapprove variances from the standards set forth in Article 3 Zone Districts of these Land Use Regulations. Any person seeking a variance from these standards shall file an application with the Planning Director. The application shall be determined sufficient, and a staff report prepared, pursuant to Section 5-120.D., Common Procedure for Review of Applications.
  - 2. Standards.** The Zoning Board of Adjustments must find that all of the following standards are met:
    - a. Special Circumstances Exist.** One of the following circumstances or conditions exists with respect to the specific piece of property:
      - (1) Exceptional narrowness, shallowness or shape, of the property at the time of the enactment of the regulation in question;
      - (2) Exceptional topographic conditions of the property;
      - (3) Other extraordinary and exceptional situation or condition of the property.
    - b. Not a Result of the Actions of Applicant.** The special circumstances and conditions found pursuant to Section 5-260.F.2.a. have not resulted from any act of the applicant.
    - c. Strict Application Consequences.** Because of the special circumstances and conditions found pursuant to Paragraph 5-260.F.2.a the strict application of the regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship on, the owner of the property.
    - d. Variance is Necessary for Relief.** The granting of the variance from the strict application of the provisions of the regulation is necessary to relieve the owner of the peculiar and exceptional practical difficulties or exceptional and undue hardship.

- e. **Not Detrimental to the Public Good.** Granting the variance will not cause substantial detriment to the public good.
  - f. **Variance Will Not Impair the Zoning Plan and Resolutions.** Granting the variance will not substantially impair the intent and purpose of the zone plan and the zoning resolutions.
3. **Solar Energy Devices Considered.** In determining whether difficulties to, or hardship upon, the owner of the subject property exist, the adequacy of access to sunlight for solar energy devices installed on or after January 1, 1980 may properly be considered.
  4. **Is Exempt From Prosecution.** No appeal to the Board of Adjustment shall be allowed for building use violations that may be prosecuted pursuant to Section 30-28-124(1)(b) of the Colorado Revised Statutes.
  5. **Conditions and Restrictions.** The Zoning Board of Adjustment may, in approving a Variance Permit, impose restrictions and conditions on the approval it determines are required by the general goals, objectives and policies of the Comprehensive Plan and these Land Use Regulations in order to prevent, or to minimize, adverse effects from the Variance Permit on other lands in the neighborhood or on the general health, safety, and welfare of the County.  
*(am 9/27/99) (am 11/08/05)*

#### G. Variance from Improvement Standards

1. **General.** The Board of County Commissioners shall have the authority to approve, approve with conditions, or disapprove variances from Article 4, Division 6, Improvement Standards. Any person seeking a variance from the improvement standards shall file an application with the Planning Director, or shall consolidate said application with any other application the applicant is submitting. The application shall be determined sufficient, and a staff report prepared pursuant to Section 5-210.D, Common Procedure for Review of Applications.
2. **Standards.** In determining whether to approve, approve with conditions, or disapprove the application for Variance to Improvement Standards, the Board of County Commissioners shall balance the hardships to the applicant of not granting the Variance against the adverse impact on the health, safety, and welfare of persons affected, and the adverse impact on the lands affected. In approving or approving with conditions said Variance, the Board of County Commissioners may impose such conditions that are necessary to ensure compliance with the terms of this Subsection, these Regulations, and the Comprehensive Plan. *(am 11/08/05)*

#### H. Floodplain Variance

1. **General.** See Section 3-350 K for floodplain variances. *(am 01/07/14)*

### SECTION 5-270. SUBDIVISION EXEMPTION



- A. Exemptions approved by the Board of County Commissioners.** The Board of County Commissioners may, pursuant to a Resolution duly adopted at a public meeting, exempt from the provisions of Section 5-280, Subdivision, any division of land, if it is determined that:
- 1. Not within purpose of Section.** Such division is not within the purposes of Section 5-280, Subdivision. Such divisions may include, but are not limited to, divisions that:
    - a. Condemnation.** Could be created pursuant to powers of condemnation;
    - b. Perpetual Open Space.** Would result in property division for the purpose of perpetual open space; or
    - c. Pre-Existing Lots.** Were created and established in the records of the Clerk and Recorder subsequent to May 5, 1972 notwithstanding compliance with Eagle County Land Use Regulations in existence at the time of the creation of the parcels. (*am 05/08/12*)
    - d. Lot Line Adjustments.** (*orig. 02/20/01*) Are for the purpose of making a lot line adjustment to correct boundary errors, align boundaries with topographic features, or straighten boundaries. This applies only to contiguous lots, neither of which lies within a subdivision approved pursuant to these Land Use Regulations, and which are not subject to merger with each other pursuant to Section 6-120.B., Contiguous Parcels Under Single Ownership. The Board may exempt a lot line adjustment if:
      - (1)** The total area of land subtracted from the one lot and added to the other, net of any addition to that lot as a result of the lot line adjustment, does not exceed 25% of the total area of the lot from which it is subtracted,
      - (2)** The resulting lots are in substantially the same configuration as the original lots before the adjustment, and
      - (3)** The lot line adjustment:
        - (a)** Does not create a nonconforming (in terms of applicable zoning) lot or increase the nonconformity of any lot, or
        - (b)** The Board determines that:
          - (i)** A site plan can be designed for the nonconforming lot(s) that is consistent with the use requirements of these Land Use Regulations, and minimizes to the greatest degree practicable any nonconformities, and,
          - (ii)** The nonconforming lot(s) can function adequately for its designated land use pursuant to a site plan(s) approved for the nonconforming lot(s) as a part of the exemption, and,
          - (iii)** Notwithstanding the nonconformity(ies) of the lot(s) which results from the adjustment, the site of the nonconforming lot(s), taken as a whole, provides a more useable lot, or one

more compatible with the neighborhood or with the public health and safety, than existed before the adjustment.

2. **Adequate access, adequate potable water, and adequate sewage treatment facilities are available.** Adequate access, adequate potable water, and adequate sewage treatment facilities are available. Pre-existing access shall be exempt from current driveway standards until the use of the access increases due to either a change, or intensity in use. *(am 9/27/99) (am 3/12/02)*

**B. Procedure.**

1. **Initiation.** An application for exemption from Subdivision may be submitted at any time to the Planning Director by the owner or any other person having a written recognizable interest in the land for which the exemption is requested. The application shall contain the materials specified in Section 5-210.D.2., Minimum Contents of Application, and the following additional materials:
  - a. **Survey.** A certified survey of the parcel, including legal description which meets the minimum requirements of a Land Survey Plat pursuant to 38-51-106 C.R.S. Additionally, all record and apparent rights-of-way and easements shall be indicated on the plat. Monumentation shall be shown pursuant to 38-51-108 C.R.S. Further, a computer printout, in text format, of Parcel Summaries shall be provided, including lot closure analyses, block closure analyses, and other appurtenant information. *(am 05/08/12)*
  - b. **Access.** Demonstration that the proposed exemption has legal and physical access to a public street or right-of-way by conventional vehicle.
  - c. **Water Supply.** Demonstration that the land proposed for exemption will be provided a legal, physical, adequate and dependable potable water supply.
  - d. **Wastewater Disposal.** Demonstration that the land proposed for exemption will be provided a wastewater disposal system, or other lawful means of disposing of human wastes that complies with all applicable public health laws.
  - e. **Hazards.** Satisfactory evidence demonstrating that the exemption will not create hazards and the lot will contain a safe, adequate building site.
2. **Review of application.** The submission of an application for, determination of its sufficiency, staff review of, and notice and scheduling of a public hearing for an application for an exemption from Subdivision shall comply with the procedures established in Section 5.210.D, Common Procedure for Review of Applications.

- C. Action by Board of County Commissioners.** The Board of County Commissioners shall conduct a public hearing on an application for Exemption to Subdivision. At the public hearing the Board of County Commissioners shall consider the application, the relevant support materials, the Staff Report, and the public testimony given at the public hearing. After the public hearing, the Board of County Commissioners shall approve or disapprove the Exemption for Subdivision based on whether: the division is within the purposes of Section 5-280, Subdivision; adequate access, potable water, and

sewage are available; and whether the exemption will not create hazards and the lot will contain a safe, adequate building site.

**SECTION 5-280. SUBDIVISION**

**A. Purpose and Intent.** The purpose of this Section is to establish the minimum standards for the division of land and improvement of that land in unincorporated Eagle County:

- 1. General.** Establish reasonable and equitable procedures and standards for the subdivision of land.
- 2. Safe and Convenient Traffic Circulation.** Require the provision of safe and convenient vehicular and pedestrian traffic circulation.
- 3. Adequacy of Public Facilities.** Ensure that public facilities are available to serve development.
- 4. Conserve and Manage Natural Resources.** Conserve and manage natural resources.
- 5. Minimize Air and Water Pollution.** Minimize the impacts of air and water pollution and the degradation of land.
- 6. Open Space.** Provide for open space and recreational land through efficient and appropriate subdivision design.
- 7. Conformance with Comprehensive Plan and Land Use Regulations.** Guide future growth and development in substantial conformance with the purposes, intents, goals and policies of the Eagle County Comprehensive Plan, Area Community Plans, and any applicable ancillary County adopted documents pertaining to natural resource protection, affordable housing, or infrastructure management, and other applicable provisions of these Land Use Regulations. *(am 11/08/05) (am 05/08/12)*
- 8. Safety From Fire, Flood, and Other Disasters.** Maintain or improve safety from fire, flood and other potential disasters, including all flooding requirements per section 3-350.L. *(am 01/07/14)*
- 9. Adequate Light, Air, and Privacy.** Provide adequate light, air, and privacy for land uses.
- 10. Recording.** Ensure that the subdivision of lands is recorded with proper legal descriptions and monuments. *(am 3/12/02)*

**B. Procedures.**

- 1. Overview of Procedures.** Unless exempted pursuant to Section 5-280.B.2, Exemptions, prior to the division or transfer of land within unincorporated Eagle County, an applicant shall obtain approval for a Sketch Plan, Preliminary Plan and Final Plat for Subdivision pursuant to the procedures and standards of this Section.
  - a. Sketch Plan.** The purpose of sketch plan review is for the applicant, the County and the public to evaluate and discuss the basic concepts for development of the proposed subdivision, and to consider whether there are any alternative concepts the applicant should explore. It is the time when determinations should be made as to whether the proposed subdivision substantially complies with these Land Use Regulations and is

in substantial conformance with the Eagle County Comprehensive Plan, Area Community Plans, and any applicable ancillary County adopted documents pertaining to natural resource protection, affordable housing, or infrastructure management, and is generally compatible with the existing and currently permissible future uses of adjacent land and other substantially impacted land, services, or infrastructure improvements. It is also the opportunity to reach general agreement on such issues as the appropriate range of units and commercial space for development; the general locations intended for development and the areas planned to remain undeveloped; the general alignments for access; and whether water supply and sewage disposal will be provided via on-site systems or through connection to public systems. The outcome of sketch plan review should be an identification of issues and concerns the applicant must address if the project is ultimately to receive final subdivision approval from the County. (am 11/08/05) (am 05/08/12)

- b. **Preliminary Plan.** The purpose of preliminary plan review is for the applicant to respond to the planning and development issues and concerns identified during sketch plan review and to formulate detailed, properly engineered solutions to those issues and concerns. The preliminary plan stage is when the applicant is to provide detailed information and mitigation proposals to be evaluated by the County.
  - c. **Final Plat.** The purpose of final plat review is for the applicant to submit a permanent, comprehensive and accurate public record of the subdivision, including the precise size, shape and location of lots, blocks, streets, easements, open spaces and other parcels of land within the development, together with all applicable covenants, conditions, use restrictions and design and development standards. The final plat shall conform in all respects to the preliminary plan approved by the County and shall incorporate all modifications and conditions imposed by the Board of County Commissioners.
2. **Exemptions.** Unless the method of disposition is adopted for the purpose of evading this Section and these Land Use Regulations, the following development is exempted from the procedures and standards of Section 5-280, Subdivision:
- a. **Division of Land into Parcels of 35 Acres or More.** The division of land in such a way that it results in parcels of thirty-five (35) acres or more, while allowed by Colorado State Statute, nonetheless requires compliance with County regulations regarding access, wildfire hazard mitigation, visual impact mitigation, building and fire code compliance and other off-site impact mitigation as determined necessary by the Board of County Commissioners for the protection of the environment and the health, safety and welfare of the residents and visitors of Eagle County. Compliance with 38-51-101et.seq. C.R.S. is required. (am 05/08/12)
  - b. **Rural Land Use Process.** Development undertaken in the Resource (R) zone district pursuant to Section 5-295 *Conservation Subdivision*, which establishes a rural land use process, as authorized by C.R.S. 30-28-101 (10)(c) (X). (am 11/07/07)
  - c. **Division of Lands by Courts.** The division of land created by any court in the State of Colorado pursuant to the law of eminent domain, or by operation of law, or by order of any court of the State of Colorado, if the Board is given timely notice of any

such pending action by the court and given opportunity to join as a party in interest in such proceeding for the purpose of raising the issue of evasion prior to the entry of the court order;

- d. Creation of Lien, Mortgage, Deed of Trust, or Other Security Instrument.** The division of land that creates an interest in land such as a lien, mortgage, deed of trust, or other security instrument;
- e. Creation of Security or Unit of Interest.** The division of land that creates a security or unit of interest in any investment trust regulated under the laws of this State or any other interest in an investment entity;
- f. Creation of Cemetery Lots.** The division of land that creates cemetery lots within a cemetery;
- g. Creation of Oil, Gas, Mineral or Water Interests.** The division of land that creates an interest or interests in oil, gas, minerals or water which are now or hereafter severed from the surface ownership of real property;
- h. Creation of Joint Tenancy or Tenancy in Common.** The division of land that creates by the acquisition of an interest in land in the name of a husband and wife or other persons in joint tenancy or as tenants in common and any such interest shall be deemed for purposes of these Land Use Regulations as only one interest;
- i. Consolidation.** The division of land that results in the consolidation of contiguous parcels of land into one larger parcel;
- j. Option to Purchase.** The division of land that creates by a contract concerning the sale of land that is contingent upon the purchaser's obtaining approval to subdivide the land that is to be acquired pursuant to the contract;
- k. Division of Land Prior to April 6, 1964.** The division of land that was created prior to April 6, 1964.

### **3. Sketch Plan for Subdivision.**

- a. Initiation.** Applications for a Sketch Plan for Subdivision may be submitted at any time to the Planning Director by the owner, or any other person having a recognizable interest in the land for which the Sketch Plan for Subdivision is proposed, or their authorized agent. Prior to submission of an application for a Sketch Plan for Subdivision, an applicant should hold a pre-application conference with the Planning Director pursuant to Section 5-210.C., Pre-application Conference. The application shall contain the materials specified in Section 5-210.D.2., Minimum Contents of Application, and the following information:
  - (1)** Tract boundary, block and lot pattern with the area and use of lots indicated by note.

- (2) Street and pedestrian circulation system with gradients and widths indicated by note; the relationship of proposed streets and paths to existing streets, and paths, both on and adjoining the Sketch Plan site, including proposed street access to a public highway, shall be shown.
- (3) Existing development on the subject and adjacent property shall be shown.
- (4) Soil types based upon the National Cooperative Soil Survey, U.S.D.A., Soil Conservation Service, as well as interpretations of soil types. Vegetation shall be described and tree masses, live and intermittent streams, floodplains, water bodies, dry washes, springs and wetlands shown.
- (5) A survey and report on the general geological, drainage, wildlife, wildfire, minerals, radiation and other conditions on the subject of adjacent property which could affect development on the subject property; the survey shall include information and recommendations of reports referred to in Article 4 of these Regulations and pertinent reports on file in the office of the Planning Department. Equal attention should focus on the potential effects of the proposed development upon the above conditions of contiguous and adjacent property.
- (6) Proposed method of water supply and sewage disposal. Including: Proposed water augmentation plan (if applicable); or an 'ability to serve' letter from applicable water and/or wastewater provider. Information regarding existing water rights including, but not limited to: Evidence of ownership or right of acquisition of or use of existing and proposed water rights; historical use and estimate yield of claimed water rights; and Amenability of existing rights to a change in use. If the water supply is proposed to be an existing well, a copy of a current valid well permit and location map identifying the location of the existing well must be provided. If individual wells are proposed, an alternatives assessment performed by a qualified Registered Professional Engineer must be submitted and include the following minimum information: Anticipated dependability of source; anticipated yield of source; anticipated depth to groundwater; anticipated water quality; estimated cost of individual well construction; and anticipated rate of water delivery. If sewage disposal is proposed to be via On-Site Wastewater Treatment System (OWTS), an alternatives assessment must be prepared by a qualified Professional Engineer evaluating the ability of the natural environment to support on-site systems with commensurate levels of sewage treatment, along with the physical ability of each property to support a site and an alternate site for wastewater disposal. The applicant must be prepared to estimate cost of installation and maintenance and state how the systems are proposed to be maintained (*am 03/28/06*) (*amd. 07/29/14*)
- (7) Other materials. Such other materials as the Planning Director deems necessary to fully evaluate the compliance of the proposed Sketch Plan

with these Land Use Regulations and as required pursuant to Article 4, Site Development Standards. (am 03/28/06) (am 05/08/12)

- (8) Proposed method of fire protection including details regarding an adequate legal water supply for fire fighting purposes; (am 03/28/06)
- b. **Review of Applications.** The submission of an application, determination of its sufficiency, staff review of, and notice and scheduling of a public hearing for an application for a Sketch Plan for Subdivision shall comply with the procedures established in Section 5-210.D, Common Procedure for Review of Applications. (am 05/08/12)
- c. **Review and Recommendation of Planning Commission.** The Planning Commission shall conduct a public hearing on an application for Sketch Plan. At the public hearing, the Planning Commission shall consider the application, the relevant support materials, the Staff Report, and the public testimony given at the public hearing. After the close of the public hearing, the Planning Commission shall recommend to the Board of County Commissioners either to approve, approve with conditions, or disapprove the application, considering whether conceptually it is consistent with the standards in Section 5-280.B.3.e., Standards.
- d. **Action by Board of County Commissioners.** After receipt of the recommendation from the Planning Commission, the Board of County Commissioners shall conduct a public hearing on an application for Sketch Plan. At the public hearing, the Board of County Commissioners shall consider the application, the relevant support materials, the Staff Report, the Planning Commission recommendation, and the public testimony given at the public hearing. After the close of the public hearing, the Board of County Commissioners, by a majority vote, shall either approve, approve with conditions, or disapprove the application, considering whether conceptually it is consistent with the standards in Section 5-280.B.3.e., Standards. A Resolution of the Board of County Commissioners approving such action shall constitute final action by the County on the application. Finalization of the Resolution must occur within 90 days of the Board of County Commissioner's vote to approve, approve with conditions or disapprove the Sketch Plan for Subdivision application. (am 05/08/12)
- e. **Standards.** The Subdivision shall comply with the following standards:
- (1) **Conformance with Comprehensive Plan.** The proposed subdivision shall be in substantial conformance with the purposes, intents, goals, and policies of the Eagle County Comprehensive Plan, Area Community Plans, and any applicable ancillary County adopted documents pertaining to natural resource protection, affordable housing, or infrastructure management. (am 11/08/05) (am 05/08/12)
- (2) **Consistent with Land Use Regulations.** The proposed subdivision shall comply with all of the standards of this Section and all other provisions of these Land Use Regulations, including, but not limited to, the applicable standards of Article 3, Zone Districts, and Article 4, Site Development Standards.



- (3) **Spatial Pattern Shall Be Efficient.** The proposed subdivision shall be located and designed to avoid creating spatial patterns that cause inefficiencies in the delivery of public services, or require duplication or premature extension of public facilities, or result in a "leapfrog" pattern of development.
- (a) **Utility and Road Extensions.** Proposed utility extensions shall be consistent with the utility's service plan or shall require prior County approval of an amendment to the service plan. Proposed road extensions shall be consistent with the Eagle County Road Capital Improvements Plan.
- (b) **Serve Ultimate Population.** Utility lines shall be sized to serve the planned ultimate population of the service area to avoid future land disruption to upgrade under-sized lines.
- (c) **Coordinate Utility Extensions.** Generally, utility extensions shall only be allowed when the entire range of necessary facilities can be provided, rather than incrementally extending a single service into an otherwise un-served area.
- (4) **Suitability for Development.** The property proposed to be subdivided shall be suitable for development, considering its topography, environmental resources and natural or man-made hazards that may affect the potential development of the property, and existing and probable future public improvements to the area.
- (5) **Compatible with Surrounding Uses.** The proposed subdivision shall be generally compatible with the existing and currently permissible future uses of adjacent land, and other substantially impacted land, services, or infrastructure improvements. (*am 05/08/12*)
- (6) **Adequate Facilities.** The applicant shall demonstrate that the development proposed in the Sketch or Preliminary Plan will be provided adequate facilities for potable water supply, sewage disposal, solid waste disposal, electrical supply, fire protection and roads and will be conveniently located in relation to schools, police and fire protection, and emergency medical services (*orig. 03/28/06*)
- f. **Effect of Approval of Sketch Plan for Subdivision.**
- (1) **Limitation of Approval.** Resolution of approval by the Board of County Commissioners of a Sketch Plan for Subdivision shall be deemed to authorize the applicant to submit to the County an application for a Preliminary Plan for Subdivision. It shall not constitute final approval for the Subdivision, or create any vested rights to develop the property in accordance with the Sketch Plan. (*am 05/08/12*)
- (2) **Preliminary Plan Conformance with Sketch Plan.** Where such Preliminary Plan departs from a condition of the Sketch Plan approval, the

Applicant shall identify any and all such inconsistencies and shall set forth its justification for them. *(orig. 05/08/12)*

- (3) **Length of Approval.** Sketch Plan for Subdivision is valid for two (2) years from the date of its issuance. The Board of County Commissioners may extend these time periods. Permitted time frames shall not change with successive owners. *(am 05/08/12)*
- (4) **Expiration of Approval.** The Resolution for approval of a Sketch Plan for Subdivision by the Board of County Commissioners shall be null and void unless an application for approval of a Preliminary Plan for Subdivision is submitted and deemed sufficient by the Planning Director within two (2) years after the date of approval of the Sketch Plan. *(am 05/08/12)*
- (5) **Extension of Sketch Plan Approval.** Approval of a Sketch Plan for Subdivision shall be voided and extinguished unless the applicant can demonstrate by competent substantial evidence that failure to proceed with the development of the application was:
  - (a) Beyond the applicant's control;
  - (b) The development complies with these Land Use Regulations and the Comprehensive Plan; and
  - (c) There is reasonable likelihood the next step in the development application will be submitted in the next two (2) years.

No request for extension shall be considered unless a written application requesting the extension is submitted to the Planning Director no later than thirty (30) calendar days prior to the date the Sketch Plan for Subdivision is to expire. The permit shall be deemed extended until the Board of County Commissioners has acted upon the request for extension. *(am 11/08/05) (am 05/08/12)*

#### 4. Preliminary Plan for Subdivision.

- a. **Application Contents.** An application for a Preliminary Plan for Subdivision shall contain the materials specified in Section 5-210.D.2., Minimum Contents of Application, and the following information:
  - (1) Preliminary Plan maps shall be drafted in a preliminary fashion scaled and dimensioned to the nearest foot; construction details requested for street, utility, erosion control facilities or other public improvements should be drawn in sufficient detail to fully represent the intentions of the subdivider with regards to the type, materials and location of the proposed improvements.

Maps and plans submitted shall be to the scale, as follows:

<u>Subdivision Lot Area</u>	<u>Scale</u>
Less than 10,000 sq.ft.	1" = 50 or less feet

10,001 sq.ft. - 2 acres	1" = 100 or less feet
2.01 acres - 5 acres	1" = 200 or less feet
More than 5 acres	Scale shall be consistent with clarity of depicted information and Final Plat Sheet size (24' x 36")

- (2) The following maps and information shall be required and shall conform to the format and inclusions which follow:
- (a) Preliminary information sufficient to indicate that the Final Plat will meet requirements established under Section 38-51-101, et seq., and 38-51-106, C.R.S. 1973, as amended, Land Survey Plat, as amended;
  - (b) North arrow, graphic scale, date of plat preparation (and of revisions thereto) and contour interval;
  - (c) Boundary lines with bearings and distances, plus a property description of the tract proposed for subdivision; said property description shall be a metes and bounds description unless an acceptable parcel description identifies the property as the subject of a previously recorded survey and shall be certified by a Registered Land Surveyor;
  - (d) Departing property lines and owners of record of all parcels adjoining the proposed subdivision, including parcels separated there from only by a public right-of-way;
  - (e) Existing contours at 5 foot intervals (within 2.5 ft accuracy) on all portions of the land proposed for development to either public or private use, to 10 foot intervals (within 5 ft. accuracy) for all areas to remain in their natural state. All contour lines shall be accurate to within 50 percent of the interval. Areas sloping less than 2 percent shall have 2-foot contour intervals (with 1 ft. accuracy);
  - (f) Street names and a block and lot numbering system shall be shown;
  - (g) Approximate area and use of each lot;
  - (h) Sites or facilities to be reserved or dedicated for public parks, open space, schools or other public uses and the proposed terms and managing agencies for such reservations and dedications;
  - (i) Open space and maintenance plan; (*am 05/08/12*)
  - (j) A vicinity sketch plan normally drawn at a scale of 1 inch = 1,000 feet, although if such maps are not available, a U.S.G.S. map, 1:24,000 scale may be accepted. The vicinity sketch shall depict tract lines and names of all abutting subdivisions, the location of streets, highways, natural streams and wetlands within an area of

approximately one-half mile of the proposed subdivision tract; the location of all adjacent utility systems within an approximate half-mile area minimum, the natural drainage courses for streams flowing through the proposed subdivision with the limits of tributary areas shown where this is reasonable. All maps submitted in accordance with this sub-section shall include clear indications of the section, township and range containing the lands which are the subject of the maps;

- (k) Wildlife Analysis pursuant to Section 4-410;
- (l) Geologic Hazards Analysis pursuant to Section 4-420;
- (m) Ridgeline Visual Analysis pursuant to Section 4-450;
- (n) Conceptual Landscape Plan pursuant to Section 4-220;
- (o) Environmental Impact Report pursuant to Section 4-460;
- (p) Erosion Control Standards pursuant to Section 4-665; (*am 3/12/02*)
- (q) Soils and Vegetation report depicting soil and vegetation types and boundaries;
- (r) Drainage Standards pursuant to Section 4-650;
- (s) Street Plan and Profiles - Roads shall be designed in accordance with Section 4-620 of these Regulations. Plan views and centerline profile shall be plotted at a horizontal scale of 1 inch to 5 feet on sheets supplemental to the drainage plan. These plans and profiles shall show all intersections with existing streets and all existing and proposed drainage areas and easements crossing, or parallel to, the roads. Also shown will be any known areas of high water table, unsuitable soils and other geological hazards. These plans shall include a typical cross-section showing road widths, including driving surface, shoulders, curbs and gutters, barrow ditches, cut and fill slopes to the point of intersection with natural ground and the pavement structure details proposed. The plan shall include the extremities of all cut and fill areas. A supplemental sheet shall be included to detail all drainage, retaining and bridge structures to be constructed as part of the roadway; (*am 3/12/02*)
- (t) Pedestrian circulation plan for trails within the subdivision and for connection to adjacent systems. Trail standards are identified in Section 4-630.A.;
- (u) Drainage Study - A drainage study shall be prepared in accordance with Section 4-650 of these Regulations. This study shall include a contour map showing all existing and proposed water courses,

including the seasonal course-limits of tributaries, indicating the surface conditions and locations of points of departure from the development. This study shall include computations of 10-year flows and 100-year floodplain plotted on the contour maps. The drainage study shall also include computations of the increase or decrease in flows anticipated as a result of the development, the capacity and velocity through all drainage structures, including open channels and the revised floodplains shall be plotted on a contour map. In no case shall the area within the 100-year floodplain be used for structural development without specific approval of the Board. In no case will a development be allowed to affect either the location of discharge, magnitude, depth, slope of stream bed, or velocity of drainage flows upstream or downstream from the development or the stream channel slope within the development unless part of an approved floodplain protection plan;

- (v) Preliminary Utility Plan, pursuant to Section 4-430, 4-670, 4-680 and 4-690, on a plan supplemental to and at the same scale as the Preliminary Plan, including: *(am 03/28/06)*
  - (i) Water Supply - If a central water supply and distribution system is to be provided, the details of the system shall be provided demonstrating that: *(am 03/28/06)*
    - aa. Source - Adequate evidence prepared by a Registered Professional Engineer verifying that a the quality and quantity of the water supply is to supply the subdivision proposed. Physical evidence may be required including but not limited to: aquifer pump testing in addition to appropriate geotechnical studies or investigations *(am 03/28/06)*
      - i. Evidence of ownership, right of acquisition or use of existing and proposed water rights. *(am 03/28/06)*
      - ii. Final, water-court approved augmentation plan *(am 03/28/06)*
      - iii. Evidence confirming the potability of the proposed water supply for the subdivision. *(am 03/28/06)*
      - iv. Evidence from the local fire jurisdiction confirming that the proposed water supply for fire fighting purposes is sufficient. *(orig. 03/28/06)*

- bb.** The nature of the legal entity which will own and operate the water system shall be described as well as the proposed method of financing. *(am 03/28/06)*
- cc.** If connecting to an existing system is proposed the following information shall be provided: *(am 03/28/06)*
  - i.** The nature of the public or private legal entity which will supply water to the proposed subdivision; *(am 03/28/06)*
  - ii.** Agreement with the above entity to service the proposed subdivision; *(am 03/28/06)*
  - iii.** Information on the water supplier's present service requirements, future commitments and present water supply capabilities, including but not limited to: *(am 03/28/06)*
    - (aa)** A summary of water rights owned and controlled by the entity *(orig. 03/28/06)*
    - (bb)** The anticipated yield of the rights in an average and a dry year *(orig. 03/28/06)*
    - (cc)** The present demand and anticipated demand for current commitments not yet being supplied *(orig. 03/28/06)*
    - (dd)** The uncommitted firm supply *(orig. 03/28/06)*
    - (ee)** A map of the entity's service area *(orig. 03/28/06)*
- dd.** If individual well water systems are proposed, a report must be prepared by a Professional Engineer or Geologist indicating the availability of groundwater which includes the depth to the groundwater supply throughout the proposed subdivision. The report must address the water quality, rates of delivery and long-term yield of such wells. The cumulative effect upon existing water rights due to the use of individual domestic wells shall be considered in the report *(am 03/28/06)*

- (ii)** Sanitary Sewage Disposal - public collection and treatment systems or the use of On-Site Wastewater Treatment Systems (OWTS) are to be provided, the details of the collections system and treatment facilities and individual components shall be provided including: *(am 03/28/06) (amd. 07/29/14)*

  - aa.** Public Treatment - Agreement to serve from a public sewage treatment provider and evidence to support that the provider possesses adequate sewage treatment capability and capacity to serve the proposed *(am 03/28/06)*
  - bb.** The nature of the legal entity which will own and operate the sewer system shall be described, as well as the proposed method of financing; *(am 03/28/06)*
  - cc.** If sanitary sewage disposal will be accomplished by On-Site Wastewater Treatment Systems (OWTS), a suitability analysis as determined by the Environmental Health Department must be performed. Such analyses may include but is not limited to, soil profile observations to identify soil classifications and horizons; adequate separation to bedrock or ground water; soil percolation tests, etc. Location(s) of soil analyses shall be indicated on the plan and must be performed by a Professional Engineer, Geologist or person qualified to do this work. *(am 03/28/06) (amd. 07/29/14)*
  
- (w)** Public Water and/or Wastewater System. *(orig. 03/28/06)*

  - (i)** If it has been determined that the proposed water and/or wastewater system is a public system, the required application for a 1041 permit (pursuant to Chapter 6: Matters of State Interest), and evidence that the associated application(s) administered by the Colorado Department of Public Health and Environment have been made, shall be submitted concurrently with the Preliminary Plan application. *(orig. 03/28/06)*
  
- (x)** The following additional information will be required when applicable:

  - (i)** A completed U. S. Army Corps of Engineer's Dredge and Fill Section 404 Permit application for subdivisions which

propose to modify the existing channel of navigable streams. (*am. 03/28/06*)

(ii) An application for an Area or Activity of State Interest when required (see Section 2 Definitions). (*am. 03/28/06*)

(y) Vegetation Management Plan pursuant to Section 4-430. (*orig. 12/17/02*) (*am. 03/28/06*)

- b. Review of applications.** The submission of an application for Preliminary Plan for Subdivision, determination of its sufficiency, staff review of, and notice and scheduling of a public hearing for the application shall comply with the procedures established in Section 5-210.D, Common Procedure for Review of Applications.
- c. Recommendation by Planning Commission.** The Planning Commission shall conduct a public hearing on an application for a Preliminary Plan for Subdivision. At the public hearing, the Planning Commission shall consider the application, the relevant support materials, the Staff Report, and the public information given at the public hearing. The Planning Commission may confer with the applicant on changes deemed advisable and the kind and extent of such changes, and request Planning Department input. After the close of the public hearing, the Planning Commission shall recommend approval, approval with conditions, or disapproval of the Preliminary Plan for Subdivision based upon whether it conforms to the approval given to the Sketch Plan and whether it complies with the standards in Section 5-280.B.3.e., Standards, and recommend the application to the Board of County Commissioners. (*am 9/27/99*)
- d. Action by Board of County Commissioners.** After receipt of the recommendation from the Planning Commission, the Board of County Commissioners shall conduct a public hearing on an application for a Preliminary Plan for Subdivision. At the public hearing, the Board of County Commissioners shall consider the application, the relevant support materials, the Staff Report, the Planning Commission recommendation, and the public information given at the public hearing. The Board of County Commissioners may confer with the applicant on changes deemed advisable and the kind and extent of such changes, and request Planning Department input. After the close of the public hearing, the Board of County Commissioners by a majority vote of the quorum present, shall either approve, approve with conditions or disapprove the application for Preliminary Plan for Subdivision based upon whether it conforms to the approval given to the Sketch Plan for Subdivision and whether it complies with the standards in Section 5-280.B.3.e., Standards. Action approving a Preliminary Plan for Subdivision shall require adoption by Resolution, which Resolution shall constitute final action on the application by the Board of County Commissioners. Finalization of the Resolution must occur within 90 days of the Board of County Commissioner's vote to approve, approve with conditions or disapprove the Preliminary Plan for Subdivision application. (*am 05/08/12*)
- e. Effect of approval of a Preliminary Plan for Subdivision.**
- (1) **Limitation of Approval.** Issuance of a Preliminary Plan for Subdivision shall be deemed to authorize the applicant to submit to the County an



application for a Final Plan for Subdivision. It shall not constitute final approval for Subdivision. *(am 05/08/12)*

- (2) **Length of Approval.** All Preliminary Plans for Subdivision are valid for three (3) years from the date of their issuance. The Board of County Commissioners may extend these time periods. Permitted time frames do not change with successive owners. *(am 05/08/12)*
- (3) **Expiration.** The Resolution for approval of a Preliminary Plan for Subdivision by the Board of County Commissioners shall be null and void unless an application for approval of a Preliminary Plan for Subdivision is submitted and deemed sufficient by the Planning Director within three (3) years after the date of approval of the Preliminary Plan for Subdivision. *(am 05/08/12)*
- (4) **Extension of Preliminary Plan Approval.** Approval of a Preliminary Plan for Subdivision shall be voided and extinguished unless the applicant can demonstrate by competent substantial evidence that failure to proceed with the development of the application was:
- (a) Beyond the applicant's control;
  - (b) The development complies with these Land Use Regulations and the Comprehensive Plan; and
  - (c) There is reasonable likelihood the next step in the development application will be submitted in the next two (2) years.

No request for extension shall be considered unless a written application requesting the extension is submitted to the Planning Director no later than thirty (30) calendar days prior to the date of the Preliminary Plan for Subdivision is to expire. The permit shall be deemed extended until the Board of County Commissioners has acted upon the request for extension. *(am 11/08/05) (am 05/08/12)*

- (5) **Extinguishment Hearing.** If a Preliminary Plan for Subdivision is not extended pursuant to Section 5-280.B.4.e.(4), Extension, the Board of County Commissioners shall initiate a hearing pursuant to the procedures and standards of Subsection 5-210 H., Extinguishment of Approvals, to determine whether to extinguish the Preliminary Plan for Subdivision. *(am 05/08/12)*

## 5. Final Plat for Subdivision or Final Plat for PUD.

- a. **General.** The Final Plat for Subdivision shall contain the materials specified in Section 5-210.D.2., Minimum Contents of Application, shall conform to the Preliminary Plan for Subdivision and shall include all changes and conditions specified thereon, and shall include the following information. A Final Plat for Subdivision may be submitted in sections covering representative and reasonable portions of the subdivision tract. In such cases, submission shall include a key map indicating the sections designated for the entire tract with each sheet numbered accordingly, including title, legend, match lines, and other appropriate information.

(1) The Final Plat shall be drafted in a legible form with black waterproof ink on a permanent reproducible material such as mylar, on a sheet or sheets measuring 24 by 36 inches with clear margins measuring 2 inches on the left hand side and one-half inch on the remaining sides. The Plat shall show the name of the subdivision, date, and date of survey, north arrow, and graphic scale and a vicinity map to appropriate scale. Where multiple sheets are necessary to depict the total filing, the vicinity map, legal description of the tract boundary, a key map to sheet location and all certifications and dedications need to appear on the title or cover sheet. The Final Plat shall adhere to the format and include information as follows:

(a) Tract boundary lines and right-of-way lines or street lines in solid black lines; easements or other right-of-way lines in dashed lines; and lot boundaries in solid lines shall be shown with accurate dimensions to the nearest 0.01 foot.

Bearings, deflection angles, arc lengths, chord bearings, chord lengths, tangent distances, and central angles of all curve shall be shown. Curve tables shall be provided on the plat.

Widths and dimensions of all easements, rights-of-way, and streets shall be indicated. In addition to requirements described herein, the Final Plat shall meet all requirements established under Section 38-51-101, et seq., 38-51-105 and 38-51-106, C.R.S. 1973, as amended.

(b) Names of all streets or roads, block letters and lot numbers shall be indicated for easy plat identification. A street address Table shall list the street address of each lot on the plat. The address number shall be placed within an oval on each lot. (See Dept. of Community Development on Street Address Numbering System).

(c) The location of all major drainage channels or areas showing the boundaries of lands subject to inundation.

(d) A legal description of the property with reference to the record information of the existing parcel.

(e) Name of subdivision, basis of bearings, north arrow, graphic scale, and date.

(f) Vicinity map at an appropriate scale, including section lines and township and range lines, where practical.

(g) Certificates and information as follows:

(i) Name and address of owners of record.

- (ii) Total acreage of subdivision, total number of lots, and acreage within the subdivision devoted to each use such as single family residential, commercial, street, or open space.
  - (iii) A reference to any protective covenants, declarations or other restrictions which shall be filed with the plat and an indication of the purpose for which sites other than residential lots are dedicated or reserved.
  - (iv) A Certificate of Dedication and Ownership executed by the record owner(s) and all other persons having an interest in the property affected by the subdivision, including any security interest. (See Appendix A).
  - (v) A Title Company or Attorney's Certificate showing marketable title in the owners, subject only to the liens or encumbrances of persons executing the Certificate of Dedication and Ownership. (See Appendix A).
  - (vi) Surveyor's Certificate (See Appendix A). The certificate shall be signed by a land surveyor licensed in the State of Colorado responsible for the survey and Final Subdivision Plat.
  - (vii) An approval block for the Board (See Appendix A).
  - (viii) The Recorder's Certificate (See Appendix A). This certificate need not be completed until after final approval.
  - (ix) Treasurer's Certificate of Taxes Paid (See Appendix A).
  - (h) A computer printout, in text format, of Parcel Summaries shall be provided, including lot closure analyses, block closure analyses, and other appurtenant information. *(am 05/08/12)*
- (2) Supplemental Requirements to be filed with Final Plat shall be as follows:
- (a) Two (2) copies of all the protective covenants, declarations, party wall agreements, or other restrictions placed on the subdivision;
  - (b) Complete engineering plans and specifications, time schedules and cost estimated for all public improvements, including erosion control and revegetation measures, "no discharge" measures to eliminate stormwater discharges, streets, access roads, drainage facilities, utility systems, bridges, landscaping and other improvements proposed or required to be installed by the developer, and a statement of proof that the subdivider has the ability to pay for such improvements;

The above referenced drawings shall be labeled as Final Public Improvements drawings and shall have a signature block for the Board of County Commissioners.

- (c) An executed improvements agreement, off-site road improvements agreement or other agreement required by the Board of County Commissioners as a condition of Final Plat approval.
  - (d) Adequate evidence of water in sufficient quantity for both domestic and irrigation use which shall be transferred to a legal entity which shall be established to operate such system;
  - (e) Show compliance with Section 4-700 regarding School Land Dedication or cash in lieu thereof.
  - (f) Evidence that the developer has obtained a Section 404 - U.S. Army Corps of Engineers Dredge and Fill Permit, if required;
  - (g) An approved permit for An Area or Activity of State Interest, if required.
- b. Procedures.** After approval of the Preliminary Plat for Subdivision (unless an extension has been approved pursuant to Section 5-280.B.4.e.(4), Extension, or the Preliminary Plan specifies otherwise), the applicant shall submit to the Planning Director an application for Final Plat for Subdivision. (am 9/27/99)
- (1) **Review of Applications.** The submission of an application for, determination of its sufficiency, and staff review of a hearing for a Final Plat for Subdivision shall comply with the procedures established in Section 5-210.D, Common Procedures for Review of Applications.
  - (2) **Revised Subdivision Mylar.** Prior to scheduling the application for hearing before the Board of County Commissioners, the applicant shall submit to the Planning Director all Improvement Agreements for Board signature, and a properly signed and notarized Mylar of the Subdivision showing all necessary revisions as required by the Planning Director, together with two (2) paper copies of it. Upon review and approval by the Eagle County Attorney, the plat shall be scheduled for the next available hearing date of the Board of County Commissioners. (am 9/27/99)
  - (3) **Action by Board of County Commissioners.** At the meeting on the Final Plat for Subdivision, the Board of County Commissioners shall review the Final Plat, the submittal materials, provide both County staff and the applicant an opportunity to comment, and approve or disapprove the Final Plat for Subdivision based on whether it conforms to the approval given to the Preliminary Plan for Subdivision and the standards in Section 5-280.B.3.e., Standards., considering specifically the adequacy of required improvements and the acceptance of areas dedicated for public use and easements.

- c. **Recording.** After the Final Plat for Subdivision is approved by the Board and all required conditions related to the Final Plat are satisfactorily addressed, the original Mylar drawing shall be recorded. Failure of the applicant to record the Final Plat and Subdivision Agreement within one hundred and eighty (180) days of its approval shall render the Final Plat for Subdivision and Subdivision Agreement invalid. (*am 3/12/02*)
- d. **Effect of approval of a Final Plat for Subdivision or Final Plat for PUD.**
- (1) **Length of Approval.** All Final Plats for Subdivision are valid for five (5) years from the date of their issuance. The Board of County Commissioners has the option to extend these time periods. Permitted time frames do not change with successive owners.
  - (2) **Infrastructure Installed.** If the infrastructure required to develop at least fifty (50) percent of the lots in a single phase subdivision or the infrastructure required to develop the first phase of a multi-phase subdivision is installed, the Final Plat for Subdivision shall remain valid without any further time limitation.
  - (3) **Extension of Final Plat Approval.** Approval of a Final Plat for Subdivision shall be voided and extinguished unless the applicant can demonstrate by competent substantial evidence that failure to proceed with the development of the application was:
    - (a) Beyond the applicant's control;
    - (b) The development complies with these Land Use Regulations and the Comprehensive Plan; and
    - (c) There is reasonable likelihood the next step in the development application will be submitted in the next two (2) years.

No request for extension shall be considered unless a written application requesting the extension is submitted to the Planning Director no later than thirty (30) calendar days prior to the date the Final Plat for Subdivision is to expire. The permit shall be deemed extended until the Board of County Commissioners has acted upon the request for extension. (*am 11/08/05*) (*am 05/08/12*)

- (4) **Hearing on Permit Expiration.** If the developer has not installed infrastructure required for the subdivision, pursuant to Section 5-280 B.5.d.(2), Infrastructure Installed, or if the Final Plat for Subdivision or Final Plat for PUD is not extended, pursuant to Section 5-280.B.5.d.(3), Extension, then the Board of County Commissioners shall initiate a hearing pursuant to Subsection 5-210.H., Extinguishment of Approvals, to determine whether to extinguish the Final Plat for Subdivision.

e. **Subdivision Agreement.**

- (1) **General.** Concurrent with the approval of Final Plat for Subdivision or Final Plat for PUD, the applicant and the Board of County Commissioners shall enter into a Subdivision Agreement binding the Subdivision to any conditions placed in the Resolution. This SIA Agreement shall be signed by the Board of County Commissioners in conjunction with signature of the Final Plat. *(am 3/12/02) (am 05/08/12)*
- (2) **Common Park and Recreation Areas.** The Subdivision Agreement shall include a Common Open Space, Park, and Recreation Area Plan. It shall outline the area of common open space, parks, trails and recreation lands, and specify any agreement on the part of the developer to preserve the open space, parks, trails and recreation lands and how this will be implemented by deeding the land to the appropriate entity. It shall also identify any deed or other restrictions against future residential, commercial, or industrial development and shall include the terms by which any common areas will be maintained.
- (3) **Landscape Guarantee.** The Subdivision Agreement shall set down how the landscaping proposed for the subdivision will comply with Section 4-240, Installation and Maintenance Requirements. Landscaping for a phased subdivision may be designed by phase, with installation occurring concurrent with development of each phase. The Subdivision Agreement shall include the landscaping for the entire subdivision and for each phase of the subdivision.
  - (a) **Form of Guarantee.** The County may require the developer to provide a guarantee for no less than one hundred and twenty-five (125) percent of the current estimated cost of the landscaping improvements, and the landscape plan as estimated by the Planning Director, to ensure the installation of all landscaping shown and to ensure the continued maintenance and replacement of that landscaping for a period of two (2) years after installation. The guarantee shall be in a form acceptable to the County Attorney. At the developer's option, the guarantee may be provided for the entire subdivision or for each phase. The guarantee shall be provided prior to initiation of any land clearing or infrastructure development for the phase or the subdivision, whichever is applicable.
  - (b) **Release.** As portions of the landscape improvements are completed, the Planning Director shall inspect them, and upon approval and acceptance, shall authorize the release of the agreed estimated cost for that portion of the improvements, except that ten (10) percent shall be withheld until all proposed improvements are completed and approved, and an additional twenty-five (25) percent shall be retained until the improvements have been maintained in a satisfactory condition for two (2) years.

- (4) **Public Improvement Guarantee.** In order to ensure installation of necessary public improvements planned to accommodate the development, the Subdivision Agreement shall provide a guarantee for no less than one hundred (100) percent of the current estimated cost of such public facility improvements, as estimated by the County Engineer. The guarantee shall be in a form approved by the County Attorney. As portions of the public facilities improvements are completed, the County Engineer shall inspect them, and upon approval and acceptance, shall authorize the release of the agreed costs for that portion of the improvements except that ten (10) percent shall be withheld until all proposed improvements are completed and approved by the County Engineer.

## SECTION 5-290. MINOR SUBDIVISION

- A. Purpose.** A Minor Subdivision shall be reviewed in accordance with the provisions of this Section for Type A and Type B Subdivisions, and Amended Final Plats.
- B. Definitions.**
1. **Type A Subdivision.** A Type A Subdivision is a subdivision creating not more than three (3) lots within property that has not previously been platted, or a conservation subdivision creating any number of lots within property that has not previously been platted, which shall be administered in accordance with Section 5-295., Conservation Subdivision. (am 11/07/07)
  2. **Type B Subdivision.** A Type B Subdivision is a subdivision creating new lots within a legally approved subdivision. The Minor Type B Subdivision process is intended to serve three separate functions: (am 11/08/05)
    - a. If the subject property is unimproved and vacant then, no more than three new lots may be created via this Minor Type B Subdivision process, unless the subdivision is pursuant to or a conservation subdivision creating any number of lots within a legally approved subdivision, which shall be administered in accordance with Section 5-295., Conservation Subdivision. (orig 11/08/05) (am 11/07/07)
    - b. This Minor Type B Subdivision process is the mechanism by which duplex, townhome and condominium units may be subdivided for individual sale. Subdivision of a townhome structure may also include the land upon which each unit is situated. The balance of the land area included within the Minor Type B Subdivision may be defined as a general or limited common element. Any number of duplex, townhome or condominium units may be subdivided utilizing this Minor Type B Subdivision process. (orig 11/08/05)
    - c. This Minor Type B Subdivision process is the mechanism by which one or more patio home structures may be subdivided for individual sale. Subdivision of patio homes may define a separate lot for each unit, as well as, general or limited common elements. (orig 11/08/05)

3. **Amended Final Plat.** An Amended Final Plat may be used only in the following instances:
  - a. The proposed Amended Final Plat is part of a previously approved Final Plat.
  - b. The proposed amendment to the Final Plat is not inconsistent with the intent of the Final Plat.
  - c. The proposed amendment to the Final Plat does not adversely affect adjacent property owners.
  - d. The proposed amendment to the Final Plat does not create a new lot or lots.

C. **Procedure.**

1. **Initiation.** An application for either a Type A or Type B Subdivision or an Amended Final Plat shall only be submitted by the owner, or any other person having a recognizable interest in the land, or their authorized agent. Other than for Conservation Subdivisions (Refer to Section 5-295., Conservation Subdivision) the application shall contain the materials specified in Section 5-210 D.2., Minimum Contents of Application, and shall also contain the following additional materials, as applicable: *(am 11/07/07)*
  - a. **Final Plat.** A final plat of the proposed subdivision in conformance with Final Plat requirements as delineated in Section 5-280.B.5.a.(1) & (2). *(am 05/08/12)*
  - b. **Zoning.** Demonstration that the land included within the proposed subdivision is properly zoned for the proposed use. Conformance with existing zoning on the property is required.
  - c. **Access.** Demonstration that all lots in the proposed subdivision have legal and physical access to a public street or rights-of-way by conventional vehicle.
  - d. **Water Supply.** Satisfactory evidence demonstrating the existence of a legal, physical, adequate and dependable water supply for each lot.
  - e. **Waste Water Disposal.** Satisfactory evidence, for each proposed lot, demonstrating the existence of a waste water disposal system, or other lawful means of disposing of human wastes, which complies with all applicable public health laws.
  - f. **Fire Protection.** Satisfactory evidence demonstrating adequate fire protection for each proposed lot.
  - g. **Hazards.** Satisfactory evidence demonstrating that all site conditions associated with the subdivision will not create hazards and all lots will contain safe, adequate building sites.
  - h. **Site Plan.** A site plan, if applicable, depicting existing and proposed building locations, access drives, parking areas, landscaping, fences, signs, and any other pertinent site data.



- i. **Agreements.** A Subdivision Improvements Agreement, off-site road improvements agreement or other agreement if required by the Board of County Commissioners.
  - j. **Restrictions.** Any protective covenants, declarations, party wall agreements or other restrictions to be placed on the subdivision which shall be filed for recording in the Office of the Clerk and Recorder at the time of Final Plat recording.
  - k. **Schools.** Demonstration that all applicable school land dedication or cash-in-lieu requirements have been satisfied.
2. **Public Notice.** Minor Subdivisions shall comply with the provisions of Section 5-210.E Notice of Public Hearing, except that Type Minor B Subdivisions are exempt from this requirement unless the application is for the creation of three (3) or fewer lots from otherwise unimproved land. *(am 9/27/99)*
3. **Review of Applications.** The submission of an application for minor subdivision, and determination of its sufficiency, shall comply with the procedures established in Section 5-210.D, Common Procedures for Review of Applications. In addition, the Staff Report shall outline any revisions that need to be made to the Type A or Type B Subdivision to ensure that it complies with the requirements of this Section. *(am 9/27/99)*
4. **Revised Subdivision Mylar.** Prior to scheduling the application for hearing before the Board of County Commissioners, the applicant shall submit to the Planning Director all Improvement Agreements for Board signature, and a properly signed and notarized Mylar of the Subdivision showing all necessary revisions as required by the Planning Director, together with two (2) paper copies of it. Upon review and approval by the Eagle County Attorney, the plat shall be scheduled for the next available hearing date of the Board of County Commissioners. *(am 9/27/99)*
5. **Other.** If required within a PUD the Community Development Certificate may also be required to be on the Plat. *(am 3/12/02)*
- D. Action on Type A Subdivision.** After receipt of the Staff Report on the Type A Subdivision and the revised subdivision Mylar, Improvement Agreements, and certificates, the Board of County Commissioners shall review the application and other support materials and approve, or disapprove the Type A Subdivision based on the standards in Section 5-290.G., Standards.
- E. Action on Type B Subdivision.** After receipt of the Staff Report on the Type B Subdivision and the revised subdivision Mylar, Improvement Agreements, and certificates, and in the event the application is for the subdivision of a duplex, patio homes or a structure containing condominiums or townhomes, the Planning Director shall review the application and other support materials and approve, or disapprove the Type B Subdivision based on the standards in Section 5-290.G., Standards. If the Planning Director approves the Type B Subdivision, as specifically provided above, the Final Plat shall be signed by the Board of County Commissioners. If the application is for the creation of three (3) or fewer lots from otherwise unimproved, vacant land that has previously been subdivided then, the Board of County Commissioners shall review the application and other support materials and approve or disapprove the Minor Type B Subdivision Plat based on the standards of Section 5-290.G., Standards. *(am 11/08/05)*

- F. Action on Amended Final Plats.** After receipt of the Staff Report on the Amended Final Plat and the revised Amended Final Plat Mylar, Improvements Agreements, and certificates, the Board of County Commissioners shall review the application and other support materials and approve, or disapprove the Amended Final Plat based on the standards in Section 5-290.G., Standards.
- G. Standards.** The Board of County Commissioners and the Planning Director shall consider the following in the review of a Type A Subdivision, a Type B Subdivision, and an Amended Final Plat.
- 1. Standards for Type A Subdivision.** (*orig 3/12/02*)
    - a. Consistent with Comprehensive Plan.** The proposed subdivision shall be in substantial conformance with the purposes, intents, goals and policies of the Eagle County Comprehensive Plan, Area Community Plans and any applicable ancillary County adopted documents pertaining to natural resource protection, affordable housing or infrastructure management. (*am 11/08/05*) (*am 05/08/12*)
    - b. Consistent with Land Use Regulations.** The proposed subdivision shall comply with all of the standards of this Section and all other provisions of these Land Use Regulations, including, but not limited to, the applicable standards of Article 3, Zone Districts, and Article 4, Site Development Standards.
    - c. Spatial Pattern Shall Be Efficient.** The proposed subdivision shall be located and designed to avoid creating spatial patterns that cause inefficiencies in the delivery of public services, or required duplication or premature extension of public facilities, or result in a leapfrog pattern of development.
      - (1) Utility and Road Extensions.** Proposed utility extensions shall be consistent with the utility=s service plan or shall require prior County approval of an amendment to the service plan. Proposed road extensions shall be consistent with the Eagle County Road Capital Improvements Plan.
      - (2) Service Ultimate Population.** Utility lines shall be sized to serve the planned ultimate population of the service area in order to both avoid future land disruption, and the necessity of upgrading under-sized lines.
    - d. Suitability for Development.** The property proposed to be subdivided shall be suitable for development, considering its topography, environmental resources and natural or man-made hazards that may affect the potential development of the property, and existing and probable future improvements to the area.
    - e. Compatible with Surrounding Uses.** The proposed subdivision shall be generally compatible with the existing and currently permissible future uses of adjacent land and other substantially impacted land, services or infrastructure improvements. (*am 05/08/12*)
    - f. Improvements Agreements.** The adequacy of the proposed Improvements Agreement, where applicable.

- g. **Conformance with Final Plat Requirements.** Its conformance with the Final Plat requirements and other applicable regulations, policies, standards, and guidelines.

2. **Standards for Type B Subdivision** (*am 3/12/02*)

- a. **Access, Water and Sewage.** The adequacy of access, potable water, and sewage disposal on the land to be subdivided;
- b. **Conformance with Final Plat Requirements.** Its conformance with the Final Plat requirements and other applicable regulations, policies, standards, and guidelines;
- c. **Improvements Agreements.** The adequacy of the proposed Improvements Agreement, where applicable.

3. **Standards for Amended Final Plat.**

- a. **Adjacent Property.** Review of the Amended Final Plat to determine if the proposed amendment adversely affects adjacent property owners.
- b. **Final Plat Consistency.** Review of the Amended Final Plat to determine that the proposed amendment is not inconsistent with the intent of the Final Plat.
- c. **Conformance with Final Plat Requirements.** Review of the Amended Final Plat to determine if the proposed amendment conforms to the Final Plat requirements and other applicable regulations, policies and guidelines.
- d. **Improvements Agreement.** Adequacy of the proposed improvements agreements and/or off-site road improvements agreement when applicable.
- e. **Restrictive Plat Note Alteration.** If the amendment is an alteration of a restrictive plat note at least one of the following criteria must be met:
  - (1) That the area for which the amendment is requested has changed or is changing to such a degree that it is in the public interest to encourage a new use or density in the area; or
  - (2) That the proposed amendment is necessary in order to provide land for a demonstrated community need.

**SECTION 5-295. CONSERVATION SUBDIVISION** (*orig. 11/07/07*)

- A. Purpose.** In a Conservation Subdivision, previously referred to in these Land Use Regulations as Cluster Development, lots smaller than would otherwise be allowed by the governing zone district are grouped or “clustered” in one or more limited areas on the subject property, the location of which is determined through adherence to certain design standards. A density bonus may be allowed. In exchange, the balance of the property must be set aside, in a manner acceptable to the County Attorney, as a permanent Conservation/Agricultural Lands Tract (see example diagrams under the definition for ‘Conservation Subdivision’ in Article 2). The potential for a density bonus and reduced

infrastructure costs provide incentive to a landowner, while the residents of the subdivision and the public benefit from creative designs and layouts that reduce site disturbance and preserve scenic quality, wildlife habitat, sensitive lands, and agricultural uses. (am 05/08/12)

**B. Applicability.**

1. **Zone Districts.** A Conservation Subdivision is a use allowed by Special Review in the Resource (R), Resource Limited (RL), Agricultural Residential (AR) and Agricultural Limited (AL) zone districts.
2. **Minimum Land Area.** The following minimum land areas are required:

<u>Zone District</u>	<u>Minimum Land Area</u>
Resource (R)	70 acres
Resource Limited (RL)	40 acres
Agricultural Residential (AR)	20 acres
Agricultural Limited (AL)	10 acres

- C. Uses.** The zoning designation on a property approved for a Conservation Subdivision shall remain unchanged. As such, lots created through this process will be considered legal non-conforming lots, with uses detailed in Section 6-120, Nonconforming Lots of Record.

**D. Procedure**

1. **Initiation.** Applications for a Conservation Subdivision may be submitted at any time to the Department of Community Development by the owner, or any other person having a recognizable interest in the land for which the Conservation Subdivision is proposed, or their authorized agent. Prior to submission of an application for a Conservation Subdivision, the Applicant shall participate in a pre-application conference with the Planning Director or his designee pursuant to Section 5-210.C., Pre-application Conference.
2. **Application Contents.** The application shall contain the materials specified in Section 5-210.D.2., Minimum Contents of Application, and any or all of the following requirements, as determined necessary by the Director of Community Development:
  - a. **Physical Characteristics and Site Plan.** One or more site plans with photographs and/or maps depicting topography, drainage and water features, hazard areas, agricultural resource areas, wildlife habitat and other natural resource areas, sites of any historic or archaeological significance, scenic resources, and existing and proposed building locations, roads and access drives, landscaping, fences, and any other prominent features or land uses.
  - b. **Request for Density Bonus,** if applicable. (See Section 5-295.F, Density Bonus.)
  - c. **Request for Accessory Dwelling Units and/or Agricultural Buildings,** if applicable.
  - d. **Final Plat.** A final plat of the proposed subdivision which conforms with Final Plat requirements of Section 5-280.B.5., Final Plat for Subdivision.

- e. **Zoning.** Demonstration that the land included within the proposed subdivision is properly zoned for the proposed use.
- f. **Access.** Demonstration that all lots in the proposed subdivision will be provided safe, efficient and legal access using the minimum practical roadway length. In areas of medium or high wildfire hazard, dual access to residential clusters, as detailed in Section 4.430, Development in Areas Subject to Wildfire Hazards, may be required.
- g. **Variance from Improvement Standards**, if applicable, pursuant to Section 5-260.G., Variance from Improvement Standards.
- h. **Water Supply.** Satisfactory evidence demonstrating the existence of an adequate, dependable and legally obtained water supply for each building site.
- i. **Waste Water Disposal.** Demonstration that each proposed building site will be provided with a waste water disposal system which complies with all applicable public health laws.
- j. **Fire Protection.** Satisfactory evidence demonstrating adequate fire protection for each proposed building site.
- k. **Adequate Facilities.** Demonstration that all proposed building sites will be provided electrical, telecommunication and solid waste disposal services, will be in reasonable proximity to schools (or transportation will be provided), and that each residential unit will have reasonable access by emergency service providers.
- l. **Hazards.** Satisfactory evidence demonstrating that all improvements associated with the proposed subdivision will not create hazards, and that all lots will contain safe, adequate building sites. If residential clusters are proposed for areas of medium or high wildfire hazard, a Vegetation Management Plan, pursuant to Section 4-430, shall also be required.
- m. **Conservation/Agricultural Lands Management Plan.** Provisions and documents associated with the creation and ownership of all areas proposed for conservation and/or continued agricultural uses, including a specific plan, satisfactory to the County Attorney, which details provisions for (1) the management and maintenance of the conservation/agricultural lands tract in perpetuity for its intended use and, where appropriate, (2) the permanent availability of sufficient water rights to implement the Management Plan. The Conservation/Agricultural Lands Management Plan shall be filed for recording in the Office of the Clerk and Recorder with the recording of the resolution approving the special use permit. Any protective covenants, declarations or other restrictions to be placed on the subdivision, including those related to the long term ownership and maintenance of conservation/agricultural land tracts, shall also be filed for recording in the Office of the Clerk and Recorder either with the resolution approving the special use permit or at the time of Final Plat recording. (*am 05/08/12*)

- n. **Housing Plan.** A Local Resident Housing Plan as specified in the Eagle County Local Resident Housing Guidelines.
  - o. **Common Ownership of Contiguous Parcels.** Disclosure of all contiguous parcels in which the owner or the applicant has an ownership interest.
- 5. **Process.** Review and final approval of Conservation Subdivisions shall be accomplished by Special Use Permit pursuant to Section 5-250, Special Uses, and either a Type A Minor Subdivision or a Type B Minor Subdivision, as applicable, pursuant to Section 5-290, Minor Subdivision.
  - 6. **Review of Applications.** Review of an application by Staff, determination of sufficiency and completeness, referral to outside agencies, and scheduling for public hearing for a Conservation Subdivision shall comply with the procedures established in Section 5-210.D, Common Procedure for Review of Applications.
  - 7. **Review and Recommendation of the Planning Commission.** The Planning Commission shall conduct a public hearing on an application for a Conservation Subdivision, and shall consider the application, the relevant support materials, the Staff report, and any public testimony. At the close of the public hearing, the Planning Commission shall provide to the Board of County Commissioners a recommendation to either approve, approve with conditions, or disapprove the application based on the standards in Section 5-295.G., Standards.
  - 8. **Action by Board of County Commissioners.** After receipt of the recommendation from the Planning Commission, the Board of County Commissioners shall conduct a public hearing on an application for a Conservation Subdivision. At the public hearing, the Board of County Commissioners shall consider the application, the relevant support materials, the Staff report, the Planning Commission recommendation, and any public testimony given. At the close of the public hearing, the Board of County Commissioners, by a majority vote, shall either approve, approve with conditions, or disapprove the application based on the standards in Section 5-295.G., Standards.
- E. Conservation Subdivision Design Criteria**
- 1. **Efficient layout.** The design of a Conservation Subdivision shall result in contiguous residential lots concentrated into one or more portions of the property such that development of lands of significant conservation value is avoided, and road lengths, driveways, service infrastructure needs and land disturbances are minimized. In addition, opportunities for energy efficient construction should be maximized to the greatest extent possible.
  - 2. **Road and infrastructure alignments.** Roads and utilities shall be located in a manner that results in minimal site disturbance, and shall avoid steep slopes, environmentally sensitive areas, ridgelines and other sites of high visibility. Where a group of lots borders a public road, direct access to such road or highway from individual lots, units or buildings shall not be permitted.
  - 3. **Resource Protection**

- a. Conservation/Agricultural Lands Tract.** The design of a Conservation Subdivision shall result in the creation of a contiguous tract of land that is no less than 67% of the property covered by the application, excluding floodplains, utility corridors and established rights of way, which will remain in an undeveloped state. To the greatest extent possible, this Tract shall contain the following:
- (1) Lands of existing agricultural production, including irrigated fields, pastures or croplands.
  - (2) Identified wildlife habitat and wildlife migration corridors, or buffer zones necessary to protect the same.
  - (3) Streams, drainages, wetlands, ground water recharge areas and riparian habitats.
  - (4) Lands of significant scenic or cultural value.
  - (5) Natural hazard areas including steep slopes, floodplains, debris flow paths and avalanche paths, including all flooding requirements per section 3-350.L. (*am 01/07/14*)
  - (6) Unique landforms or topographic features.
- b. Building Envelopes.** All residential and accessory residential structures within a Conservation Subdivision shall be located within building envelopes, each of which is no more than three (3) acres in size, and located on that portion of the property deemed most suitable for development. Building envelopes shall be indicated on the Final Plat for the subdivision.
- 4. Shared Septic Systems.** If septic systems are to be used for waste water disposal, shared septic systems are encouraged to the extent determined to be practicable by the Eagle County Environmental Health Department. Demonstration of an maintenance program shall be provided which is determined by the Eagle County Environmental Health Department to be adequate.
- 5. Maximum Size of Dwelling Units**
- a. Primary Dwelling Units.** Primary dwelling units shall be limited to a maximum floor area of 5,000 square feet.
  - b. Accessory Dwelling Units.** Accessory dwelling units shall conform to the provisions of Section 3-310.A., Accessory Dwelling Unit.
- 3. Residential Building Sites not in a Cluster.** On parcels larger than 70 acres in the Resource Zone district, and on parcels larger than 40 acres in the Resource Limited Zone district, one residential building site may be located outside the grouped lots. All residential and accessory residential structures associated with this isolated building site must be located within a designated building envelope, as indicated on the final plat for the subdivision. The area of the building envelope shall not count in the calculation of acreage required for the Conservation/Agricultural Use Tract. Unless pre-existing, the location of this building site should also conform to the greatest extent possible to established Conservation Subdivision Criteria.
- 4. Maximum number of Dwelling Units Per Cluster.** The maximum number of home

sites allowed within individual residential “clusters” shall depend on the subject property’s physical characteristics and the degree to which the proposal conforms to these Design Criteria. The following may, at the discretion of the Director of Community Development, be required for Conservation Subdivision applications that result in five (5) or more single family lots:

- a. Plans for shared water and wastewater systems.
  - b. A Landscaping Plan for common areas.
  - c. Internal pathways.
  - d. A Storm Water Management Plan.
  - e. Conformance to Eagle County Housing Guidelines regarding workforce housing.
  - f. Conformance to Eagle County Land Use Regulations Chapter 6, Matters of State Interest.
  - g. A development phasing plan.
- 8. Minimum Residential Lot Size.** The size of residential lots within a Conservation Subdivision may vary based on existing improvements, the physical characteristics of the land and the outcome desired by the property owner. In no event shall the total acreage of lands set aside for residential lots or building sites exceed 33% of the parcel or parcels covered by the application. Satisfactory evidence demonstrating the existence of a legal, physical, adequate and dependable water and sufficient wastewater treatment, as determined by the Eagle County Environmental Health Department, will be provided for all of the residential lots.
- 9. Accessory Dwelling Units.** If desired, a specific request for the inclusion of accessory dwelling units (ADU) may be made with the application for a Conservation Subdivision. An ADU must be an integral part of the principal residential structure on the lot. If approved, accessory dwelling units will not count towards applicable density limitations for the property, but they will be included in the calculation of single family equivalents (SFE) with respect to the applicability of Chapter VI, Matters of State Interest, of the Eagle County Land Use Regulations.
- If an application for one or more accessory dwelling units is submitted subsequent to approval of a special use permit for a clustered subdivision and would result in the total number of dwelling units in the subdivision to be ten (10) or more and would therefore be subject to Chapter VI, Matters of State Interest, of the Eagle County Land Use Regulations, then the entire Conservation Subdivision shall be subject to the provisions of Chapter VI, Matters of State Interest.
- 10. Dimensional Limitations.** With the exception of minimum lot size, dimensional limitations for residential lots in a Conservation Subdivision shall be equivalent to the limitations listed in Table 3-340, Schedule of Dimensional Limitations, for the underlying zone district. For lots of 15,000 square feet or smaller, floor area ratios and maximum lot coverage regulations shall be consistent with those listed for the zone district with the largest minimum lot size within which the subject lot would be found to be conforming in size.
- 11. Access to the Conservation/Agricultural Lands Tract.** Each residential lot within a Conservation Subdivision may or may not be provided access to the development’s conservation/agricultural land tracts depending on the goals and objectives of the project’s Conservation/Agricultural Lands Management Plan (See Section 5-295.D.2.m).



- 12. Landscaping, Lighting and Fences.** Landscaping and lighting shall conform to Section 4-230, Landscaping Design Standards and Materials, and Section 4-250, Illumination Standards, and shall be installed in such manner as to not detract from the character of the area. With the exception of areas within platted building envelopes, fences shall be wire strand or constructed of unpainted natural materials, and shall be wildlife friendly.
- 13. Signs.** Signs shall be limited to those necessary to provide direction and/or safety on public or private travel routes. Entry monuments or entry gates, where appropriate, shall be designed to conform to the rural character of the area.

- F. Density Bonus and Maximum Densities Allowed.** If desired, the Applicant shall include a request for a density bonus in the application material submitted. The density bonus allowed within a Conservation Subdivision shall not exceed the maximums provided below, and shall otherwise depend on the physical characteristics of the property and the degree of conformance of the site plan to the criteria provided in Section 5-295.E., Conservation Subdivision Design Criteria. If a property contains an existing residential dwelling, that dwelling shall count as one residential lot in the following calculations.

**Table 5-295. Maximum Number of Dwelling Units per Acre by Zone District**

Percent of Site (%) Designated as Conservation/Agricultural Land Tract	Resource	Resource Limited	Agricultural Residential	Agricultural Limited
At least 67% but less than 75%	1 / 25	1 / 14	1 / 7	1 / 3.5
At least 75% but less than 85%	1 / 20	1 / 12	1 / 6	1 / 3
85% or more	1 / 17.5	1 / 10	1 / 5	1 / 2.5

- G. Standards.** The Conservation Subdivision shall comply with Section 5-250.B, Standards for Special Use, and Section 5-290.G.1 Standards for Minor Subdivision, as applicable for a Type A or Type B Minor Subdivision, respectively. In addition, the following standards shall apply:
- 1. Design Criteria.** The conservation subdivision shall conform to the Conservation Subdivision Design Criteria of this Section.
  - 2. Improvements.** The improvements standards applicable to the Conservation Subdivision shall be as specified in Article 4, Division 6, Improvements Standards. However, the development may deviate from the County's road standards in order to better meet the criteria listed in Section 5-295.E., Conservation Subdivision Design Criteria. The following improvement standards shall apply:
    - a. Safe, Efficient Access.** The circulation system is designed to provide safe, convenient access to all common areas of the proposed development using the minimum practical roadway length. Access shall be by a public right-of-way, private vehicular or pedestrian way or a commonly owned easement. No roadway alignment, either horizontal or vertical, shall be allowed that compromises one (1) or more of the minimum design standards of the American Association of State Highway and Transportation Officials (AASHTO) for that functional classification of roadway.

- b. **Internal Pathways.** If required, internal pathways shall form a logical, safe and efficient system for pedestrian access to dwelling units and common areas, with appropriate linkages off-site.
  - c. **Emergency Vehicles.** Roadways shall be designed to permit access by emergency vehicles to all lots or units. Access easements shall be granted for emergency vehicles and utility vehicles, as applicable, to use private roadways and other areas within the development for the purpose of providing emergency services and for installation, maintenance and repair of utilities.
  - d. **Principal Access Points.** Principal vehicular access points shall be designed to provide for smooth traffic flow, minimizing hazards to vehicular, pedestrian or bicycle traffic. Where a group of lots borders a public road, direct access to such road or highway from individual lots, units or buildings shall not be permitted.
  - e. **Snow Storage.** Adequate areas shall be provided to store snow removed from roads and from vehicle turnaround areas.
3. **Facilities.** The proposed Conservation Subdivision shall be adequately served by public or private facilities and services, including roads, potable water and wastewater facilities, schools, public safety, fire protection and emergency medical services.
4. **Conformance with Final Plat Requirements.** Final Plat requirements and other applicable regulations, policies, standards, and guidelines shall be met.
5. **Preservation of Lands of Significant Conservation Value.** Areas of significant conservation value shall be preserved within the subdivision.
- a. **Uses Allowed.** Conservation/agricultural lands tracts within Conservation Subdivision shall remain primarily undeveloped. Seasonal closures to protect growing crops, livestock or sensitive wildlife habitat shall be permitted. The following uses shall be allowed:
    - (1) Agricultural production, farming, ranching and ancillary agricultural structures, including equestrian facilities, except boarding stables, as allowed in the underlying zone district.
    - (2) Low impact dispersed recreation including hiking, hunting, fishing, horseback riding, Nordic skiing, and mountain biking.
    - (3) The construction of unpaved trails for the purposes of public or private access.
    - (4) The construction of rustic camping or other rustic facilities (i.e., huts, shelters, etc.) in conjunction with low-impact dispersed recreational uses.
    - (5) Shared well and/or shared septic system improvements.
  - c. **Uses not allowed.** Conservation/agricultural land tracts created within a Conservation Subdivision shall expressly not be used for the construction or operation of developed recreational facilities such as golf courses, athletic fields, motorized vehicle tracks, or other improvements that would support non-dispersed types of recreation, or activities that would be inconsistent with the preservation of

the character of the land, including special events.

- d. **Continued Use and Maintenance.** All privately owned conservation/agricultural lands shall continue to conform to their proposed uses. To ensure that all conservation/agricultural lands identified on the final plat will be used accordingly, restrictions shall be placed on the Conservation Subdivision final plat and in each related property deed conveying a separate interest in the property to ensure continued maintenance pursuant to the Conservation/Agricultural Lands Management Plan and to prohibit the further subdivision of any conservation/agricultural lands areas.
- e. **Organization.** If conservation/agricultural lands are proposed to be maintained pursuant to the Conservation/Agricultural Lands Management Plan through an association or nonprofit corporation, such organization shall manage all conservation/agricultural lands and related facilities that are not dedicated to the public, and shall provide the maintenance, administration and operation of such land, and secure adequate liability insurance on the land. The association or nonprofit corporation shall be established prior to the separate sale of any lots or units within the subdivision. Membership in the association or nonprofit corporation shall be mandatory for all landowners within the clustered subdivision.

If the conservation/agricultural lands area is to be held in single or multiple ownership as a conservation tract, a conservation easement in favor of either a land trust or similar conservation-oriented non-profit organization and/or a governmental entity with an interest in pursuing goals compatible with the purposes of this section shall be placed on the entirety of the tract.

- H. **Effect of Approval of a Conservation Subdivision Plat.** All Conservation Subdivision Final Plats shall be subject to the provisions of Section 5-280.B.5.d., Effect of Approval of a Final Plat for Subdivision.
- I. **Subdivision Agreement.** All Conservation Subdivisions shall be subject to the provisions of Section 5-280.B.5.e., Subdivision Agreement.

## SECTION 5-300 LIMITED REVIEW USE

- A. **Limited Review Use.** Limited Review Uses are those that may be considered compatible with other uses in a zone district, and have minimal impacts. They are subject to an abbreviated review of the standards applicable to the proposed use. All proposed Limited Review Uses shall comply with the provisions of this Section 5-300 Limited Review Use.
- B. **Procedure.** Applications for Limited Review Uses may be submitted at any time to the Planning Director by the property owner, or their authorized Agent.
  - 1. **Application Contents.** The application shall contain the materials specified in Section 5-210.D.2 Minimum Contents of Application, and the following:

- a. **Site Plan.** A detailed site plan of the property, drawn to scale, that shows all existing natural and man-made features, including driveways to public ways, and the proposed development of the property. If the application is for an accessory dwelling unit or any use that will result in a building permit, the application may be accompanied by the building permit application.
  - b. **Written Description.** A written description of the proposal in sufficient detail to describe the nature of the proposed use, how it will be operated, and how its impacts on surrounding properties will be minimized and mitigated.
  - c. **Other Materials.** Evidence to show conformance with the Minimum Standards for the particular use as indicated in Section 3-310 Review Standards or Section 3-330, Review Standards, if any.
2. **Public Notice.** Notification that an application for a Limited Review Use has been received by the Eagle County Planning Department (use to be specified) shall be sent by mail, first-class postage prepaid, to all landowners of the land subject to the application, all adjacent landowners, and, if applicable, the homeowners association of the development in which the property is located. The notice shall contain all of the applicable information required under Section 5-210.E.1. Notice in Newspaper, and shall be sent no less than fifteen (15) calendar days prior to the date on which the Eagle County Planning Director is scheduled to render a decision on the application.
3. **Review of Applications.** The sufficiency of a Limited Review Use application shall be determined by the Planning Director based on compliance with the Minimum Standards for the particular use as noted in Section 3-310 Review Standards or Section 3-330 Review Standards.
4. **Action on Limited Review Use Applications.**
  - a. **Application determination.** Once the application is deemed complete, a decision approving, approving with conditions or denying the Use shall be issued by the Planning Director within five (5) working days, provided that in no event will such a decision be issued earlier than fifteen (15) days after public notice has been given. Approval of the Use shall result in the issuance of a Section 5-2100 Certificate of Zoning Compliance unless approval of the Use results in a Building Permit, in which case the issuance of the Building Permit shall constitute the issuance of the Certificate of Zoning Compliance.
  - b. **Review by the Board of Eagle County Commissioners.** In the event that public notice results in written comments in opposition to the proposed Limited Review Use, and said opposition is based on relevant development standard(s) in these Land Use Regulations, the Planning Director shall place the Limited Review Use application on the earliest available scheduled meeting agenda of the Board of Eagle County Commissioners, provided that the Planning Director's review has been completed and a staff report with all supporting materials has timely been prepared in advance of the hearing. The Board of County Commissioners shall review the Limited Review Use application pursuant to Section 5-210.F.5 Conduct of Public Hearing, and shall approve, approve with conditions, or disapprove the application

based on whether it conforms to the standards set forth in Section 5-300 Limited Review Uses.

- 5. Time Limitations.** Except where otherwise expressly provided herein or in the Article 3 review standards applicable to the use, approval of a Limited Review Use shall be valid for a period of three (3) years from the date of the issuance of the Certificate of Zoning Compliance.
- a.** A Limited Review Use established during this three year period is valid for the life of the Use, or the period provided in (b.) below, whichever is shorter; a discontinuation of the actual Use for a period of twelve (12) months shall be deemed an abandonment of the Use.
  - b.** If a Building Permit for structures integral to the Use is issued during this three year period or the period provided in (a.) above, whichever is shorter, approval of the Use shall be valid for the life of the structure;
  - c.** Any Limited Review Use that is temporary, or has received conditional approval limiting the length of its approval, shall only be valid for the time period specified in the Certificate of Zoning Compliance.
  - d.** The duration of the Limited Review Use shall not change with successive owners of the property to which it applies.
  - e.** **Extension.** Upon written request, extension of a Certificate of Zoning Compliance may be granted by the Board of County Commissioners, not to exceed two (2) years in length, if the applicant demonstrates by competent substantial evidence that failure to proceed with development of the Limited Review Use was beyond the applicant's control, the Limited Review Use is not speculative in nature, the Limited Review Use still complies with these Land Use Regulations and the Comprehensive Plan, and there is a reasonable likelihood that the Limited Review Use will be developed in the next two (2) years. No request for an extension shall be considered unless a written application requesting the extension is submitted to the Planning Director no later than thirty (30) calendar days prior to the date that the Certificate of Zoning Compliance is to expire. (am 11/08/05)
  - f.** **Building Permits.** The time limitations in this Section do not affect the time limits applicable to a Building Permit. The effective period thereof, and any extension thereof, is determined only in accordance with the Eagle County Building Resolution. (am.9/27/99)

## SECTION 5-2100. CERTIFICATE OF ZONING COMPLIANCE

- A. Purpose.** A Certificate of Zoning Compliance shall be required in accordance with the provisions of this Section in order to ensure that proposed development complies with the standards in these Land Use Regulations.
- B. Applicability.** Issuance of a Building Permit or Development Permit shall constitute the issuance of a Certificate of Zoning Compliance.

- C. General.** Prior to the issuance of the Building Permit, the Planning Director shall review all Building Permit applications and Development applications to ensure they are in compliance with these Land Use Regulations.
- D. Procedure.**
- 1. Initiation.** An application for a Certificate of Zoning Compliance shall only be submitted by the owner, or any other person having a recognizable interest in the land, or their authorized agent.
  - 2. Submission of application.** An application for a Certificate of Zoning Compliance shall be submitted to the Planning Director. *(am 3/12/02)*
  - 3. Contents of application.** The application shall be in a form established by the Planning Director and made available to the public.

## SECTION 5-2200. PUBLIC WAY AND EASEMENT VACATIONS

- A. General.** Public way and easement vacations accomplished pursuant to this Section shall be in compliance with and subject to C.R.S. 43-2-301, et. seq.
- B. Applicability.** As used in this Section, the terms 'road' and 'easement' shall be deemed to include any and all parcels upon which there has been legally sufficient acceptance of said dedication by the public or authorized agents, representatives or officials.
- C. Procedure.**
- 1. Initiation.** An application for a vacation of public way or easements shall only be submitted by the owner, or any other person having a recognizable interest in the land, or their authorized agent.
  - 2. Submission of application.** An application for a vacation of public way or easement shall be submitted to the County Engineer. The application shall contain the materials specified in Section 5-210.D.2., Minimum Contents of Application. It shall also include a Petition requesting the vacation which is signed by the owners of all abutting land whose means of legal ingress and egress would be affected by the vacation. The Petition shall set forth the reasons for the vacation together with the names, street, mailing, and legal addresses of all abutting or adjacent landowners, or other landowners whose interests therein might be adversely affected by, or who may be interested in, such vacation. The Petition shall be accompanied by a map that shows the road or easement sought to be vacated as well as the property owners described above.
  - 3. Staff Review of Petition.** Upon receipt of the Petition, the Planning Director shall refer a copy of the Petition and the map to affected government agencies and public and private utility concerns for their review and comment within thirty (30) calendar

days, and also refer the Petition to the Community Development staff for their review. After receipt of the comments from the other affected governments and utilities, the Planning Department shall complete a Staff Report on the proposed vacation, provide notice of hearing pursuant to Section 5-2200.C.4., Public Notification, and schedule the Petition for review by the Planning Commission.

**4. Public Notification.**

**a. Planning Commission.** A minimum of fifteen (15) calendar days prior to the Planning Commission public hearing, the Planning Director shall give notice by mail to all persons that own land that is adjacent to the proposed vacation or who own land that could be affected by the proposed vacation. The notice shall: (1) state that a Petition to vacate has been submitted and identify the public way or easement that is proposed to be vacated; (2) briefly state the reasons given for the vacation; and (3) give the date, time, and place of the hearing on the vacation.

**b. Board of County Commissioners.** A minimum of thirty (30) calendar days prior to the Board of County Commissioners public hearing, the Planning Director shall publish notice of the hearing in a newspaper of general circulation in the County . The notice shall: (1) state that a Petition to vacate has been submitted and identify the road ROW or easement that is proposed to be vacated; (2) briefly state the reasons given for the vacation; (3) provide the recommendation of the Planning Commission; and (4) give the date, time, and place of the hearing on the vacation.

**D. Review and Recommendation of Planning Commission.** After receipt of the Staff Report and the mailing of notice, the Planning Commission shall conduct a public hearing on a proposed vacation. At the public hearing, the Planning Commission shall consider the Petition, the relevant support materials, the Staff Report, and the public information given at the public hearing. After the close of the public hearing, the Planning Commission, by a majority vote of the quorum present, shall recommend to the Board of County Commissioners either to approve, approve with conditions, or disapprove the Petition based on the standards in Section 5-2200 F., Standards.

**E. Action by Board of County Commissioners.** After receipt of the recommendation from the Planning Commission, the Board of County Commissioners shall conduct a public hearing on the proposed vacation. At the public hearing, the Board of County Commissioners shall consider the Petition, the relevant support materials, and the public testimony given at the public hearing. After the close of the public hearing, the Board of County Commissioners, by a majority vote of the quorum present, shall either approve, approve with conditions, or disapprove the Petition for vacation based on the standards in Section 5- 2200.F, Standards.

**F. Standards.** The vacation shall be demonstrated to be in the general interest of the public=s health, safety, and welfare, not to be in violation of law, and to be in compliance with these Land Use Regulations and the Comprehensive Plan and shall comply with the following: *(am 11/08/05)*

**1. Access to a Public Road.** No roadway shall be vacated so as to leave any adjoining land without a means of access to another public road.

2. **Easements.** In granting a vacation, the County may reserve easements for the installation or maintenance of utilities, ditches and similar improvements.
- G. Vacation Effective.** No vacation shall be considered effective unless within a reasonable time following approval of the vacation by the Board of County Commissioners, the following conditions are met:
1. **Record Deeds.** Quit claim deeds have been duly recorded in the Office of the County Clerk and Recorder which cumulatively relinquishes all rights, claims and interests that all interested parties, including public and private utility companies, may have in the road or easement to be vacated; and
  2. **Resolution.** A Resolution of the Board of County Commissioners has been duly executed and recorded in the Office of the County Clerk and Recorder evidencing the approval of the Board of the vacation of the subject road or easement.

## SECTION 5-2300. BENEFICIAL USE DETERMINATION

If, after the submission and decision on the appropriate applications for development permits for land development, a landowner in unincorporated Eagle County is of the opinion that all economically beneficial use of that landowner's land has been denied by the application of these Land Use Regulations, then the procedures of this Section shall be used prior to seeking relief from the courts in order that any denial of economically beneficial use of land may be remedied through a non-judicial forum.

- A. Purpose.** The purpose and intent of the Board of County Commissioners is that every landowner in the unincorporated County enjoys an economically beneficial use of land. It is also the purpose and intent of this Section to provide for relief to the landowner, where appropriate, from the application of these Land Use Regulations. The procedures set forth in this Section are intended to permit landowners who believe they have been deprived of economically beneficial use of their land to apply to the Board of County Commissioners for relief sufficient to provide economically beneficial use of the land.
- B. Procedure.**
1. **Application for an Appeal for Beneficial Use Determination.** An Appeal for a Beneficial Use Determination may be made by a landowner to the Planning Director at any time.
  2. **Contents of Application.** The application shall contain the materials specified in Section 5-210 D.2., Minimum Contents of Application and shall also include the following materials:
    - a. **Date of, and Offers to Purchase.** Documentation of the date of purchase and the purchase price of the land, and any offers to purchase the land made by any person within the last three (3) years.



- b. Description of Land.** A description of the physical features present on the land, the land's total acreage, the present use of the land, and the use of the land at the time of the adoption of these Land Use Regulations.
  - c. Improvements to Land.** Evidence of any investments made by the landowner to improve the land, the date the improvements were made, and the costs of the improvements.
  - d. Description of Regulations and Uses.** A description of the uses of land that were allowed when the land was purchased by the landowner. In addition, a description of the regulations and uses permitted which are alleged to result in an elimination of economically beneficial use of the land together with all appraisals, studies, any other supporting evidence, and any actions taken by Eagle County related to the land.
  - e. Description of Minimum Beneficial Use.** A description of the use that the landowner believes represents the minimum legally required economically beneficial use of the land and all documentation, studies, and other supporting evidence thereof.
- 3. Determination of Sufficiency.** The Planning Director shall determine if the application is sufficient and includes data in sufficient detail to evaluate the application to determine if it complies with the appropriate substantive requirements of this Section.
  - a. Determined Insufficient.** If the Planning Director determines the application is not sufficient, a written notice shall be mailed to the applicant specifying the application's deficiencies. No further action shall be taken on the application until the deficiencies are remedied. If the applicant fails to correct the deficiencies within thirty (30) calendar days, the application shall be considered withdrawn, and the application fee shall be refunded.
  - b. Determined Sufficient.** When the application is determined sufficient, the Planning Director shall notify the applicant, in writing, of the application's sufficiency, and forward the application to the Hearing Officer for the scheduling of a hearing.
- 4. Establishment of Date for Hearing by Hearing Officer and Notice.** Within thirty (30) calendar days of the date that the application has been determined sufficient by the Planning Director, the Hearing Officer shall schedule a hearing on the Appeal for Beneficial Use Determination. The applicant shall provide the Planning Director a list of all adjacent landowners of the land subject to the Appeal for Beneficial Use Determination at least twenty-five (25) calendar days prior to the hearing, and the Planning Director shall provide these adjacent landowners notice by mail within fifteen (15) calendar days of the hearing. Costs of this mailing shall be paid by the applicant.

5. **Hearing by Hearing Officer.** At the hearing, the applicant shall present the applicant's case and the County Attorney shall represent the local government. All evidence presented shall be under oath, and the parties involved shall be permitted to cross-examine witnesses. The sworn testimony and evidence shall pertain to the standards set forth in Section 5-2300.C, Beneficial Use Standards, as to whether the applicant has been deprived of economically beneficial use of the land and the standards in Section 5-2300.D, Granting of Relief, pertaining to the degree of relief needed to provide the landowner with an economically beneficial use of the land.
  6. **Findings of the Hearing Officer.** Within thirty (30) calendar days of the close of the hearing, the Hearing Officer shall prepare recommended findings of fact and a proposed order for consideration by the Board of County Commissioners. The findings and recommendations of the Hearing Officer as to whether the land is provided economically beneficial use shall be based on the evidence submitted and the standards in Section 5-2300.C., Beneficial Use Standards. If the Hearing Officer finds that the applicant has been denied economically beneficial use of the subject land, then the Hearing Officer shall recommend a use that permits economically beneficial use and results in a minimum change from the regulations of these Land Use Regulations as they apply to the subject land, pursuant to the standards set forth in Section 5-2300.C, Beneficial Use Standards, and Section 5-2300.D, Granting of Relief. The Hearing Officer's recommended findings of facts and proposed order shall be in writing and shall detail the basis of the conclusions from the record of the hearing.
  7. **Action by Board of County Commissioners.** The Board of County Commissioners shall schedule a hearing on the application within thirty (30) calendar days of the date the Hearing Officer issues the recommended findings of fact and proposed order. The Planning Director shall provide the applicant and all adjacent landowners of the land subject to the Appeal for Beneficial Use Determination at least twenty (20) calendar days notice of the hearing by mail. At the hearing, the Board of County Commissioners shall approve the findings of fact and proposed order of the Hearing Officer, or may attach conditions, modify, or reverse the findings of fact or proposed order of the Hearing Officer, based on the standards of Section 5-2300.C, Beneficial Use Standards, and Section 5-2300.D, Granting of Relief. If the Board of County Commissioners attaches conditions, modifies or reverses the findings of fact or proposed order, it shall do so only where the record of the hearing indicates that the Hearing Officer is unsupported by the record, or that the proposed order is not in conformance with the standards of Section 5-2300.C, Beneficial Use Standards, and Section 5-2300.D, Granting of Relief.
  8. **Appeal.** The decision of the Board of County Commissioners is appealable to a court of law.
- C. **Beneficial Use Standards.** In determining if a landowner has been deprived of economically beneficial use of land, the Hearing Officer and Board of County Commissioners shall take into account the following factors:
1. **Economically Viable Use.** In making the determination whether the land is provided economically viable use, the Hearing Officer/Board of County Commissioners shall first evaluate the uses of the land as provided by these Land Use Regulations, and the uses of land in relation to the uses provided similarly situated lands. For the purposes of this Section,

economically viable use means the opportunity to make a return equivalent to that which would have been received from a conservative financial investment. Transitory economic issues shall not be relevant to this determination.

2. **Diminution in Value.** The market value of the land, as established by the comparable sales approach, prior to adoption of these Land Use Regulations, which caused the landowner to apply for relief shall be compared to the market value of the land, as established by the comparable sales approach, with the regulations as applied. Market value of the land prior to the adoption of the Land Use Regulations shall constitute its highest and best use on (one day prior to the effective of these Land Use Regulations) or the date of purchase of the land, whichever is later, and any other land value/appraisal information that the applicant would like to be considered. All appraisals shall be proposed by qualified licensed appraisers, and shall follow the best professional practices as established by the profession. A mere diminution in market value is not sufficient to support a determination of denial of economically beneficial use; the diminution must be so substantial that it effectively deprives the landowner of any material use or enjoyment of the land, commensurate with any reasonable investment backed expectations, if any.
3. **External costs.**
  - a. **Subsidy.** The amount or nature of any subsidy that may be required by Eagle County, neighbors, purchasers, tenants, or the public at large if the uses allowed under these Land Use Regulations are modified.
  - b. **Other Adverse Effects.** Any other adverse effects on the County and its residents.
4. **Current State of the Law.** The state of the law established by the United States Supreme Court, the federal Circuit Courts of Appeals, and the Colorado Supreme Court, relevant to these standards.

**D. Granting of Relief.**

1. **General.** If the finding is that a landowner has been deprived economically beneficial use of land, or is otherwise entitled to relief pursuant to the standards of this Section, relief shall be granted.
2. **Minimum Increase.** In granting relief, the landowner shall be given the minimum increase in use density/intensity or other possible concessions from these Land Use Regulations in order to permit an economically viable use of the land or a use that is determined to be required by law. The highest use, or even an average or generally reasonable expectation, is not required or intended as the appropriate remedy. The following guidelines shall be used for determining the minimum economically viable use of land and, therefore, the amount of relief to be granted a landowner in order to reach that minimum.
  - a. **No Governmental Subsidy.** A minimum economically viable use of the land should be one that does not have any governmental subsidy attached to the long-term safe occupation of the land. If such a subsidy is needed, then that should be reflected by

lowering the use intensity that is considered a minimum economically viable use on a market valuation basis.

- b. Common Use.** A use common to the unincorporated County, although it may not involve further development of the land, is considered an economically viable use. Attention shall also be given to land uses that are considered to be the lowest intensity in the unincorporated County but which uses still provide for occupation and living within the County. These land uses, as well, shall be considered economically viable uses.
- c. Actual Condition of Land Considered.** The actual condition of the land shall be considered. The reality of limited development potential, given the natural condition of the land, shall not be attributed to the regulations applied to the land. If the land is such that it cannot safely accommodate development with normal grading and clearing practices, this fact shall lower the intensity of use that is considered a minimum economically viable use.
- d. Potential for Damages.** The potential for damages to either residents or land shall be assessed in determining economically viable use. The need for a governmental subsidy to future landowners shall be considered, and the cost of such subsidies shall be deducted from the otherwise established minimum economically viable use.
- e. Only Investment Backed Expectations Considered.** Expectations shall, in general, not be considered. Only reasonable expectations backed by investments as recognized by the current state of the law shall be considered.
- f. Current State of Law.** The current state of law established by the United States Supreme Court, the federal Circuit Court of Appeals, and the Colorado Supreme Court, relevant to the granting of relief

## SECTION 5-2400. APPEALS OF STAFF DECISIONS/INTERPRETATIONS

An appeal may be taken to the Board of County Commissioners by any person aggrieved by a final decision or interpretation of the Planning Director or County Engineer under these Land Use Regulations.

### A. Procedure.

- 1. Initiation.** The appeal shall be filed with the County Administrator within thirty (30) calendar days of the date of the written notice of the decision/interpretation of the Planning Director or County Engineer.
- 2. Contents of Appeal.** The appeal shall include a statement of the error or improper decision/interpretation made by the Planning Director or County Engineer, the date of that decision, and the grounds for the appeal, including any materials or evidence to support the appeal.

3. **Scheduling of Hearing.** The Board of County Commissioners shall hold a hearing on the appeal within thirty (30) days of the date the appeal was received.
  4. **Action by Board of County Commissioners.** At the hearing on the appeal, the appellant or the appellant's agent shall state the grounds for the appeal, and include any materials or evidence to support the appeal. The Planning Director or any other County employee shall be provided the opportunity to respond, as well as any other persons the Board of County Commissioners deem necessary. After the conclusion of the hearing, the Board of County Commissioners shall affirm, affirm with modifications, or reverse the decision of the Planning Director based on these Land Use Regulations.
- B. Stay.** An appeal shall stay all proceedings in furtherance of the action appealed, unless the County Attorney certifies that by reason of facts stated in the certificate, a stay would cause imminent peril to life or property.

## SECTION 5-2500. VESTED PROPERTY RIGHTS

- A. Purpose.** The purpose of this Section is to establish a system of vested property rights for these Land Use Regulations, as authorized by C.R.S. 24-68-101, et. seq.
- B. Establishment.**
1. **General.** Pursuant to these Land Use Regulations, a vested property right shall be deemed established for a development permit for a period of three (3) years with the approval of a site specific development plan. Such vested property right shall attach to and run with the land for which the development permit is approved for the site specific development plan and shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the site specific development plan for a period of three (3) years from the date of its approval.
  2. **Site Specific Development Plan.** For the purposes of this Section, site specific development plan shall only mean a (1) a Special Use Permit; (2) a Preliminary Plan for PUD; (3) a Preliminary Plan for Subdivision; and (4) a Final Plat for Subdivision.
- C. Duration and Termination.**
1. **Duration.** A vested property right as defined in this Subsection shall be deemed effective as of the date the resolution by which the Board of County Commissioners approves the site specific development plan, and shall remain effective for a period of three (3) years. This vesting period shall not be extended by any amendments to a site specific development plan, unless expressly authorized by the Board of County Commissioners. Such approval shall be subject to all rights of judicial review; except that period of time permitted by law for the exercise of such rights shall not begin to run until the date of publication of a notice advising the general public of the approval. Publication shall be done by the Eagle County Department of Community Development. (*am 9/27/99*), (*am 3/12/02*) (*am 05/08/12*)

2. **Forfeiture.** Failure to abide by any applicable terms and conditions attached to the site specific development plan shall result in immediate forfeiture of the vested property right.
  3. **Extensions.** The Board of County Commissioners may, as a legislative act, enter into a Development Agreement with a landowner that provides that property rights shall be vested for a period exceeding three (3) years where it is warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of the development, economic cycles, and market conditions.
  4. **Subsequent Review and Approval.** Following approval or conditional approval of a site specific development plan, nothing in this Section shall exempt the site specific development plan from subsequent reviews by Eagle County to ensure compliance with the terms and conditions of the original approval, if such reviews and approvals are not inconsistent with the terms and conditions of the original approval.
- D. Exceptions.** A vested property right, once established pursuant to this Section, precludes any zoning or land use action by Eagle County for a period of three (3) years from the date of approval of the site specific development plan, that would alter, impair, prevent, diminish, or otherwise delay the development or use of the land subject to the site specific development plan consistent with the terms and conditions of the site specific development plan, except:
1. **Landowner's Consent.** With the consent of the affected landowner;
  2. **Hazards.** Upon the discovery of natural or man-made hazards on or in the immediate vicinity of the subject property, which hazards could not reasonably have been discovered at the time of the approval of the site specific development plan, and which hazards, if uncorrected, would pose a serious threat to the public health, safety, and welfare; and
  3. **Just Compensation Paid to Landowner.** To the extent that the affected landowner receives just compensation for all costs, expenses, and liabilities incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultants' fees incurred after approval by the governmental entity, together with interest thereon at the legal rate until paid. Just compensation shall not include any diminution in the value of the property which is caused by such action.
- E. Applicability of General Ordinances and Regulations.** The establishment of a vested property right shall not preclude the application of ordinances or regulations which are general in nature and are applicable to all property subject to land use regulation by Eagle County, including, but not limited to building, fire, plumbing, electrical, and mechanical codes.

## SECTION 5-2600. TEMPORARY REGULATIONS

The Board of County Commissioners, if in its opinion conditions require such action, may promulgate, by resolution at a public meeting, regulations of a temporary nature to be effective for a limited period not to exceed 30 days. During this 30 day period, a 15 day public notice shall be given in a newspaper of local distribution, advertising a public hearing to discuss the matter at hand requiring the temporary regulation and

may at such public hearing extend the duration of the effectiveness of said regulation for a period not to exceed 6 months. The nature of the temporary regulation may prohibit or regulate, in any part or all of the unincorporated territory of Eagle County, the zoning or subdivision of land, or the erection, construction, reconstruction or alteration of any building or structure used or to be used for any business, residential, industrial or commercial purpose. (*am 3/12/02*)

**SECTION 5-2700. CORRECTION PLAT** (*orig 3/12/02*)

The Board of County Commissioners, without a hearing or compliance with any of the submission, referral or review requirements in these Land Use Regulations, may approve a Correction Plat if the sole purpose of such a correction plat is to correct one or more technical errors on a previously approved Plat. The Correction Plat shall be consistent with an approved Preliminary Plan.

**A. Correction Plat Requirements.**

- 1. Certificates.** The following certificates, found in Appendix A of these Land Use Regulations, are required on the new and corrected Mylar:
  - a.** County Commissioners' Certificate
  - b.** Surveyor's Certificate
  - c.** Clerk and Recorder Certificate
- 2. General Notes.** Contained within the General Notes should be a purpose statement, the name of the Plat that the Correction supersedes, and any other notes which are pertinent to the Correction Plat.
- 3. Mylars.** All pages of the previously recorded Plat for which the Correction is being made, must be submitted and titled **CORRECTION PLAT**.