

SECTION 2 – LAND USE REVIEW

2.1 GENERAL

2.1.1 Land Use Permit Required:¹

2.1.1.1 Any development, re-development or change in land use shall be completed in conformance with these Regulations, *Archuleta County Road & Bridge Design Standards and Construction Specifications*, Archuleta County Ordinances, building and construction permits pursuant to the uniform codes adopted by the County, and must comply with all other applicable County requirements.

(1) "Development" and "Land Use Change," as used in these Regulations, are general and inclusive terms defined in Section 11 of these Regulations.

(2) As provided in Section 1.1.5, should there be any conflict between these regulations, the Road & Bridge Design Standards, adopted County Ordinances, or any other regulations, the more restrictive shall apply.

2.1.1.2 A Land Use Permit is required for any Land Use Change inclusive of any action listed as an "approval requested" in Table 1: Review Process Chart, Section 2.2.2.

(1) A Land Use Permit is not required when expressly exempt by Section 2.1.2.

(2) For any Use by Right, the use of property may be changed with a **Change of Use Review** (Section 3.2.1), rather than a Site Plan Review (Section 3.2.2), when:

- The Change of Use does not require a Building Permit, and
- Off-street parking requirements can be met within existing parking areas, and
- There is no increase in impervious surface area (no increase in storm water runoff), and
- The change is otherwise in complete conformance with these Regulations.

(3) A Land Use Permit may be required for any Development, as defined, in a Special Flood Hazard Area (floodplain), with or without a building permit, including Substantial Improvement of existing structures.

*See also definition of **Development**: The division of a parcel of land into two or more lots; the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any structure or use; any mining, excavation, land fill or land disturbance; any new use or extension of a permitted use; or the extension or alteration of the scope of a use, as well as the storage of equipment or materials.*

*See also definition of **Land Use Change**: Zoning or rezoning of property, subdivision of land, substantial clearing, grading, filling or excavation, construction, alteration or moving of buildings or roads, or any action listed as an "approval requested" in the Review Process Chart, Section 2.2.2.*

¹ Amended June 2018 (Res. 2018-18)

2.1.2 Exemptions from Land Use Permit Requirement:

The following uses and activities are exempt from the requirement to obtain a Land Use Permit:²

2.1.2.1 Agricultural Uses proposed for areas of the County that are zoned Agricultural/Forestry (AF) or Agricultural/Ranching (AR) that do not require a Land Use Permit include:³

- (1) Production, cultivation, growing, and harvesting of crops and plants, excluding marijuana for commercial use.
- (2) Sustainable and/or restoration forest practices on non-industrial private land in accordance with a plan approved by the Colorado State Forest Service, CSU Extension office, NRCS, or other third-party nationally recognized sustainable certification program that is designated to maintain and enhance ecological processes.
- (3) Raising and breeding livestock, but not including confined animal feedlot operations.
- (4) Harvesting, storage, grading, packaging, distribution, and sale of agricultural commodities occurring at the point of production.

2.1.2.2 Uses associated with Conservation Easements.⁴**2.1.2.3 Accessory uses and structures associated with agricultural and residential uses that do not require a Land Use Permit.²**

- (1) Multiple dwelling units in conjunction with an active Farm and Ranch Use require an agricultural Land Use Permit.
- (2) Approval of a Land Use Permit shall be required prior to commencing a Marijuana Caregiver use.

2.1.2.4 In any Agricultural or Residential district where permitted as a Use by Right (Agricultural/Ranching - AR, Agricultural Estate - AE, Rural Residential - RR, Residential – R, or Planned Unit Development – PUD) one (1) single family detached dwelling or Manufactured Home is allowed and exempt from a land use permit.⁵**2.1.2.5 In any Agricultural or Residential district where permitted as a Use by Right (Agricultural/Ranching - AR, Agricultural Estate - AE, Rural Residential – RR, or Planned Unit Development – PUD) a **second** single family detached dwelling or Manufactured Home is allowed and exempt from a land use permit as long as the lot is three (3) acres or more⁶.**

² Amended October 2016 (Res 2016-62)

³ Amended March 2015; October 2016 (Res 2016-62)

⁴ Amended October 2006 (Res. 2006-29); October 2016 (Res 2016-62)

⁵ Amended June 2018 (Res. 2018-18)

⁶ Amended October 2006 (Res. 2006-29); June 2018 (Res. 2018-18)

2.1.2.6 In the Residential (R) Zoning District or in a Planned Unit Development (PUD), where permitted as a Use by Right, a single **Duplex** is exempt from a Land Use Permit within Maximum Density limits in Table 4 or in the PUD Development Plan.⁷

2.2 REVIEW PROCEDURE

2.2.1 General:

2.2.1.1 All land use changes must be reviewed and approved in accordance with the review process and standards set forth in this Section. Table 1, the Review Process Chart in Section 2.2.2, establishes the required review steps applicable to different forms of approval which may be requested by the applicant. Applicants should refer to the chart to determine which one (1) or more "APPROVAL REQUESTED" under the left-hand column of the chart applies to their proposed development. The required stages of review for each approval are shown on the lines to the right. Submission requirements and the specific review process for each stage are set out in detail in the balance of these Regulations under the appropriate headings. Unless otherwise indicated, amendment or modification of a prior approval follows the procedure for review of the original application.

2.2.1.2 In the event the Planning Commission or other County board or department with authority under this Section recommends denial of an application at any stage, the applicant may choose to proceed to the next stage of review or may resubmit the application at the first stage. In the event the review stage is before the Board of County Commissioners, the application may not be further processed following a denial. If, in the opinion of the Director of County Development, a submittal at any stage of review is incomplete, the matter shall be removed from the agenda and not further processed until deemed complete.

2.2.1.3 At any stage of review of any land use change the Planning Commission, Board of County Commissioners, Board of Adjustment or Director of County Development may require at the applicant's expense the submission of any plan, study, survey or other information, in addition to that specified in these Regulations, as such body or individual may determine necessary to enable it to review and act upon the application or in order to determine whether the application complies with the requirements of these Regulations.

2.2.2 Review Process Chart:

⁷ Amended June 2018 (Res. 2018-18)

TABLE 1: REVIEW PROCESS⁸

	<u>Pre-App</u>	<u>Sketch</u>			<u>Preliminary</u>			<u>Final</u>				
<u>Approval Requested</u>		<u>Staff</u>	<u>PC</u>	<u>BCC</u>	<u>Staff</u>	<u>PC</u>	<u>BCC</u>	<u>Staff</u>	<u>PC</u>	<u>BCC</u>	<u>BOA</u>	<u>Notes</u>
Floodplain Development Permit	M							A ³			APP	³ Sec 10.2.2
Minor O&G Permit	M ¹							M	H ³		APP	¹ Sec 9.2.4.1 ³ Sec 9.2.6.9
Minor S&G Permit	M							A ³			APP	³ Sec 9.1.4
Major O&G Permit	M ¹							M	P	H ³		¹ Sec 9.2.4.1 ³ Sec 9.2.6.10
Major S&G Permit	M							M	H	H ³		³ Sec 9.1.5
Geothermal Exploration Activity Notice	M							A ³		APP		³ Sec 2.5.6.3
Geothermal Resources Permit	M	M ¹						A ³	H ³	H ³		¹ Sec 2.5.6.4 ³ Sec 2.5.6.4 Sec 2.5.6.5 Sec 2.5.6.7
Temporary Use Permit								A ³			APP	³ Sec 3.2.4
Change of Use	M							A ³			APP	³ Sec 3.2.1
Use by Right Site Plan	M							A ³			APP	³ Sec 3.2.2
Conditional Use Permit	M							M ³	H	APP		³ Sec 3.2.3
Board CUP	M							M ³	H	H		³ Sec 3.2.3
Vacation Rental Permit	M							A ⁴	APP	APP		⁴ Sec 3.2.7
Concept Review	M	M		H ¹				M	H	H		¹ Sec 2.2.12
General Development Plan	M	M				H ²		M	H	H		² Sec 2.2.13
PUD	M	M	P ¹		M	H	APP	M	H	H		¹ Sec 3.1.6.2
Rezoning	M							M	H	H ³		³ Sec 3.1.7.3

⁸ Amended October 2016 (Res 2016-62); June 2018 (Res. 2018-18); May 2019 (Res 2019-39); May 2021 (Res. 2021-35); October 2021 (Res. 2021-76)

	<u>Pre-App</u>	<u>Sketch</u>			<u>Preliminary</u>			<u>Final</u>				
<u>Approval Requested</u>		<u>Staff</u>	<u>PC</u>	<u>BCC</u>	<u>Staff</u>	<u>PC</u>	<u>BCC</u>	<u>Staff</u>	<u>PC</u>	<u>BCC</u>	<u>BOA</u>	<u>Notes</u>
Major Subdivision	M	M	P ¹		M	H ²	APP	M	P	H ³		¹ Sec 4.2.3.2 ² Sec 4.3.3 ³ Sec 4.4.3
Minor Subdivision	M	M	A/ P ¹					M	P	H ³		¹ Sec 4.2.3.2 ³ Sec 4.4.3
Rural Land Use Process	M	M	P ¹		M	H	APP	M	P	H		¹ Sec 4.5
Site Specific Development Plan	M									H ³		³ Sec 2.3.1
Amended Plat-Major	M	M	P ¹		M	H ²	APP	M	P	H ³		¹ Sec 4.2.3.2 ² Sec 4.3.3 ³ Sec 4.6.4
Amended Plat-Minor	M	M	A/ P ¹					M	P	H ³		¹ Sec 4.2.3.2 ³ Sec 4.6.4
Minor Lot Line Adjustment	M							M	P	P ³		³ Sec 4.6.4.3
Lot Consolidation	M							M		P ³		³ Sec 4.9.5, Sec 4.10.4
Vacation of Recorded Subdivision	M							M	P	H ³		³ Sec 4.8.3
Subdivision Exemption	M							M		H ³		³ Sec 4.9.3
Legal Lot Certificate	M							A ⁴	APP			⁴ Sec 4.10.4
Access Plan	M							M	P	P ³		³ Sec 5.3.2
Sign Permit	M							A ³			APP	³ Sec 7.1.3
Variences-Administrative	M							A ³			APP	³ Sec 2.4.3
Variences-General	M							M			H ³	³ Sec 2.4.3

Key: **PC** Planning Commission
BCC Board of County Commissioners
BOA Board of Adjustment
M Staff Meeting Required
P Public Meeting Required
H Public Hearing Required (*Noticed*)

A Administrative Approval
PUD Planned Unit Development
O&G Oil and Gas
S&G Sand & Gravel
APP Appeal Permitted

2.2.3 Public Notice Requirements:

The requirements of this Section apply only to public hearings required by these Regulations and as shown on Table 1: Review Process Chart and Table 2: Public Notice Requirements. Where Table 1 indicates that a public meeting (in contrast to a public hearing) is required, this Section does not apply, and notice of such meeting is subject only to the requirements of the Colorado Open Meetings law, C.R.S. §24-6-401, *et seq.*⁹

2.2.3.1 Published Notice. At least two (2) notices in a twenty-one (21) day period prior to any public hearing for a land use change which requires published notice, the Director of County Development shall cause to be published in the legal section of a newspaper of general circulation within the County a notice of such public hearing. The notice shall specify the kind of action requested; the hearing authority; the time, date and location of hearing; and the location of the parcel under consideration, by both address and legal description.

2.2.3.2 Posted Notice. At least twenty-one (21) days prior to any public hearing which requires posted notice, the Director of County Development shall cause to be prepared, and the applicant shall post signs upon the parcel under consideration which provide notice of the kind of action requested; the hearing authority; the time, date and location of hearing; and the location of the parcel by both address and legal description. The signs shall be of a size and form prescribed by the County and shall consist of at least one sign facing, and reasonably visible and legible from, each adjacent public right-of-way. The fact that a parcel was not continuously posted the full period shall not, at the sole discretion of the hearing authority, constitute grounds for continuance where the applicant can show that a good faith effort to meet this posting requirement was made.

2.2.3.3 Mailed Notice. At least twenty-one (21) days prior to any public hearing which requires notification by letter in Table 2 below, the Planning Department shall cause to be sent, by Certificate of Mailing, a letter to: Owners of property whose land abuts the subject property, is within five hundred (500) feet of the subject property, or is separated from the subject property only by a right-of-way or water course, and

- (1) Owners of property included within the application.
- (2) The letter shall include a vicinity map, a short narrative describing the application and an announcement of the date, time and location of the scheduled hearing. The letters shall specify the kind of action requested; the hearing authority; the time, date and location of hearing; and the location of the parcel under consideration by address or approximate address. Failure of a property owner to receive a mailed notice will not necessitate the delay of a hearing and shall not be regarded as constituting inadequate notice.
- (3) For Major Oil and Gas Permit applications, the notice shall also be sent to the owners of any land adjacent to or located within one (1) mile of any portion of the subject site.

⁹ Amended October 2006 (Res. 2006-29); May 2019 (Res. 2019-39)

2.2.3.4 Notice to Mineral Estate Owners and Lessees. For applications requiring a public hearing in Table 1 above—including but not limited to preliminary or final subdivision plats, exemption plats, Conditional Use Permits, Sand and Gravel Permits, and Oil & Gas Permits—the Applicant shall provide notice in accordance with CRS §24-65.5-101 *et seq.* to all owners and lessees of any mineral rights that have been severed from the subject property.¹⁰

- (1) Such notification shall be made not less than 30 days before the initial public hearing on the application for development, and shall, at a minimum, meet the requirements of CRS §24-65.5-103.
- (2) Prior to the initial public hearing, the Applicant shall certify to the Planning Department that the required notice has been provided to the owners and lessees of any mineral rights in accordance with CRS §24-65.5-103.

2.2.3.5 Public Notice Time Requirements. Unless otherwise provided in these Regulations, public notice time requirements include the day the notice is posted, appears in the newspaper, is mailed, and is received by a recipient, and shall also include the day of the public hearing.

2.2.3.6 Public Notice Requirements Chart. Public notice shall be given of all Public Hearings. Table 2 identifies for which requested approvals public notice is required, either by publishing, posting, or mailing.

TABLE 2: PUBLIC NOTICE REQUIREMENT¹¹

Approval Requested	NOTICE REQUIRED		
	Publish	Post	Mail
Appeal Hearing Request	X		
Minor O&G Permit	X	X	X
Major O&G Permit	X	X	X
Major S&G Permit	X	X	X
Access Plan	X	X	
Vacation Rental Permit			X
Conditional Use Permit	X	X	X
Preliminary PUD	X	X	X
Final PUD	X	X	
Rezoning	X	X	X

¹⁰ Amended May 2019 (Res. 2019-39)

¹¹ Amended June 2018 (Res. 2018-18); May 2019 (Res. 2019-39); May 2021 (Res. 2021-35); October 2021 (Res. 2021-76)

Approval Requested	NOTICE REQUIRED		
	Publish	Post	Mail
Subdivision Preliminary Plan	X	X	X
Subdivision Final Plat	X	X	
Site Specific Development Plan	X	X	
Subdivision Vacation	X		
Subdivision Exemption	X	X	
Variance	X	X	X

2.2.4 Application Procedure:

2.2.4.1 Pre-application Conference:

All applicants shall schedule and attend a pre-application meeting with a member of the Planning Department before submitting an application. The purpose of the pre-application meeting is to inform the applicant of the applicable procedures, submittal requirements, development standards, and other pertinent matter before the applicant finalizes the proposal. If a formal permit application is not submitted within six months of the pre-application meeting, a new pre-application meeting must be scheduled before the formal application will be accepted.¹²

- (1) The Director may schedule Pre-Application Conferences by telephone or webcast for relatively routine applications, especially for those that can be completed electronically.

2.2.4.2 Required Forms:

All requests for a land use change shall be submitted utilizing forms provided by the Planning Department.

2.2.4.3 Determination of Completeness:

An application will only be considered complete if it is submitted in the required form and number, including all required information and the applicable fee. If an application is determined to be incomplete, the Planning Department shall provide written notice to the applicant along with an explanation of the application's deficiencies. The Planning Commission review date will not be set until application submittal is deemed complete by the director or his/her designee.¹³ No further processing of the application shall occur until the deficiencies are corrected. If the applicant does not correct the deficiencies within thirty (30) days from receipt of the notice, the application shall be considered withdrawn, and the application shall be returned to the applicant.

¹² Amended June 2018 (Res. 2018-18)

¹³ Amended October 2006 (Res. 2006-29)

2.2.4.4 Fees:

Reasonable fees sufficient to cover the costs of administration, inspection, publication of notice and similar matters will be charged to applicants for Land Use Permits.¹⁴

- (1) The fee schedule will be adopted periodically by the Board of County Commissioners and is available from the Planning Department. Fees shall not be required for projects on property owned by Archuleta County.
- (2) In addition to the application fee, outside consulting fees for expert review may be required. When the Planning Department determines that they are in need of additional technical expertise, in order to conduct a competent analysis of the application, the Planning Department shall be authorized to engage the services of a qualified consultant. These services shall be provided at the applicant's expense. It is anticipated that a determination on whether to use outside consulting services, for the review of an application, will be made during the pre-application meeting.

2.2.5 Review by Referral Agency:

Based upon the specific nature of the application, the Planning Department shall distribute a copy of a completed application to other reviewers, such as other Archuleta County departments and outside review agencies. **The applicable reviewing agencies will have up to twenty-one (21) days to respond for Subdivision Review, or up to fourteen (14) days for other Land Use Permits.** The express purpose of this distribution is to solicit review comments and to ensure the proposal complies with all applicable development standards and requirements.¹⁴

Each review agency shall return its recommendations to the Planning Department in accordance with State Statutes; unless a necessary extension of not more than thirty (30) days has been consented to by the applicant and the Board of County Commissioners. The failure of any agency to respond within the allocated time or within the period of an extension shall, for the purpose of the hearing on the plan, be deemed approval of such application; except that where such application involves twenty (20) or more dwelling units, a school district shall be required to submit within said time limit specific recommendations with respect to the adequacy of school sites and facilities.

Final submission application materials shall, unless the Director of County Planning deems otherwise, be submitted for review only to those referral agencies expressing concerns or making negative recommendations at the general submission stage of review. Any improvements, such as roads or upgrading of existing roads, utilities, etc., or improvements required by the reviewing agencies shall be the responsibility of the applicant.

Outside review agencies can include, but are not limited to, the following:

2.2.5.1 Each county and/or municipality within a two (2) mile radius of any portion of the proposed development.

2.2.5.2 The appropriate school district(s).

¹⁴ Amended June 2018 (Res. 2018-18)

- 2.2.5.3** Any utility (such as, but not limited to, electric, gas and telephone companies), local improvement and service district, or ditch authority.
- 2.2.5.4** The Colorado State Forest Service, when applicable, for identification of specific wildfire hazards and recommendations for control and/or mitigation applicable to the proposed development.
- 2.2.5.5** The local Natural Resource Conservation Service board within the County for explicit review and recommendations regarding soil suitability, flooding problems and watershed protection.
- 2.2.5.6** The Colorado Department of Public Health and Environment and the local health authority, when applicable, for their review of any on-lot sewage disposal adequacy and for review of the adequacy of existing or proposed sewage treatment works to handle the estimated volume of sewage.
- 2.2.5.7** The State Engineer, Colorado Division of Water Resources, for an opinion regarding material injury to decreed water rights and historic use of estimated water yield to supply the proposed development. The State Engineer shall consider the cumulative effect of on-lot wells or water rights and existing wells.
- 2.2.5.8** The Colorado Geological Survey or a qualified Colorado Geologist for an evaluation of those geologic factors which would have a significant impact on the proposed use of the land.
- 2.2.5.9** Other County offices as appropriate.
- 2.2.5.10** Other referral agencies and potentially affected parties as the Director of County Planning may, in the exercise of reasonable discretion determine to be reasonable and appropriate in order to provide the Planning Commission and the Board of County Commissioners with adequate information, including but not limited to the Colorado Department of Transportation, the Colorado Division of Wildlife, the Bureau of Land Management, the Bureau of Indian Affairs, and the U.S. Forest Service.
- 2.2.6 Review by Staff:**
The Planning Department shall review each application pursuant to established review criteria. Based upon the Planning Department’s review and based upon the comments received from the review agencies, the Planning Department shall provide a report, with a recommendation for action, to the appropriate decision-making body. If requested by either the applicant or the Planning Department, submittals shall proceed to a work session(s) with the Planning Commission. Following the work session(s), and the submittal of any additional information or materials that may be required, the Planning Department shall schedule either a formal public meeting or hearing as detailed in Section 2.2.2.

2.2.7 Review by Planning Commission:

The Planning Commission shall conduct either a public meeting or public hearing on an application, as appropriate. The Planning Commission shall consider the application, the relevant support materials, the recommendation of the Planning Department, the recommendations of the outside review agencies, and public input. The Planning Commission, by a majority vote of the quorum present, shall make a decision, or recommend to the Board of County Commissioners to approve, approve with conditions, or deny the application. The Planning Commission can also table the request to a future meeting date.¹⁵

2.2.8 Review by Board of County Commissioners:

The Board of County Commissioners shall conduct either a public meeting or public hearing on an application, as appropriate. After receipt of the recommendations from the Planning Department and the Planning Commission, the Board of County Commissioners shall consider the application, the relevant support materials, the recommendations of the outside review agencies, and the public testimony. The Board of County Commissioners, by a majority vote of the quorum present, shall either approve, approve with conditions, table to a future meeting date, or deny the application.

2.2.9 Review by Board of Adjustment:

The Board of Adjustment shall hear all applications for variances to these Regulations and appeals presented to it for review. The Board of Adjustment shall hold a public hearing and grant or deny variances from the provisions of these Regulations based on the powers set forth in these Regulations.

2.2.10 Computation of Time:

In computing a period of days, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day which is not a Saturday, Sunday or legal holiday. If a number of months is to be computed by counting the months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period ends on the last day of that month.

2.2.11 Expiration of Approval:

2.2.11.1 Unless otherwise specifically provided in these Regulations, any preliminary or final approval as listed in Table 1 shall expire and become null and void if:¹⁵

- (1) Sketch plan or preliminary approvals** shall expire when an application for final approval is not filed within one (1) year of such approval, or a one-time, one (1) year extension of such original approval has not been approved by the Board of County Commissioners; or
- (2) Final Plat approvals** shall expire if not recorded with the Archuleta County Clerk & Recorder within one (1) year, or as more specifically provided in Section 4.

¹⁵ Amended June 2018 (Res. 2018-18)

(3) All other final approvals shall expire when a building permit is not issued for the work authorized (or work is not substantially begun on a project not requiring a building permit) within one (1) year from the date of final approval, if work is ceased for a period of one hundred eighty (180) days or more at any time after work is commenced.

a. Applicant may apply for a one-time, one (1) year extension of such original approval, to be approved by the Board of County Commissioners.

2.2.11.2 Should a final approval expire (for a project other than Final Plat approval) for which final approval has been granted according to Sec. 2.2.11.1 above, the Planning Commission or Board of County Commissioners, as appropriate in the manner required for final review, shall hold a public hearing to confirm whether the zoning and/or permitted use of the property shall revert to that in place prior to the (expired) approval, or whether a one-time, one (1) year extension of such original approval may be granted.

2.2.11.3 After approval has expired, no work shall be commenced until the developer has received new approval pursuant to the procedures set forth in these Regulations.

2.2.11.4 Any issued Land Use permit shall expire if the work authorized is not commenced within one year from the date of issuance.

2.2.12 Appeal Hearings.¹⁶ Where it is alleged by an applicant that there is error in any order, requirement, condition, decision, or refusal made by a Decision-Making Body in the enforcement of these Regulations, and if allowed in “Table 1: Review Process,” an Appeal Hearing may be requested.

2.2.12.1 The request for an Appeal Hearing must be made within thirty (30) days after the occurrence of the grievance or decision that is the subject of the appeal.

2.2.12.2 All Appeal Hearings must be requested in writing to the Planning Department. An Appeal Hearing Request is not considered complete until full payment of all appeal fees is received. Every Appeal Hearing Request must include:

- (1)** The details of the decision being appealed;
- (2)** Regulation(s) (and relevant sections) impacting the appeal;
- (3)** Grounds upon which the appeal is being sought;
- (4)** Evidence supporting the claim; and
- (5)** Relief requested.

2.2.12.3 Due to the requirement for published public notice (per Sec 2.2.3.1), Appeal Hearings will be added to the first available agenda that is at least thirty (30) days after the Appeal Hearing Request is deemed complete.

2.2.12.4 Standards for the Granting or Denial of all appeals will be reviewed as to the preponderance of the evidence presented and in consideration of the applicable criteria

¹⁶ Amended October 2021 (Res. 2021-76)

and standards for approval from the Type of Approval originally requested.

2.2.12.5 Members of the Decision-Making Body hearing an appeal must recuse themselves from the hearing if they have participated in prior ex-parte conversations on the matter with any involved party.

2.2.13 Concept Review¹⁷

Concept or Conceptual Development Plan review is a very preliminary review of a conceptual proposal which may have potential for major impacts to the community. Such impacts may result from a major subdivision or PUD and such proposals may be referred for Concept Review. Requests for Concept Review may originate from the Applicant, the Planning Department or the Board of County Commissioners with the Planning Department as the final decision making authority on the appropriateness of Concept Review process for such application. Concept Review shall be utilized when Applicant is seeking *Vested Rights*; however, the Concept Review is in addition to and will not substitute for the minimum Statutory requirements for achieving Vested Rights.

By participating in Concept Review, Applicants, their agents and assigns waive any and all claims against Archuleta County arising out of, touching upon, or concerning the Concept Review including but not limited to claims based in promissory estoppel or detrimental reliance.

2.2.13.1 Application contents:

A complete application for a Concept Review shall contain a draft Development Agreement; a map depicting the general layout of the property; adequate detail regarding number of units, non-residential square footage, open space, access, amenities, and any other pertinent details that the Board may need to consider the Concept.

2.2.13.2 Concept Review process:

The process for Concept Review shall follow the proper notice requirements under Section 2.2.3. A properly noticed Concept Review shall be heard by the Board of County Commissioners at a Special Meeting where public comment may or may not be taken. A final vote shall only indicate the Board's general guidance for the project and shall not grant any rights, implied or otherwise, for the proposal.

The Board, after hearing a Concept Review, may refer it to the Planning Department and/or the Planning Commission as a General Development Plan review or may refuse to endorse the concept with or without comments or additional guidance.

2.2.14 General Development Plan:¹⁷

A General Development Plan is a plan for which the Board seeks additional detailed input and feedback from the Planning Commission prior to hearing the Applicant's request to obtain any land use rights such as Vested Rights for the property. A General Development Plan review shall provide more detail than in Concept review so that a more thorough evaluation may occur to provide informed advice to the Board of County Commissioners.

¹⁷ Amended December 2008 (Res. 2009-58)

2.2.14.1 General Development Plan shall apply to those applications which have been referred by the Board to the Planning Department and the Planning Commission for additional evaluation and advice.

2.2.14.2 Application Contents. The General Development Plan shall include at a minimum the Concept Plan plus additional details including but not limited to:

- (1) Land Use application
- (2) Narrative
- (3) Clearly defined development tracts or parcels
- (4) Open space designations and descriptions of public and private open space and protection of resources
- (5) Non-residential square footages
- (6) Access and roadways
- (7) Planned provision of infrastructure (water and sewer)
- (8) Critical resources inventory (rivers, slopes, viewsheds, wildlife, scenery, etc.)

2.2.14.3 General Development Plan review process shall include a properly noticed proposal which will be presented to the Planning Commission at a regularly scheduled meeting and at which there will be public comment taken for consideration and discussion among the Commissioners regarding the project before providing Staff with feedback on the proposal to be forwarded to the Board of County Commissioners.

The Planning Commission will vote on the item providing comments and/or feedback to the Developer which will also be forwarded to the Board of County Commissioners for their consideration along with their subsequent hearing of the item.

2.3 VESTED PROPERTY RIGHTS

2.3.1 Generally:

For those developments for which the landowner wishes the creation of vested rights, under CRS §24-68-101 *et. seq.*, Applicant shall complete a Land Use Permit for review and approval by the board of County Commissioners at a public hearing, as provided in Table 1 in Section 2.2.3, after all other required stages of the development review process.¹⁸

2.3.1.1 Failure of the landowner to apply for such a hearing at least thirty days prior to such approval renders the approval not a “site specific development plan”, and no vested rights shall be deemed to have been created. The provisions of this Section shall apply only to a PUD, Major or Minor Subdivision final approval, and only to the extent the landowner requests a hearing to create vested rights as provided herein. The Board of County Commissioners may by agreement with the developer designate an approval other than or in addition to those described above to serve as the site specific development plan approval for a specific project.

2.3.2 Notice and Hearing:

¹⁸Amended May 2019 (Res. 2019-39)

No Site-Specific Development Plan shall be approved until after a public hearing before the Board of County Commissioners, preceded by written notice as provided in Table 2 in Section 2.2.3. Such notice may, at the County’s option, be combined with the notice required by CRS §30-28-116 for amending regulations, or with any other required notice. At such hearing, interested persons shall have an opportunity to be heard.¹⁹

2.3.3 Approval-Effective Date-Amendments and Conditions:

A site-specific development plan shall be deemed approved upon the effective date of the Board of County Commissioners’ approval action relating thereto, as set forth above. In the event amendments to a site specific development are proposed and approved, the effective date of such amendments, for purposes of the duration of a vested property right, shall be the date of the approval of the original site specific development plan, unless the Board of County Commissioners specifically finds to the contrary and incorporates such finding in its approval of the amendment. The approval may include such terms and conditions as may be reasonably necessary to protect the public health, safety and welfare, and failure to abide by such terms and conditions may, at the option of the County, and after public hearing, result in the forfeiture of vested property rights.

2.3.4 Notice Of Approval:

Each map, plat, or site plan or other document constituting a site specific development plan shall contain the following language: “Approval of this plan may create a vested property right pursuant to Article 68 of Title 24, C.R.S., as amended.” Failure to contain this statement shall invalidate the creation of the vested property right.

2.3.4.1 In addition, a notice describing generally the type and intensity of use approved, the specific parcel or parcels of property affected and stating that a vested property right has been created shall be published once, not more than fourteen (14) days after approval of the site specific development plan, in a newspaper of general circulation within the County. The applicant shall be responsible for publication of the notice.¹⁹

2.3.5 Payment Of Costs:

The applicant seeking approval of a site specific development plan as provided herein shall pay all applicable fees and costs as may be required by these Regulations. The applicant shall also be responsible for the publication costs of any required public notice and shall present the original paid statement from the newspaper prior to the hearing date.

2.3.6 Other Provisions Unaffected:

Approval of a site-specific development plan shall not constitute an exemption from or waiver of any other provisions of this code pertaining to the development and use of property.

2.3.7 Revocation:

The Board of County Commissioners may revoke a vested property right for failure to abide by the terms and conditions of such vested property right. Prior to taking action to revoke a vested property right, the Board of County Commissioners shall provide a hearing to the affected landowner and shall provide at least fourteen (14) days prior written notice mailed to the property owner’s address of record of the County Assessor’s office as well as provide notice in

¹⁹Amended May 2019 (Res. 2019-39)

the same manner as the posting or publishing of ordinances and resolutions. The mailed notice to the landowner shall specifically identify the terms and conditions which are not in compliance with the site specific development plan approval. During the period of determining compliance with the terms and conditions of site specific development plan approval, the County may administratively withhold any building, utility, excavation, road cut or other County permit, and may withhold acceptance of additional development applications or processing of existing development applications for the property subject to the site specific development plan.

2.3.8 Governing Law:

A pending site specific development plan application will be governed by the duly adopted laws and regulations in effect at the time the application is submitted, with the exception that the County reserves the right pursuant to Section 24-68-102.5(2), C.R.S., to enforce new or amended laws or regulations to pending applications when such law or regulations necessary for the immediate preservation of public health and safety, including temporary development restrictions duly adopted by resolution of the Board of County Commissioners for the purposes of preparing planning studies and considering land use regulations related to public health and safety or for the purpose of promoting concurrency of essential public infrastructure, equipment or services with increased demand.

2.3.9 Limitations:

Nothing in this Section is intended to create any vested property right, but only to implement the provisions of Section 24-68-101, *et seq.*, C.R.S. In the event of the repeal of said statute, or a judicial determination that it is invalid or unconstitutional, this Section 2.3 shall be deemed to be repealed and the provisions hereof no longer effective.

2.4 VARIANCES

2.4.1 Variances may be granted from portions of these Regulations where the applicant can clearly demonstrate that because of peculiar conditions, the literal enforcement of one or more of these regulations is impractical or will exact undue hardship.

2.4.1.1 Such variances shall be heard by the Board of Adjustment (BOA) as provided in Section 1.2.4.

2.4.1.2 An Administrative Variance can be reviewed and approved by Staff to vary from a required setback in Table 4 or PUD Development Plan, when the request does not encroach on any easement.²⁰

- (1) The property owner or designated agent shall obtain and furnish to the Planning Department written verifications of consent from:
 - a. Any affected property owner adjacent to the side(s) of the property where the setback encroachment is proposed.
- (2) Where the property owner owns both sides of a lot line or easement, they may provide their own written verification of consent for variance of a setback from a lot line or access easement (but not to encroach on any easement).

2.4.2 Submittal Requirements:

The applicant shall submit to the Planning Department a completed application for a variance, payment of the non-refundable application fee, and all required data which at the sole discretion of Planning Staff may include but not be limited to: photographs, surveys showing all easements or other plan drawings by a licensed surveyor, narrative detailing why the variance is needed, ownership records, tax receipts and anything that may be needed to make an informed determination.

2.4.3 Review Procedure:

2.4.3.1 The Planning Director shall prepare a written report and present it to the Board of Adjustment for decisions on Variances.²¹

- (1) Planning Staff may seek the advice of any affected utility companies and/or property/home owners' associations and/or contiguous, affected property owner(s).
- (2) For an Administrative Variance, the written notice and request for verification of consent should include but not be limited to: property location by block and lot if applicable and by address if available; a map showing property highlighted, and a copy of proposed plans. If the applicant cannot obtain written consent from required respondents, the Variance request shall be processed through the Board of Adjustment.

²⁰ Amended Jul 2010 (Res. 2010-32); Jun 2018 (Res. 2018-18); May 2019 (Res. 2019-39); Oct 2021 (Res. 2021-76)

²¹ Amended July 2010 (Res. 2010-32); June 2018 (Res. 2018-18)

2.4.3.2 Standards for the Grant or Denial of Variances:²²

- (1) The BOA may grant a variance from dimensional standards of this Regulation, or Planning Staff may grant an administrative variance, if all of the following are found to exist:
 - a. Peculiar and exceptional practical difficulties or an unnecessary and unreasonable hardship will be imposed on the property owner if the provisions of these Regulations are strictly enforced.
 - b. Circumstances creating the hardship were created subsequently through no fault of the appellant.
 - c. That the property for which a variance is requested possesses exceptional narrowness, shallowness, shape or topography or other extraordinary and exceptional situation or condition which does not occur generally in other property in the same zoning or overlay district.
 - d. That the variance, if granted, will not diminish the value, use or enjoyment of the adjacent properties, nor curtail desirable light, air and open space in the neighborhood, nor change the character of the neighborhood.
 - e. The variance, if granted, will not be directly contrary to the intent and purpose of these Regulations or the *Community Plan*.
- (2) Variance from Floodplain Development Standards may be granted as provided in Section 10—Floodplain Regulations.
- (3) Under no circumstances shall a variance be granted on the sole basis of personal convenience, profit or special privilege to the applicant.
- (4) Under no circumstance shall the BOA grant a variance to allow a use not permissible under the terms of these Regulations in the appropriate zone district.
- (5) Variances shall be granted only with respect to specific plans. Unless otherwise specified by the BOA, a variance may be transferred to successive owners prior to construction if no changes are made to the approved plan and shall run with the land after the construction of any authorized structure or structures and only for the life of such structures.
- (6) In order to insure that the protection of the public good and the intent and purpose of these Regulations is preserved, the BOA may impose any condition upon the grant of a variance, including those categories of conditions which may be placed upon Conditional Use Permits under Section 3 of these Regulations.
 - a. The BOA may condition the granting of a variance on the issuance of a building permit within a specific time period and may require the applicant to pursue completion of the construction with due diligence. If such conditions are not satisfied, the variance shall become null and void.

²² Amended June 2018 (Res. 2018-18)

2.5 AREAS AND ACTIVITIES OF STATE INTEREST

2.5.1 General Provisions:

2.5.1.1 Purpose and Findings:

The purpose and intent of these Regulations is to facilitate identification, designation, and administration of matters of state interest consistent with the statutory requirements and criteria set forth in Section 24-65.1-101, *et seq.*, C.R.S. The Board of County Commissioners, Archuleta County, State of Colorado, finds that:

- (1) The notice and public hearing requirements of Section 24-65.1-404, C.R.S. have been followed;
- (2) These Regulations are necessary because of the intensity of current and foreseeable development pressures on and within this County; and
- (3) These Regulations were adopted after taking into consideration applicable guidelines adopted and issued by the Colorado Land Use Commission;

2.5.1.2 Authority:

These Regulations are authorized by, inter alia, Section 24-65.1-101, *et seq.*, C.R.S.; Section 30-28-101, *et seq.*, C.R.S.; Section 30-28-201, *et seq.*, C.R.S.; Section 29-20-101, *et seq.*, C.R.S.; and Section 24-32-111, C.R.S. These Regulations are necessary for the preservation of the public health, safety and welfare.

2.5.1.3 Applicability:

These Regulations shall apply to all proceedings concerning identification and designation of any developments in any area of state interest or any activity of state interest which has been or may hereafter be designated by the Board of County Commissioners of the Archuleta County. Except as otherwise provided herein, these Regulations apply to the entire unincorporated territory of Archuleta County. These Regulations interpret and apply to any regulations adopted for specific areas of state interest and specific activities of state interest which have been or may be designated by the Board of County Commissioners of Archuleta County.

2.5.1.4 Exemptions:

The portions of these Regulations authorized exclusively under Section 24-65.1-101, *et seq.*, C.R.S., shall not apply to any development in an area of state interest or any activity of state interest if, on the effective date of their adoption:

- (1) The specific development or activity is covered by a current building permit issued by Archuleta County;
- (2) The specific development or activity has been approved by the electorate of Archuleta County;
- (3) The specific development or activity is to be on land which has been finally approved for Planned Unit Development or for a use substantially the same as

Planned Unit Development;

- (4) The specific development or activity is to be on land which has been zoned in response to an application which specifically contemplated said specific development or activity; or
- (5) The specific development or activity is to be on land with respect to which a plan for that development or activity has been conditionally or finally approved by Archuleta County.

2.5.1.5 Relationship of Regulations to County, State and Federal Requirements:

- (1) Whenever these Regulations are found to be inconsistent with any other resolution, ordinance, code, regulation, or other enactment of Archuleta County, the enactment imposing the more restrictive standards or requirements shall control.
- (2) In the event these Regulations are found to be less stringent than the statutory criteria for administration of matters of state interest set forth in Section 24-65.1-202, C.R.S., the statutory criteria shall control.
- (3) In the event these Regulations are found to be more stringent than the statutory criteria for administration of matter of state interest set forth in Sections 24-65.1-202 and 24-65.1-204, C.R.S., these regulations shall control pursuant to the authority of Section 24- 65.1-402(3), C.R.S.
- (4) These Regulations are intended to be applied in addition to, and not in lieu of, all other regulations of Archuleta County.
- (5) Permit requirements included in these Regulations shall be in addition to all applicable state and federal water quality laws, rules and regulations, including but not limited to the following:
 - a. Section 28-8-702, C.R.S., sewage treatment plant site approval;
 - b. Section 25-8-501, C.R.S., point source pollutant discharge permit;
 - c. Section 208 (33 U.S.C. Section 1288) area-wide wastewater treatment management planning;
 - d. Section 303 (33 U.S.C. Section 1313) river basin water quality management planning;
 - e. Disposal of sewage sludge (33 U.S.C. Section 1345);
 - f. Section 32-1-201, C.R.S., Special District Control Act;
 - g. 16 U.S.C. Section 661-666(c) (1970), the Fish and Wildlife Coordination Act;
 - h. Section 102(c) 42 U.S.C. Section 4321, et seq., the National Environmental Policy Act; and
 - i. Section 404 of the Federal Clean Water Act.

Nothing in these Regulations shall be construed as enhancing or diminishing the rights and procedures with respect to the power of a public utility to acquire property and rights-of-way by eminent domain to serve public need in the most economical and expedient manner.

2.5.1.6 Maps:

The following maps are fully incorporated herein by this reference:

2.5.1.7 Duties of the Board of County Commissioners:

Unless otherwise specifically provided, it shall be the duty of the Board of County Commissioners of Archuleta County to perform all functions pertaining to matters of state interest.

2.5.1.8 Definitions:

For the purposes of this Section 2.5, the words and terms herein shall have the meanings set forth below unless the context requires otherwise:

- (1) Designation: That legal procedure specified by Section 24-65.1- 401, *et seq.*, C.R.S., carried out by the Board of County Commissioners.
- (2) Development: Any construction, activity, or change in activity which changes the basic character or the use of the land on which the construction activity or change occurs.
- (3) Legal description: Any description from which it is possible to locate accurately on the ground the boundaries of the land being described.
- (4) Matter of state interest: An area of state interest or an activity of state interest or both
- (5) Permit Authority: The Board of County Commissioners.
- (6) Person: Any private individual, partnership, corporation, association, company, or any public or corporate body, including the state and federal government, and includes any political subdivision, agency, instrumentality, or corporation thereof.
- (7) Receipt of Application: The time at which the completed application is accepted by the Permit Authority.

2.5.2 Designation of Matter of State Interest:**2.5.2.1** Designations and amendments of designations may be initiated in two ways:

- (1) The Board of County Commissioners may in its discretion designate and adopt regulations for the administration of any matter of state interest.
- (2) The Archuleta County Planning Commission may on its own motion or upon request by the Board of County Commissioners recommend the designation of matters of state interest. The Board of County Commissioners shall decide, in its sole discretion, whether or not to designate any or all of the requested matters of state interest.

2.5.2.2 Public Hearing Required:

The Board of County Commissioners shall hold a public hearing before designating any matter of state interest and adopting regulations for the administration thereof. Said hearing shall be held not less than thirty (30) days nor more than sixty (60) days after the giving of public notice of said hearing.

2.5.2.2 Notice of Public Hearing, Mailing List, Publication:

The Board of County Commissioners shall prepare a notice of the designation hearing which shall include:

- (1) The time and place of the hearing;
- (2) The place at which materials relating to the matter to be designated and any guidelines and regulations for the administration thereof may be examined;
- (3) The telephone number where inquiries may be answered;
- (4) A description of the area or activity proposed to be designated in sufficient detail to provide reasonable notice as to property which would be included.

2.5.2.4 The Board of County Commissioners shall maintain a mailing list of those persons requesting they be placed on the list and paying to the Clerk an annual fee of twenty-five dollars (\$25.00) to cover the costs of production, handling and mailing of notices of all hearings pursuant to Sections 24-65.1-404 (2)(b) and 24-65.1-501(2)(c), C.R.S. In order to have a name and address retained on the list, the person shall resubmit their name and address and pay said annual fee before January 31 of each year.

2.5.2.5 At least thirty (30) days but no more than sixty (60) days before the public hearing, the Board of County Commissioners shall publish the notice in a newspaper of general circulation in the County and shall mail the notice by first class mail to each of the following:

- (1) State and federal agencies, as deemed appropriate in the discretion of the Board of County Commissioners;
- (2) Persons on the mailing list (subsequent to the initial adoption of guidelines and regulations);
- (3) In the discretion of the Board of County Commissioners, members of the news media and any other person considered likely to be affected by the proposed designation; and
- (4) If any other local governmental jurisdiction would be directly or indirectly affected, the proposed designation similarly may be mailed to such government in the sole discretion of the Board of County Commissioners.

2.5.2.6 Matters to be Considered at Designation Hearing:

At the public hearing, the Board of County Commissioners shall receive into the public record:

- (1) Testimony and evidence from all persons or organizations desiring to appear and be heard, including County staff;
- (2) Any documents that may be offered; and
- (3) The recommendations of the Archuleta County Planning Commission, if any.

2.5.2.7 Record of Designation Proceeding:

The Board of County Commissioners shall collect and preserve the following record of the public hearing:

- (1) A copy of the notice of the hearing;
- (2) The certificate of publication of the notice of the hearing and a listing of all persons to whom the notice was mailed;
- (3) The names and addresses of persons who presented written or oral statements or offered documentary evidence;
- (4) Any written statements or documents presented in support of or in opposition to the proposed designation of the matter of state interest;
- (5) Any recording or transcript of the hearing which has been prepared pursuant to Section 2.5.2.11;
- (6) The order of designation of the area or activity of state interest; and
- (7) A map or maps depicting each area of state interest designated.

Any person may, at his or her own expense, provide for the recording of the hearing and transcription thereof, provided, however, that a copy of the recording or transcript thereof, if transcribed, shall be furnished free of charge to the Board of County Commissioners and shall become part of the record.

2.5.2.8 Adoption of Designation and Regulations:

- (1) At the conclusion of the hearing, or within thirty (30) days thereafter, the Board of County Commissioners may adopt, adopt with modification, or reject the proposed designation which was the subject of public hearing.
- (2) In making any such designation, the Board shall take into consideration:
- (3) All testimony, evidence and documents taken and admitted at the public hearing;

- (4) The intensity of current and foreseeable development pressures in the Archuleta County; and
- (5) Reasons why the particular area or activity is of state interest, the dangers that would result from uncontrolled development of any such area or uncontrolled conduct of such activity, and the advantages of development of such area or conduct of such activity in a coordinated manner.

2.5.2.9 In the event the Board of County Commissioners finally determines that any matter is a matter of state interest, it shall be the Board's duty, acting by resolution, to designate such matter and adopt regulations for the administration thereof.

2.5.2.10 Each designation order adopted by the Board of County Commissioners shall:

- (1) Specify the boundaries of the designated area of state interest or the boundary of the area in which an activity of state interest has been designated;
- (2) State reasons why the particular area or activity is of state interest, the dangers that would result from uncontrolled development of any such area or uncontrolled conduct of such activity, and the advantages of development of such area or conduct of such activity in a coordinated manner.

2.5.2.11 Recording of Notice of Designation:

A notice of the designation shall be certified by the Board of County Commissioners to the County Clerk and Recorder for filing in the same manner as any document affecting real property.

2.5.2.12 Effect of Designation - Moratorium Until Final Determination:

After a matter of state interest is designated pursuant to this Section 2.5.2, no person shall engage in development in such area and no such activity shall be conducted until the designation and regulations for such area or activity are finally determined as required by Section 24-65.1-404(4), C.R.S.

2.5.3 Permit Authority:

2.5.3.1 Permit Authority Established:

The Archuleta County Permit Authority is hereby established, the members of which shall be the Board of County Commissioners. The Permit Authority shall exercise all powers and duties granted herein.

2.5.3.2 Permits Required After Designation; Receipt of Application Form:

- (1) Any person desiring to engage in a development in a designated area of state interest or to conduct a designated activity of state interest must apply for and obtain a permit from the Permit Authority, and maintained in the office of the County Clerk. In the event a development or activity is proposed as an integral part of a subdivision or Planned Unit Development, it shall be the responsibility of the service provider and/or developer to comply with the requirements of these Regulations.

- (2) An application shall not be accepted unless it is complete. A request for waiver of submission requirements shall not render the application incomplete. If the application is considered incomplete by the Permit Authority, the Permit Authority shall specify what additional information is required. An application need not meet the submission requirements for other than the particular development alternative for which a permit is being sought in order to be considered complete. When a submitted application is considered to be complete by the Permit Authority, the Permit Authority shall note upon the application the date and hour of its receipt.
- (3) When an applicant seeks a permit to engage in development in more than one area of state interest and/or to conduct more than one activity of state interest and/or to engage in development in one area of state interest and to conduct one activity of state interest, a single application may be completed for all such activities or developments and may be reviewed by the Permit Authority in one consolidated hearing.

2.5.3.3 Waiver of Submission Requirements:

- (1) The Permit Authority may waive any part but not all of the submission requirements imposed by these Regulations upon petition of the applicant that full compliance with the submission requirements would be unreasonably burdensome and that the submission requirements so waived would not address or disclose a substantial impact on the County or its residents. When an applicant is applying for permits under separate section of these Regulations, submission requirements, where identical, may be combined. A waiver of submission requirements may be granted by the Permit Authority upon a written determination that the information to be submitted is sufficient for the Permit Authority to arrive at a permit decision in full compliance with the law and these Regulations.
- (2) The petition shall be considered and the decision rendered by the Permit Authority at a public hearing held in substantial compliance with the provisions of Section 2.5.4.1.
- (3) In the event the waiver request is denied, the applicant shall provide the required additional information on or before ten (10) days prior to the date set for hearing of the application itself. If the applicant fails to provide such information, the Permit Authority may in its discretion vacate the public hearing on the application and require complete reapplication, or may continue the hearing in accordance with Section 2.5.4.4(1).

2.5.3.4 Intergovernmental Agreements:

Upon the request of the State of Colorado or a political subdivision of the state, as defined by Section 29-1-202(1), C.R.S., proposing to engage in an activity of state interest, the requirements of these Regulations may be met by the approval of an intergovernmental agreement between the County and the state or political subdivision applicant. The County may, but shall be under no obligation to, approve such an intergovernmental agreement in lieu of a permit application and review as provided

herein. In the event such an agreement is approved by the County, no permit application to conduct the activity of state interest shall be required, provided that all of the following conditions are met:

- (1) The state or political subdivision applicant and the County must both be authorized by Article XIV, Section 18(2) of the Colorado Constitution and Sections 29-1-201 *et seq.*, 29-20-105 and 29- 20-107, C.R.S., to enter into the agreement.
- (2) The purpose and intent of these Regulations must be satisfied by the terms of the agreement.
- (3) A public hearing must be conducted by the Permit Authority in conformance with Section 2.5.4 [with the exception that the references to "permit application" in shall be deemed replaced with "proposed intergovernmental agreement"]. Prior to the hearing, the Board of County Commissioners shall approve the form of any proposed intergovernmental agreement, provided, however, that the final approval of the agreement shall take place at the conclusion of or subsequent to the public hearing. The public hearing shall be for the purpose of taking comment upon the proposed intergovernmental agreement, the provisions of which have been determined to be acceptable to the applicant and to the County.
- (4) Both the Permit Authority and the governing body of the state or political subdivision applicant must approve the agreement in the manner required of each of them by the Colorado Constitution, statutes and any applicable charter, ordinance or resolution.
- (5) Exercise of the provisions of this Section 2.5.3.4 by the state or political subdivision applicant will not prevent that entity from electing at any time to proceed under the permit provisions of these Regulations. Additionally, any entity which has previously proceeded under the permit provisions of these Regulations may at any time elect to proceed instead under this Section.

2.5.4 Permit Hearing:

2.5.4.1 Notice of Permit Hearing:

Not later than thirty (30) days after receipt of a completed application for a permit, the Permit Authority shall set and publish notice(s) of the date, time and place for hearing(s) on said application and any required separate hearing on any requested waiver of submission requirements. The notice of the public hearing shall be published once in a newspaper of general circulation in Archuleta County, not less than thirty (30) nor more than sixty (60) days before the date set for hearing and shall also be given to other persons and entities in the same manner as set forth for the notice of a designation hearing in Section 2.5.2.3.

2.5.4.2 Conduct of Permit Hearing:

- (1) The Permit Authority shall conduct the public hearing in a manner affording procedural due process to the applicant, supporters of the project and any person who opposes issuance of the permit.

- (2) The Permit Authority shall hear testimony and receive evidence, including:
 - a. The recommendations of the Archuleta County Planning Commission, if any;
 - b. Testimony and evidence from any and all persons or organizations desiring to appear and be heard, including County staff; and
 - c. Any documents that may be offered.

- (3) Although the Colorado Rules of Civil Procedure do not govern the conduct of the hearing, all persons appearing at the hearing, in person or by counsel, shall be afforded the right of cross-examination as well as reasonable opportunity to offer evidence in rebuttal.

- (4) Any person may, at his or her own expense, provide for the recording of the hearing and transcription thereof, provided, however, that a copy of the recording or transcript thereof, if transcribed, shall be furnished free of charge to the Permit Authority and shall become part of the record.

- (5) The Permit Authority shall collect and preserve the following record of the public hearing:
 - a. The permit application;
 - b. A copy of the notice of the hearing, the certificate of publication of the notice of hearing, and a listing of all persons to whom the notice was mailed;
 - c. Any written statements or documents presented in support of or in opposition to the permit application;
 - d. The names and addresses of all persons who presented oral or written statements, appeared as witnesses, or offered documentary evidence;
 - e. Any recording or transcript of the hearing.
 - f. Written minutes of the Permit Authority relating to the public hearing;
 - g. The resolution of the Permit Authority granting or denying the permit application; and
 - h. A copy of the permit, if issued.

2.5.4.3 In cases in which the development or activity must also comply with other provisions of the County land use regulations, the permit hearing required by these Regulations may be held at the same time as the final hearing required for such other approvals.

2.5.4.4 Action on Permit Application:

- (1) If the Permit Authority finds that there is not sufficient information concerning any material feature of a proposed development or activity, it may deny the application or it may continue the hearing until the additional information has been received. However, no such continuance may exceed sixty (60) days unless agreed to by the applicant.

- (2) The Permit Authority shall approve an application for a permit to engage in development in an area of state interest or for the conduct of an activity of state interest if the proposed development or activity complies with the provisions of the guidelines and regulations governing such area or activity. The Permit Authority

may attach reasonable conditions to its approval. If the proposed development does not comply with the guidelines and regulations governing the area or activity, the permit shall be denied.

- (3) The burden of proof shall be upon the applicant to show compliance with the provisions of these Regulations governing the area or activity of state interest involved.
- (4) The Permit Authority shall state, in writing, reasons for its decision on a permit application, and its findings and conclusions.
- (5) The Permit Authority shall reach a decision on a permit application within one hundred twenty (120) days after the completion of the permit hearing, or the permit shall be deemed approved.

2.5.4.5 Issuance, Revocation or Suspension of Permits:

- (1) **Issuance of Permits:**
 - a. The permit shall be issued on the form adopted by the Board of County Commissioners.
 - b. The permit may be issued for an indefinite term, or for a specific period of years.

2.5.4.6 Revocation or Suspension of Permits

- (1) In the event the Permit Authority has reason to believe that the provision of any permit or the terms of any regulation for administration have been violated by the holder of the permit, the Permit Authority may temporarily suspend the permit for a period of thirty (30) days. Before imposing such a temporary suspension, the Permit Authority shall give the permit holder written notice of the specific violation and shall allow the permit holder a period of at least fifteen (15) days to correct the violations. If the permit holder does not concur that there is a violation, he shall, within fifteen (15) days of his receipt of such notice, show cause to the Permit Authority why temporary suspension should not be ordered. A hearing shall be held within said thirty (30) day period.
- (2) Prior to or subsequent to a temporary suspension, the Permit Authority may permanently revoke or suspend the permit after conducting a public hearing in substantially the same manner and after substantially the same notice as for permit hearings, and if it finds:
 - a. A violation of any provision or condition of approval of the permit or applicable regulation for administration of the matter of state interest concerned; or
 - b. The applicant has failed to take substantial steps to initiate the permitted development or activity within twelve (12) months from the date of the permit, or, if such steps have been taken, the applicant has failed to complete the development or activity or any condition of permit approval with reasonable diligence. "Substantial steps" do not require construction activity and may include, among other things, legal or administrative proceedings and activities

directly associated with the Applicant's project. An extension of the time within which substantial steps to initiate the permitted development or activity need be taken may be granted by the Permit Authority upon the request of the applicant and a showing of good cause therefore.

- 2.5.4.7** Upon good cause shown, any revoked or suspended permit may be reinstated, within twelve (12) months after revocation or suspension.

2.5.5 Annual Review:

2.5.5.1 Within thirty (30) days prior to each annual anniversary date of the granting of a permit, the permittee shall submit a report detailing all past activities conducted by the permittee pursuant to the permit including a satisfactory showing that the permittee has complied with all conditions of the permit and applicable regulations. The permittee need not inform the Permit Authority of activities, such as operational changes, which are not the subject of a permit condition.

2.5.5.2 The Permit Authority shall review the report within thirty (30) days from the date of submittal thereof. If the Permit Authority determines that the permittee is likely to have violated the provisions of the permit and/or applicable regulations, it shall consider the matter at a scheduled public hearing. If the Permit Authority determines at the public hearing that the permittee has violated the provisions of the permit and/or applicable regulations, the Permit Authority may suspend and/or revoke the permit.

2.5.5.3 Upon notice to the Permit Authority of the fulfillment of all permit conditions, and the Permit Authority's concurrence therein, the Permit Authority shall terminate any annual review requirements.

2.5.5.4 The Permit Authority may waive or modify the annual review requirements upon petition of the permittee and a showing of good cause therefore.

2.5.6 Guidelines and Regulations for the Use of Geothermal Resources for Commercial Production of Electricity:²³

2.5.6.1 General Provisions

(1) Title and Citation: These Regulations are entitled "Guidelines and Regulations for the Use of Geothermal Resources for Commercial Production of Electricity," or "Regulations."

(2) Applicability: These Regulations shall apply to the use and only to the use of geothermal resources for the commercial production of electricity ("Commercial Use of Geothermal Resources") on public or private lands, located wholly or partially within the unincorporated areas of Archuleta County. The Commercial Use of Geothermal Resources may only be located in a zoning district where such use is

²³ Amended May 2014 (Res. 2014-23)

allowed, including where allowed by a conditional land use permit, or by another review process identified in the Land Use Code.

- a. No person may engage in Commercial Use of Geothermal Resources without first obtaining either a Permit or a Statement of No Impact under these Regulations. No person may engage in exploration for geothermal resources for commercial use without filing an Activity Notice under these Regulations.
- b. The County shall not issue any building permit or grant other approvals for Commercial Use of Geothermal Resources subject to these Regulations without the applicant having first obtained a Permit or a Statement of No Impact under these Regulations
- c. Any permit or Statement of No Impact issued under these Regulations shall be deemed to satisfy all requirements and take the place of a Conditional Use Permit as may be required under Table 3 and Section 3.2.3 of the Land Use Regulations.

(3) Exemptions from These Regulations:

- a. **Statutory Exemptions:** These Regulations shall not apply to any development in an area of state interest or any activity of state interest which meets any one of the following conditions as of May 6, 2014:
 1. The development or activity is covered by a current building permit issued by the appropriate local government; or
 2. The development or activity has been approved by the electorate; or
 3. The development or activity is to be on land:
 - i. Which has been conditionally or finally approved by the appropriate local government for planned unit development or for a use substantially the same as planned unit development; or
 - ii. Which has been zoned by the appropriate local government for the use contemplated by such development or activity; or
 - iii. With respect to which a development plan has been conditionally or finally approved by the appropriate governmental authority.
- b. **Other Exemptions:** These Regulations shall not apply to Commercial Use of Geothermal Resources approved by the County as of the effective date of these Regulations.

(4) Relationship to Other Regulations:

- a. **Inconsistencies or Conflict with Other Regulations and Plans:** If any provision of these Regulations is found to be inconsistent or in conflict with other County or state standards or requirements, or the statutory criteria for administration of matters of state interest set forth in C.R.S. §§ 24-65.1-202 and 204, the more stringent standards or requirements shall control.
- b. **Transmission Lines not Subject to These Regulations.** The development of transmission lines associated with Commercial Use of Geothermal Resources is not subject to the requirements of these Regulations. The development of such transmission lines requires a County Land Use Change Permit which may be submitted and reviewed concurrently with any application submitted under these regulations.
- c. **Coordination of County Permit Process with Other Permit Processes:**
 1. **Coordinated Review:** The applicant may request that the County

application and review process be coordinated with that of other agencies. The County will attempt to eliminate redundant application submittal requirements and will coordinate its review of the application with other agencies, as appropriate.

2. **Coordinated Permit Conditions:** The County will coordinate its approval of the application, including the terms and conditions of such approval, with that of other agencies so that the applicant shall not be subjected to duplicative terms and conditions.
3. **No Intent to Conflict:** These Regulations shall not be applied to create an operational conflict with any state or federal laws or regulations.

(5) Intergovernmental Agreements: Upon the request of the State of Colorado (“state”) or a political subdivision of the state, as defined by C.R.S. § 29-1-202(1), proposing Commercial Use of Geothermal Resources, the requirement for a permit for Commercial Use of Geothermal Resources pursuant to these Regulations may be met by the approval of an intergovernmental agreement between the County and the state or political subdivision applicant. The County may, but shall be under no obligation to, approve such an intergovernmental agreement. In the event such an intergovernmental agreement is approved by the County, a permit for Commercial Use of Geothermal Resources shall not be required if all of the following conditions are met:

- a. The state or political subdivision applicant and the County must both be authorized by Article XIV, Section 18(2) of the Colorado Constitution and C.R.S. §§ 29-1-201 et seq., § 29-20-105 and § 29- 20- 107 to enter into the agreement.
- b. The findings set forth in section 2.5.6.2(1) and reasons for designation set forth in Section 2.5.6.2(3) of these Regulations must be satisfied by the terms of the agreement.
- c. The Board shall conduct a public hearing on the proposed intergovernmental agreement in conformance with Section 2.5.4. Prior to the hearing, the Board of County Commissioners may approve the form of any proposed intergovernmental agreement, provided, however, that the final approval of the intergovernmental agreement shall take place at the conclusion of or subsequent to the public hearing. The public hearing shall be for the purpose of taking comment upon the proposed intergovernmental agreement, the provisions of which have been determined to be acceptable to the applicant and to the County.
- d. Both the Board and the governing body of the state or political subdivision applicant must approve the agreement in the manner required for each entity by the Colorado Constitution, statutes and any applicable charter, ordinance or resolution.
- e. Exercise of the provisions of this Section 2.5.6.1(5) by the state or political subdivision applicant will not prevent that entity from electing at any time to pursue permit review under these Regulations. Additionally, any state or political subdivision applicant which has initiated permit review under these Regulations may at any time elect to proceed instead under this Section 2.5.6.1(5).
- f. Notwithstanding anything to the contrary herein, no applications or approvals pursuant to these Guidelines and Regulations for the Use of Geothermal

Resources for Commercial Production of Electricity shall give rise to any vested property right.

(6) Severability: If any section, subsection, sentence, clause or phrase of these Regulations is held to be invalid or unconstitutional by a court of law, such decision shall not affect the validity of these Regulations as a whole or any part other than the part declared invalid.

(7) Definition of Words and Terms:

- a. **Adverse** means unfavorable, harmful.
- b. **Board** means Board of County Commissioners of the County of Archuleta.
- c. **Completed well** means a well that has been drilled to its total depth, has been cased, grouted, and pressure or flow tested as required, has been equipped with production equipment if needed, and is ready to be placed into service.
- d. **Commercial Production of Electricity** means the sale of 1 megawatt to an electrical utility, including cooperative or to another entity(ies), for use by one other than the producer of the 1 megawatt. Provided, however, the Commercial Production of Electricity does not include a producer of a megawatt that consumes the electricity itself.
- e. **Use of Geothermal Resources for the Commercial Production of Electricity or Commercial Use of Geothermal Resources** means the siting, drilling, deepening, reworking, closure or abandonment of a geothermal well; power production facilities and operations; and all construction, site preparation, reclamation and related activities associated with the development of geothermal resources for the commercial production of electricity. Transmission lines and related facilities are not included within this definition.
- f. **Critical View Shed** means adverse effect on a visually sensitive natural environment that is visible from a public road, park or existing dwelling.
- g. **Designation** means that legal procedure specified by C.R.S. §§ 24-65.1-401, 402 and 406 for designating Matters of State Interest. It also includes the revocation and amendment of such designations.
- h. **Development** means any construction or activity which changes the basic character or the use of the land on which the construction or activity occurs.
- i. **Development area** means those geographic areas within the County which will be developed or altered directly by construction or operation of the Project.
- j. **Director** means Planning Manager of Development Services or designee.
- k. **Exploration** means any activity relating to the search for evidence of geothermal resources. This activity requires physical presence on the land and may result in damage to surface lands or resources. Exploration includes, but is not limited to, surveying, and geophysical operations such as drilling shallow temperature gradient wells or holes used for explosive charges for seismic exploration and slim holes for flow and heat test. It also includes related construction of roads and trails, and cross-country transit by vehicles over surface land. Exploration operations do not include the production or beneficial use of geothermal resources.

- l. **Geothermal well** means a well that is constructed for the use of a geothermal resource for the commercial production of electricity, or reinjection of a geothermal fluid from such well.
- m. **Impact area** means those geographic areas, including the development area, in which any impacts are likely to be caused by the Project.
- n. **Mitigation** means an action that will have one or more of the following effects:
 1. Avoiding an impact by not taking a certain action or parts of an action.
 2. Minimizing impacts by limiting the degree or magnitude of the action or its implementation.
 3. Rectifying the impact by repairing, rehabilitating or restoring the impact area, facility or service.
 4. Reducing or eliminating the impact over time by preservation and maintenance operations.
 5. Compensating for the impact by replacing or providing suitable biological and physical conditions and by replacing or providing suitable services and facilities.
- o. **Net effect** (relating to mitigation) means the impact of an action after mitigation.
- p. **Permit** means a permit for use of geothermal resources for commercial production of electricity issued by the Permit Authority pursuant to this Section 2.5.6.
- q. **Permit Authority** means the Board, or its designee.
- r. **Production equipment** means any pump, fluid circulating system, or other device used or intended for extracting geothermal resources from a well. Production equipment includes well seals, well heads, control devices, and couplings appurtenant thereto.
- s. **Production facilities** include, but are not limited to, power plants, extraction plants, and separators.
- t. **Project** means the construction and operation of an activity proposed under these Geothermal Regulations throughout its life cycle including all ancillary structures, facilities, improvements, and activities, and all integrated components thereof, and any proposed land use directly related to such project if such project is to be located wholly or partially within the County.
- u. **Reinjection** means reintroducing geothermal fluids through a well into the same reservoir from which they were produced, whether by pressure at the surface or by gravity flow.
- v. **Significant** means deserving to be considered; important; notable.
- w. **Significantly degrade** means to lower in grade or desirability to a significant degree
- x. **Significantly deteriorate** means to make inferior in quality or value to a significant, as opposed to trivial, degree.
- y. **Significant adverse impact** means an impact of an action, after mitigation, which is considerable or substantial, and unfavorable or harmful.
- z. **Zero discharge system** means a system that accesses the heat from a geothermal resource through water or other fluids, and returns the fluids to the source through re-injection, without discharging to or coming in contact with surface waters or other groundwater aquifers.

2.5.6.2 Designation of Use of Geothermal Resource for Commercial Production of Electricity:

- (1) Findings:** The Board of County Commissioners hereby finds that:
- a. Developing geothermal resources for commercial production of electricity in an uncontrolled manner could result in detrimental effects to water resources and water supplies and detrimental effects on people, property, and the environment.
 - b. The advantages of developing geothermal resources for commercial production of electricity in a controlled manner include:
 1. To encourage the responsible production of electricity from the available geothermal resources in the County.
 2. To ensure that development of geothermal resources for the commercial production of electricity does not have an unacceptable impact on private property rights.
 3. To ensure that development of geothermal resources for commercial production of electricity does not prevent development of geothermal resources for other purposes.
 4. To ensure that development of geothermal resources is undertaken in such a manner as to safeguard life, health, property, public welfare, and the environment.
- (2) Designation of Activity of State Interest:** Based upon the findings in Section 2.5.6.2(1), the Board of County Commissioners hereby designates the use of geothermal resources for commercial production of electricity to be an activity of state interest subject to the provisions of this Section 2.5.6.
- (3) Reasons for Designation:** The Commercial Use of Geothermal Resources is hereby designated as an activity of state interest for the reasons stated in Section 2.5.1.1, and in Section 2.5.6.2(1) of these Regulations.

2.5.6.3 Exploration Activity Notice

- (1) Activity Notice Required.** Drilling of exploration wells and related exploration activities for Commercial Use of Geothermal Resources is not subject to the permit application and review requirements of these Regulations provided the operator files and receive approval of an Activity Notice for exploration and reclamation activities with the Director. The exploration activities may be presented by the applicant and approved by the Director in an iterative manner or as a phased process as additional information is developed.
- (2) Activity Notice Submittal Requirements.** An operator seeking to file for an Activity Notice shall submit the following materials to the Director. The Director may waive one or more of the submittal requirements when the submittal information would not be relevant to a determination as to whether the proposed exploration complies with the Activity Notice approval criteria in Section 2.5.6.3(4). Application materials submitted to other agencies may be submitted to satisfy one or more submittal requirements if the materials contain the information required under this section.

- a. The name, address, and telephone number of the person proposing exploration activities.
- b. The name, address, and telephone number of the person who will be present at and responsible for conducting the proposed exploration activities.
- c. If the surface land comprising the proposed exploration area is owned by a person other than the person who intends to conduct exploration activities, the name and address of the owner of record of the surface land and a description of the basis upon which the person proposing exploration activities claims the right to enter the proposed exploration area.
- d. A map, at a scale acceptable to the County, showing the proposed exploration area. The map shall specifically show:
 1. Location of all exploratory wells proposed to be drilled or altered;
 2. Location of existing and proposed roads and the existing and proposed access routes;
 3. Earth or debris storage and disposal areas;
 4. Topographic and drainage features;
 5. Historic and cultural features;
 6. Existing bodies of surface water;
 7. Wildlife habitats and habitats of any endangered or threatened species;
 8. Areas of developed geothermal resources;
 9. Recreation areas; and
 10. Location of occupied dwellings.
- e. An Exploration and Reclamation Plan including:
 1. **Description of Exploration Area.** A narrative description of the proposed exploration area, cross-referenced to the map required in Section 2.5.6.3(2)d, that identifies surface topography, geology, drainage, surface water, and other physical features; vegetative cover; wildlife habitats and habitats of endangered or threatened species; and recreational, historical and archaeological resources located within the proposed exploration area.
 2. **Description of Proposed Exploration.** A narrative description of the proposed exploration, including maximum number and location of drill holes intended for the proposed exploration, cross referenced to the map required in Section 2.5.6.3(2)d, and their size and depth; a narrative description of the methods to be used to conduct exploration, including, but not limited to the type(s) of drilling, construction of access routes, and an estimated timetable for conducting and completing each phase of exploration and reclamation.
 3. **Description of Reclamation.** A narrative description of the methods to be used for reclamation of the exploration area upon completion of each phase of exploration activities including proposed method of financial guarantee to ensure reclamation occurs if appropriate.
 4. **Protection of Public Health and the Environment.** A narrative description of the practices proposed to be followed to ensure public health and safety and to protect the environment and wildlife habitats from adverse impacts as a result of the proposed exploration and reclamation activities. Include a discussion of potential adverse effects and possible methods of mitigation.
 5. **Permit(s) Issued by State Engineer.** A copy of the drilling permit(s) issued by the State Engineer for the proposed exploration if required.

- (3) Confidential Information.** Upon request of the applicant, information submitted to the County pursuant to Section 2.5.6.3(2) concerning trade secrets, or privileged commercial or financial information that relates to the competitive rights of the person or entity intending to explore the described area shall be kept confidential and not be available for public examination. Such information shall be clearly marked confidential by applicant and submitted in a separate packet.
- (4) Approval Criteria for Activity Notice.** The following criteria shall apply to evaluate all requests for approval of an Activity Notice for exploration activities associated with Commercial Use of Geothermal Resources.
- a. Property Rights, Access Agreements, Permits and Approvals.** Prior to site disturbance associated with the proposed exploration activities the operator can and will obtain all property rights, access agreements, permits, and approvals necessary for the proposed exploration. If the applicant has not obtained all necessary property rights, access agreements, permits and approvals, the County may, at its discretion, defer making a final decision on the Activity Notice until outstanding property rights, access agreements, permits and approvals necessary for exploration are obtained.
 - b. Soils, Geologic, and Natural Hazards.** The proposed exploration activities are not subject to significant risk from soils, geologic, or natural hazards. Examples of factors the County may consider in determining risk include without limitation:
 1. Faults and fissures.
 2. Unstable slopes including landslides, rock slides and avalanche areas.
 3. Expansive or collapsible soils and risk of subsidence.
 4. Changes to the topography, natural drainage patterns, soil morphology and productivity, soil erosion potential, and floodplains.
 5. Exacerbation of seismic concerns and subsidence.
 6. Flood hazard.
 7. Wildfire hazard.
 - c. Hazardous Materials and Drilling Byproducts or Waste.** The proposed exploration activities shall not result in significant risk of releases of hazardous materials and drilling byproducts or waste. Each drilling site shall be reclaimed upon completion of exploratory drilling activities unless the site and associated facilities are proposed to be used as part of a permitted activity.
 - d. Disturbance to Surface Areas.** The proposed exploration activities shall be conducted in a manner that will minimize disturbance to surface areas.
 - e. Recreation Opportunities and Experiences.** The proposed exploration activities shall not cause a significant degradation in the quality or quantity of recreational activities in the County.
 - f. Areas of Paleontological, Historic, or Archaeological Importance.** The proposed exploration activities shall be conducted in a manner that will be compatible with the preservation of the resource and minimize damage to the resource, if applicable.
 - g. No Significant Degradation of the Natural Environment.**
 1. **Air Quality.** The proposed exploration activities shall not significantly degrade air quality.

2. **Surface Water Quality.** The proposed exploration activities shall not significantly degrade surface water quality.
 3. **Groundwater Quality.** The proposed exploration activities shall not significantly degrade groundwater quality.
 4. **Wetlands and Riparian Areas.** The proposed exploration activities shall not significantly degrade wetlands and riparian areas.
 5. **Wildlife and Wildlife Habitat.** The proposed exploration activities will not significantly degrade wildlife or sensitive wildlife habitat.
- h. Exploration Activities Will Not Cause a Nuisance.** The proposed exploration activities will not cause excessive noise and vibration levels, dust, fumes, glare, exterior artificial light, and odor to adjacent properties unless such impact is mitigated to the satisfaction of the Director.

(5) Decision on Activity Notice by Director

- a. Director's Decision.** Not more than thirty (30) working days after receipt of a complete Activity Notice, the Director shall approve, deny, or conditionally approve the exploration activity, based upon whether the proposed exploration satisfies the approval criteria in Section 2.5.6.3(4).
- b. Written Notice of Director's Decision.** Written notice of the Director's Decision shall be provided to the applicant, mailed to adjacent landowners and posted at the County Courthouse.
- c. Consultant and Referral Agency Review.** The Director may refer the Activity Notice to consultants and other state or federal agencies to assist with review of the Activity Notice.
- d. Filing Fees.** The Activity Notice shall be accompanied by appropriate fees. A schedule of fees adopted by the Board is available through the Planning Department.
 1. **Applicant Responsible for Cost of Review.** The applicant is responsible for the costs of reviewing and processing the Activity Notice including costs of copying, labor and overhead.
 2. **Applicant Responsible for Referral Agency and Consultant Fees.** The applicant is responsible for the costs of referral agency and consultant review of the Activity Notice provided that the applicant is first provided an estimate of consultants costs and the ability to request additional estimates from competing consultants acceptable to the Director.
- e. Appeal or Call-up by Board of Commissioners.** Either the applicant or an adjacent property owner affected by the decision may request reconsideration of the Director's decision by the Board of County Commissioners. The Board of County Commissioners also may, at its discretion, decide to reconsider the decision at the next regularly scheduled meeting of the Board for which proper notice of hearing can be accomplished in accordance with the County Land Use Code. The aggrieved party shall file a written request within seven (7) calendar days of the date of written notice of the decision.
- f. Minor Revisions to Exploration Plan.** As exploration proceeds under the approved Activity Notice the need for minor revisions may occur. The Director may approve minor revisions to the approved Activity Notice as long as it is determined that no additional impacts to adjacent properties or the public will

occur. Minor revisions may include: minor revisions to the number, location, size and depth of drill holes, well pads and/or access roads and timetable for conducting and completing phases.

2.5.6.4 Permit Application Process:

(1) Application Procedure: The following application and review procedures shall apply to an application proposing Commercial Use of Geothermal Resources.

a. Pre-Application Conference:

Any person proposing to engage in Commercial Use of Geothermal Resources shall first request a pre-application conference with the Director. The conference will be held within ten (10) working days of the request.

1. **Purpose:** The purposes of the pre-application conference include, without limitation:

- i. To discuss the location and nature of the proposed Project and site specific considerations that bear on the proposed Project;
- ii. To discuss whether the proposed Project is eligible for a Statement of No Impact or whether a Permit is required;
- iii. To explain Permit application submittal requirements and the nature of materials that will be responsive to those requirements;
- iv. To identify materials that may have been submitted to other state or federal agencies that the project proponent may propose to use in the County application process;
- v. To discuss federal and state terms and conditions that may have been imposed on the proposed Project;
- vi. To discuss projected impacts and potential mitigation;
- vii. To discuss the standards that must be satisfied for permit approval; and
- viii. To identify potential operational conflicts, or waivers of standards based on technical infeasibility or environmental protection that the applicant intends to raise.

2. **Materials:** At or before the pre-application conference, the project proponent shall submit the following materials:

- i. The proponent's name, address and phone number. If the applicant is not the owner of the property where the proposed Project will occur, applicant shall also provide the name, address and phone number of the property owner and documentation that the property owner consents to the proposed Project.
- ii. Map prepared at an easily readable scale showing:
 - 1) Boundary of the proposed Project.
 - 2) Relationship of the proposed Project to surrounding topographic and cultural features such as roads, streams and existing structures.
 - 3) Proposed building(s), improvements and infrastructure.
 - 4) Topographic information in intervals not less than forty (40) feet.
- iii. Written summary of the Project.
- iv. Why the Project is eligible for a Statement of No Impact under

Section 2.5.6.4(1)b.3 if the proponent is seeking a Statement of No Impact.

3. **Participation by County Staff and Consultants:** The Director may include staff from other departments and agencies, and outside consultants in the pre-application conference.
 4. **Comments Are Preliminary:** Any comments made by County staff and consultants during the pre-application conference are preliminary in nature and not binding.
- b. Application Submittal, Determination of Completeness, and Determination of Whether the Proposed Project Is Eligible for a Statement of No Impact:**
1. **Application Submittal:** Following a pre-application conference with the Director, an applicant shall submit an application to the Director. See Section 2.5.6.6 of these Regulations for the content of the application.
 2. **Determination of Completeness of Application:** Not more than ten (10) working days after receipt of the application materials, or twenty (20) working days if outside consultants or staff other than Director assist the County with completeness determination, the Director shall determine whether the application is complete.
 - i. **Application Is Not Complete:** If the Director determines that the application is not complete, the Director shall inform the applicant in writing of the deficiencies and shall take no further action on the application until the deficiencies are remedied. If the applicant fails to correct the deficiencies within thirty (30) calendar days after the notice that the application is incomplete, the application shall be considered withdrawn unless the applicant requests more time to ensure that the materials are as complete as possible.
 - ii. **Application Is Complete:** If the Director determines that the application is complete, the Director shall date the application and notify the applicant in writing.
 - iii. **Completeness Is Not a Determination of Compliance:** A determination that an application is complete shall not constitute a determination that it complies with the permit approval criteria of these Regulations.
 3. **Determination of Whether the Proposed Project is Eligible for a Statement of No Impact:** As part of the completeness determination, the Director shall determine whether the proposed Project is eligible for a STATEMENT OF NO IMPACT or if the proposed Project requires a Permit.
 - i. **STATEMENT OF NO IMPACT:** The Director may make a finding of no significant impact, and a Permit under these Regulations will not be necessary, if the proposed Project without mitigation in its proposed location is unlikely to have any significant adverse impact to the County. The Director's decision shall take into consideration the permit approval criteria set forth in Section 2.5.6.7 of these Regulations.
 - ii. **Subject to Permit Review:** If the Director determines that the proposed Project is not eligible for a Statement of No Impact, then the proposed Project shall be subject to Permit Review set forth in Section 2.5.6.5 of these Regulations.

- iii. **Notice of Statement of No Impact or Determination that the Proposed Project is Subject to Permit Review:** Within five (5) calendar days of the Statement of No Impact or the determination that the proposed Project is subject to permit review, the Director shall notify the applicant, the Board, and adjacent property owners in writing of its decision. The notice shall include a description of the proposed Project and the procedure for requesting reconsideration of the Statement of No Impact or determination that the proposed Project is subject to permit review.
- iv. **Reconsideration of Planning Department’s Statement of No Impact or Determination that the Proposed Project Is Subject to Permit Review:**
 - 1) **Call-up by the Board:** The Board may, at its discretion, review and amend the Director’s Statement of No Impact or determination that the proposed Project is subject to permit review at the next regularly scheduled meeting of the Board for which proper notice can be accomplished following the date of written notice of determination.
 - 2) **Request for Reconsideration:** The applicant or adjacent property owners may request that the Board reconsider the Director’s Statement of No Impact or determination that the proposed Project is subject to permit review at the next regularly scheduled meeting for which proper notice can be accomplished following the request. The request shall be in writing, within ten (10) calendar days following the date of written notice of determination.

2.5.6.5 Permit Review Process:

This permit review process shall apply to any proposed Project that was not issued a Statement of No Impact.

(1) Public Notice:

- a. **Notice by Publication:** Not later than thirty (30) calendar days after determination that the application is complete under Section 2.5.6.4(1)b.2, the Director shall publish a notice of public hearing on the application. The notice shall be published in a newspaper of general circulation in the area where the proposed Project is located, not less than thirty (30) calendar days nor more than sixty (60) calendar days prior to the date of the public hearing. The applicant shall be responsible for the cost of publication.
- b. **Written Notice to Adjacent Property Owners:** Not less than thirty (30) calendar days nor more than sixty (60) calendar days prior to the date of the public hearing, the applicant shall mail written notice of the public hearing to the owners of record of all adjacent property by certified mail, return receipt requested.
 - 1. **List of Property Owners:** The list of property owners to be notified shall be compiled by the applicant using the most current list of property owners on file with the County Assessor.
 - 2. **Validity of Notice:** The applicant is responsible for the accuracy of lists of

property owners to whom written notice is provided. If the applicant makes reasonable good faith efforts to accomplish the notice responsibilities identified above, then the failure of any property owner to receive notice shall not affect the validity of the decision.

3. **Sign Posting:** Not less than thirty (30) calendar days nor more than sixty (60) calendar days prior to the date of the public hearing, the applicant shall post a sign, provided by the County at the site. The sign shall include information related to the application and the public hearing notice.

(2) Review by Planning Commission: The Director shall submit a copy of the complete application to and seek review comments from the Planning Commission. The Planning Commission shall conduct a public hearing to consider the application at a properly noticed regular meeting. The Planning Commission shall submit review comments to the Board no later than thirty (30) working days from the date that the application is determined to be complete.

(3) Consultant Review: The Director may submit the complete application for review and recommendation by consultants retained by the County with the necessary expertise to review the application. The costs of consultant review are the responsibility of the applicant as set forth in Section 2.5.6.6(2) of these Regulations provided that the applicant is first provided an estimate of consultants costs and the ability to request additional estimates from competing consultants acceptable to the Director.

(4) Referral Agency Review: The Director may submit the application for review and recommendation to other County departments, and municipal, state, or federal agencies having an interest in or authority over all or part of the proposed Project. The referral review and comment period shall be thirty (30) working days from the date that the application is determined to be complete. Comments not received from referral agencies within the comment period may, but need not be considered by the Director. The costs of referral agency review are the responsibility of the applicant as set forth in Section 2.5.6.6(2) of these Regulations.

(5) Application Review and Staff Report by Director: The Director shall review the application to determine if the proposed Project satisfies the permit approval criteria set forth in Section 2.5.6.7 of these Regulations. The Director shall prepare a report taking into account the application, Planning Commission review comments, issues raised by referral agencies and consultants, terms and conditions imposed by state and federal agencies, and any other available information on the record.

a. Contents of Staff Report: The report shall:

1. Briefly describe the proposed Project and highlight issues raised by the Planning Commission, consultants, and referral agencies.
2. Discuss state or federal requirements that may have been imposed on the proposed Project and the extent to which any of the terms, conditions, and requirements satisfy County standards applicable to the proposed Project.
3. Discuss the impacts of the proposed Project, the proposed mitigation, and whether it appears that each standard has been satisfied.
4. Recommend conditions of approval for any standard that appears not to

have been fully satisfied, or recommend denial.

5. Include additional information that would be relevant to the decision of the Board.

- b. Distribution of Staff Report:** No less than seven (7) calendar days prior to the date of the public hearing, the Director shall submit the staff report to the applicant and to the Board. A copy of the staff report shall also be available for public review prior to the hearing.

2.5.6.6 Submittal Requirements:

The applicant shall include the following materials in the application. The Director may waive one or more of the submittal requirements when the submittal information would not be relevant to a determination as to whether the proposed project complies with the permit approval criteria in 2.5.6.7(2).

(1) Authorized Applicant: Completed application forms and accompanying materials shall be submitted to the Director by the owner, or any agent acting through written authorization of the owner.

- a. Authorized Agent:** 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 all other owners or an association representing all the owners, by which all owners consent to or join in the application.

(2) Application Fees.

- a. Application Fee Set by the Board:** The application for a permit for Commercial Use of Geothermal Resources shall be accompanied by appropriate fees. A schedule of fees adopted by the Board is available through the Director.
- b. Applicant Responsible for Additional Cost of Reviewing and Processing the Application:** The applicant is responsible for the costs of reviewing and processing the application for a permit for Commercial Use of Geothermal Resources, including costs of copying, mailings, publications, labor and overhead, and all hearings and meetings on the application.
- c. Applicant Responsible for Referral Agency and Consultant Fees:** The applicant is responsible for the costs of referral agency and consultant review of the application for a permit for Commercial Use of Geothermal Resources, including reviews associated with the pre-application conference and completeness determination.
- d. Deposit:** An application for a permit for Commercial Use of Geothermal Resources shall be accompanied by a deposit set forth in the schedule of fees adopted by the Board. The deposit shall be applied toward the costs of the pre-application meeting, referral agency review, and consultant fees. The County shall initially pay the costs of referral agency review and outside consultants retained by the County to review the application from this fund.
1. **Balance:** Throughout the application process, the applicant shall maintain a minimum fee deposit balance established by the Board. The amount of the deposit and the minimum balance required may be reduced upon a finding

by the Director that the application processing and review costs are likely to be less than the minimum amount set herein.

2. **Suspend Processing:** The County may suspend processing the application pending receipt of additional installments required to bring the fee deposit balance to at least the minimum balance. The County will take no action on the application until all fees and expenses related to the application review process have been paid. Suspension shall toll all deadlines imposed on the County by these Regulations.
3. **Refund:** Within thirty (30) calendar days after the decision on the Permit is made, the County shall refund any balance of the deposit not expended.

(3) Information Describing the Applicant:

- a. The names, addresses, email address, phone number, organization form, and business of the applicant and, if different, the owner of the proposed Project.
- b. Authorization of the application by the owner of the proposed Project, if different than the applicant.
- c. Written qualifications of those preparing reports and providing certifications required by these Regulations.

(4) Information Describing the Project:

- a. Detailed plans and specifications of the proposed Project.
- b. Amount and type of energy (KW, MW) and/or products to be produced by the proposed Project.
- c. Detailed map(s) showing the location of all existing and proposed structures and appurtenant facilities.
- d. Description of the surface water and groundwater to be used by the proposed Project including: the source, amount and quality of such water; the applicant's right to use the water, including adjudicated decrees, and application for decrees; proposed points of diversion and changes in the points of diversion; and the existing uses of the water. If an augmentation plan for the proposed Project has been decreed or an application for such plan has been filed in court, the applicant shall submit a copy of that plan.
- e. Discussion of the alternatives to the proposed Project that were considered and rejected by the applicant, including the general degree of feasibility of each alternative and reasons why alternatives were rejected.
- f. Schedules for, drilling, construction and operation of the proposed Project, including the estimated life of the proposed Project.

(5) Property Rights, Permits and Other Approvals:

- a. Description of property rights that are necessary for or that will be affected by the proposed Project, and documentation establishing property rights and easement and right-of-way agreements connected with the property.
- b. A list and copies of all other federal, state, and local permits and approvals that have been or will be required for the proposed Project, together with any proposal for coordinating these approvals with the County's permitting process.
- c. A description of all mitigation required by federal, state and local authorities and copies of any draft or final environmental assessment or environmental impact statement required for the proposed Project.

- (6) Socioeconomic Impact Analysis:** An analysis of the socioeconomic impact of the proposed Project. The analysis shall include a description of how the applicant will comply with the applicable permit approval criteria set forth in Section 2.5.6.6 of these Regulations.
- a. Land Use:**
 - 1. Description of existing land uses within and adjacent to the proposed Project.
 - 2. Description of provisions from comprehensive plans, master plans, and intergovernmental agreements that are applicable to the proposed Project, and an assessment of whether the proposed Project will be consistent with or further the objectives of those provisions.
 - 3. Description of impacts to land use patterns and net effect that the proposed Project would have on existing and future land use patterns.
 - b. Local Government Services:**
 - 1. Description of the demand for local government services including schools, water and wastewater treatment, water supply, emergency services, transportation, infrastructure or other County services necessary to accommodate the proposed Project.
 - 2. A map that identifies the access route to, and within the subject property, and a traffic impact assessment to determine the impacts of the proposed Project on the public roadway system.
 - 3. Description of the impacts and net effect of the proposed Project on the capability of local government to provide services, and proposed mitigation.
 - c. Local Economy:**
 - 1. Description of impacts and net effect of the proposed Project on the local economy, and proposed mitigation if necessary, including whether or not applicant is aware of any similar projects and the effect the proposed project is expected to have on similar existing facilities.
 - d. Recreational Opportunities:**
 - 1. Description of present and potential recreational uses in the area where the proposed Project will be located.
 - 2. Description of the impacts and net effect of the proposed Project on present and potential recreational opportunities and revenues to the local economy derived from those uses, and proposed mitigation.
- (7) Areas of Paleontological, Historic or Archaeological Importance:**
- 1. Map and description of all sites of paleontological, historic or archaeological interest.
 - 2. Description of the impacts and net effect of the proposed Project on sites of paleontological, historic or archaeological interest, and proposed mitigation.
- (8) Environmental Impact Analysis.**
- a. Air Quality:**
 - 1. Description of the air-sheds that will be affected by the proposed Project, including the seasonal pattern of air circulation and microclimates.
 - 2. Map and description of the ambient air quality and state air quality standards of the air-sheds that will be affected by the proposed Project,

- including particulate matter and aerosols, oxides, hydrocarbons, oxidants and other chemicals, temperature effects and atmospheric interactions.
3. Descriptions of the impacts and net effect that the proposed Project would have on air quality during both construction and operation, and proposed mitigation.
- b. Visual Quality:**
1. Map and description of ground cover and vegetation, forest canopies, waterfalls and streams, view-sheds, scenic vistas, unique landscapes and land formations or other natural features of visual importance.
 2. Descriptions of the impacts and net effect that the proposed Project would have on visual quality, and proposed mitigation.
- c. Surface Water Quality and Quantity:**
1. Map and description of all surface waters that will be affected by the proposed Project, including description of applicable state water quality standards for water bodies that will be affected by the proposed Project.
 2. Map and description of existing points of diversion for municipal, agricultural, industrial, and recreational uses of water within the County.
 3. Descriptions of the immediate and long-term impact and net effects that the proposed Project would have on the quantity and quality of surface water, and proposed mitigation.
- d. Groundwater Quality and Quantity:**
1. Map and description of all groundwater, including any aquifers that will be affected by the proposed Project, including:
 - i. Seasonal water levels in each subdivision of the aquifer affected by the proposed Project.
 - ii. Artesian pressure in aquifers and a description of how the proposed Project may affect adjacent communities and users on wells.
 - iii. Groundwater flow directions and levels.
 - iv. Existing aquifer recharge rates and methodology used to calculate recharge to the aquifer from any recharge sources.
 - v. Existing groundwater quality and classification.
 - v. Location of all water wells and their uses.
 2. Description of the impacts and net effect of the proposed Project on groundwater, and proposed mitigation.
- e. Drinking Water Supplies:**
1. An inventory and location of all water bodies and domestic water wells within one mile of the proposed Project.
 2. Identification of all intakes for any municipal water supplies downstream from the proposed Project.
 3. A description of impacts to drinking water supplies associated with the proposed Project, and proposed mitigation.
- f. Floodplains, Wetlands and Riparian Areas:**
1. Map and description of all floodplains, wetlands, and riparian areas that will be affected by the proposed Project, including a description of each type of wetlands, species composition, and biomass.
 2. Description of the source of water interacting with the surface systems to create each wetland (i.e., side-slope runoff, over-bank flooding, groundwater seepage, etc.).

3. Description of the impacts and net effect that the proposed Project would have on the floodplains, wetlands and riparian areas, and proposed mitigation.

g. Wildlife and Wildlife Habitat:

1. An analysis of existing wildlife and wildlife habitat.
2. A detailed map indicating the location of summer and winter ranges, critical habitat, migration routes, calving grounds, mating grounds, and nesting grounds in relationship to the proposed structures and appurtenant facilities.
3. Description of the impacts and net effect that the proposed Project would have on wildlife and wildlife habitat, and proposed mitigation.

h. Identification of Other Geothermal Resources Affected by the Proposed Project:

- Description of the impacts and net effect that the proposed Project would have on geothermal resources and proposed mitigation.

(9) Soils, Geologic Conditions, and Natural Hazards:

- a. Map and description of soil, geologic conditions, and natural hazards, including soil types, drainage areas, slopes, avalanche areas, debris fans, mud flows, rock slide areas, faults and fissures, seismic history, and wildfire hazard areas.
- b. Descriptions of the risks to the proposed Project from natural hazards, and proposed mitigation.
- c. Descriptions of the impact and net effect of the proposed Project on soil and geologic conditions in the area, and proposed mitigation.

(10) Nuisance: Descriptions of noise, glare, dust, fumes, vibration, and odor levels caused by the proposed Project, and proposed mitigation.

(11) Balance between Benefits and Losses:

- a. Description of foreseeable benefits to the County created by the proposed Project.
- b. Description of foreseeable losses of natural, agricultural, recreational, or industrial resources within the County and loss of opportunities to develop those resources in the future.

(12) Drainage and Erosion Control Plan: A detailed plan that identifies existing and proposed drainage patterns and the methods for controlling erosion during construction and operation phases of the proposed Project.

(13) Weed Management Plan: A plan for the management and prevention of noxious weeds on the site.

(14) Emergency Response Plan: A plan that addresses events including, but not limited to blow-outs, major fluid spills, earthquakes, fires, floods and other emergencies, including: proof of adequate personnel, equipment, supplies, and funding to implement the emergency response plan immediately at all times during construction and operations. The plan shall include a notification list of response agencies. The plan shall include a provision for the owner or operator to reimburse the appropriate emergency response service providers for costs incurred in

connection with the emergency.

(15) Reclamation Plan: A detailed plan showing proposed reclamation including: schedules; finish contours, grading, sloping; types, placement, and amount of vegetation; subsequent land use plans; and any other proposed elements.

(16) Spill Prevention, Storage and Control Plan: A detailed plan that describes spill prevention, containment, control, storage, countermeasure and clean-up procedures and protocols.

(17) Monitoring and Mitigation Plan:

- a. Description of all mitigation for the proposed Project.
 1. Description of how and when mitigation will be implemented and financed.
 2. Description of impacts that are unavoidable and cannot be mitigated.
 3. Description of methodology used to measure impacts of the proposed Project and effectiveness of proposed mitigation measures.
- b. Description, location, and intervals of proposed monitoring to ensure that mitigation will be effective.
- c. The Board may at its discretion require the applicant to prepare a revised monitoring and mitigation plan for review and approval by the County as a condition of permit approval.

(18) Additional Information May Be Necessary: The Director may request that the applicant supply additional information related to the proposed Project as may be necessary for the Board to make a determination on whether the proposed Project satisfies permit approval criteria.

2.5.6.7 Action on Permit Application by Board:

(1) Permit Hearing: The Permit Hearing shall be conducted in accordance with Sections 2.5.4.2 *Conduct of Public Hearing*, and 2.5.4.4 *Action on Permit Application* of this Section 2.5.

(2) Application of Permit Approval Criteria:

- a. The Permit Authority shall apply the following performance criteria and siting criteria to determine whether a permit should be issued.
- b. In determining whether the proposed Project satisfies permit approval criteria, the Permit Authority shall take into consideration the construction, operation and cumulative impacts of the proposed Project. A project cannot be segmented to avoid the requirements of these Regulations. If a project is to be phased over time or is composed of distinguishable elements, the impacts of all phases or elements of the development must be considered together when determining whether the proposed Project satisfies the permit approval criteria.

2.5.6.8 Approval Criteria

(1) Performance Criteria:

- a. **All Property Rights, Permits and Approvals Have Been Obtained:** Prior to site

disturbance associated with the proposed Project, the applicant can and will obtain all property rights, permits, and approvals necessary for the proposed Project. If the applicant has not obtained all necessary property rights, permits and approvals, the County may, at its discretion, defer making a final decision on the application until outstanding property rights, permits and approvals are obtained or condition the approval as appropriate.

- b. **No Significant Degradation of Property Rights:** The proposed Project shall not significantly degrade property rights held by others.
 - 1. **No Significant Impact to Geothermal Resource:** The proposed Project shall not significantly impact geothermal resources used by others. Examples of factors the County may consider in determining impacts including the following:
 - i. Temperature
 - ii. Chemistry
 - iii. Volume
- c. **The Proposed Project Will Not Result in Unreasonable Risk of Releases of Hazardous Materials:** The proposed Project shall not result in significant risk of releases of hazardous materials. Examples of factors the County may consider in determining risk include without limitation:
 - 1. Adequacy of spill prevention and response plans.
 - 2. Likelihood of hazardous materials or wastes being moved off the site by natural causes or forces.
- d. **The Surface Facilities of the Proposed Project are Not Subject to Significant Risk from Soils, Geologic, or Natural Hazards:** The surface facilities of the proposed Project are not subject to significant risk from soils, geologic, or natural hazards that cannot be reasonably mitigated. Examples of factors the County may consider in determining risk include without limitation:
 - 1. Faults and fissures.
 - 2. Unstable slopes including landslides, rock slides and avalanche areas.
 - 3. Expansive or evaporative soils and risk of subsidence.
 - 4. Changes to the topography, natural drainage patterns, soil morphology and productivity, soil erosion potential, and floodplains.
 - 5. Exacerbation of seismic concerns and subsidence.
 - 6. Flood hazard.
 - 7. Wildfire hazard.
- e. **The Proposed Project Will Not Have a Significant Adverse Effect on the Capability of Local Government to Provide Services, or Exceed the Capacity of Service Delivery Systems:** The proposed Project shall not significantly degrade the capability of local government to provide services, or exceed the capacity of service delivery systems within the County. Examples of factors the County may consider in determining impacts to local government services include without limitation:
 - 1. **Public Roadways:** Current and projected capacity of roads and the impact of the proposed Project upon the current and projected capacity.
 - i. All public access roads under the jurisdiction of the County shall be constructed and maintained in compliance with the Archuleta County Road Standards, as necessary to accommodate the traffic and equipment related to Project operations and emergency

- vehicles.
- ii. Ingress and egress points to County roads shall be located, maintained and improved to assure adequate capacity for efficient movement of existing and projected traffic volumes and to minimize traffic hazards.
 - iii. If the projected use of the County roads resulting from the proposed Project will result in a need for an increase in roadway maintenance or snow removal, the County shall require the applicant to: i) enter into an agreement with the County whereby the applicant provides for private maintenance and snow removal, or reimburses the County for such increased costs; and/or ii) provide a bond or other financial assurance; and/or iii) pay impact fees in an amount acceptable to the County to cover the costs of impacts to the roads.
2. **Water Supply:** Significant reduction in the amount of water available to the County for future water supply.
 3. **Water Treatment:** Significant reduction in the current and future capacity of water treatment services.
 4. **Wastewater Treatment:** Significant reduction in current and future capacity of wastewater treatment services.
 5. **Emergency Services:** Significant reduction in current and future capacity for provision of emergency services.
- f. **No Significant Degradation of the Economy:** The proposed Project shall not significantly degrade any current or foreseeable future sector of the local economy. Examples of factors the County may consider in determining impacts to the economy include without limitation:
1. Reductions to projected revenues generated from each economic sector.
 2. Reductions in the value or productivity of any lands.
 3. Reductions in opportunities for economic diversification.
 4. Potential for boom/bust cycles.
- g. **No Significant Degradation of Recreation Opportunities and Experiences:** The proposed Project shall not cause a significant degradation in the quality or quantity of recreational activities in the County. Examples of factors the County may consider in determining impacts to recreation include without limitation:
1. Changes to existing and projected visitor days.
 2. Changes in access to recreational resources.
 3. Changes to quality and quantity of hiking and biking trails.
 4. Changes to the wilderness experience or other opportunity for solitude in the natural environment.
 5. Changes to hunting.
- h. **No Significant Degradation of Areas of Paleontological, Historic, or Archaeological Importance:** The proposed Project shall be conducted in a manner that will be compatible with the preservation of the resource and minimize damage to the resource.
- i. **No Significant Degradation of Agricultural Lands:** The proposed Project shall be designed to retain the maximum amount of productive agricultural land and not interfere with existing irrigation and drainage patterns.

- j. The Proposed Project Will Not Significantly Degrade the Natural Environment:**
1. **No Significant Degradation of Air Quality:** The proposed Project shall not significantly degrade air quality. Examples of factors the County may consider in determining impacts to air quality include without limitation:
 - i. Changes to seasonal ambient air quality.
 - ii. Changes in visibility.
 - iii. Changes to microclimates.
 - iv. Applicable air quality standards.
 2. **No Significant Degradation of Visual Quality:** The proposed Project shall not significantly degrade visual quality. Examples of factors the County may consider in determining impacts to visual quality include without limitation:
 - i. Visual changes to ground cover and vegetation, streams or any other natural feature, or interference with view sheds and scenic vistas and ridgelines.
 - ii. Visual changes resulting from construction activities and from the existence and operation of the proposed Project.
 - iii. Changes to unique or fragile areas, including geological formations, forested areas, critical view sheds or water bodies.
 - iv. Compatibility of proposed facility and appurtenant structures with surrounding land uses.
 3. **No Significant Degradation of Surface Water Quality:** The proposed Project shall not significantly degrade surface water quality. Examples of factors the County may consider in determining impacts to surface water quality include without limitation:
 - i. Applicable narrative and numeric water quality standards.
 - ii. Changes in point and nonpoint source pollution loads.
 - iii. Increase in erosion and sediment loads. The proposed project shall be conducted in accordance with the drainage and erosion control plan.
 - iv. Changes in stream channel or shoreline stability.
 - v. Changes in storm water runoff flows.
 4. **No Significant Degradation of Groundwater Quality:** The proposed Project shall not significantly degrade groundwater quality. Examples of factors the County may consider in determining impacts to groundwater quality include without limitation:
 - i. Changes in aquifer recharge rates, groundwater levels and aquifer capacity including seepage losses through aquifer boundaries and at aquifer-stream interfaces.
 - ii. Changes in capacity and function of wells within the impact area.
 - iii. Changes in quality of well water within the impact area.
 5. **No Significant Degradation of Wetlands and Riparian Areas:** The proposed Project shall not significantly degrade wetlands and riparian areas. Examples of factors the County may consider in determining impacts wetlands and riparian areas include without limitation:
 - i. Changes in the structure and function of wetlands and riparian areas.
 - ii. Changes to the filtering and pollutant uptake and storage capacities of wetlands and riparian areas.

- iii. Changes to aerial extent of wetlands and riparian areas.
 - iv. Changes in species' characteristics and diversity.
 - v. Transition from wetland to upland species.
 - vi. Introduction of exotic, nuisance, or invasive species into wetland and riparian areas.
6. **No Significant Adverse Effect on Designated Floodplains:** The proposed Project will not have a significant adverse effect on designated floodplains. Examples of factors the County may consider in determining impacts to floodplains include without limitation:
- i. Changes in function and aerial extent of floodplains.
 - ii. Creation of obstructions from the proposed Project during times of flooding and vulnerability of the proposed Project to flooding.
 - iii. Use of flood-protection devices or flood-proofing methods.
 - iv. Increases in impervious surface area caused by the proposed Project.
 - v. Increases in surface runoff flow rate and amount caused by the proposed Project.
 - vi. Increases in floodwater flow rate and amount caused by the proposed Project.
 - vii. Proximity and nature of adjacent or nearby land use.
 - viii. Impacts to downstream properties or communities.
 - ix. Impacts on shallow wells, waste disposal sites, water supply systems and wastewater disposal or septic systems.
7. **No Significant Degradation of Wildlife and Wildlife Habitat:** The proposed Project has a written plan to mitigate any significant degradation to wildlife or sensitive wildlife habitat and any such significant degradation is outweighed by the benefits of the proposed project. Examples of factors the County may consider in determining impacts to wildlife and wildlife habitat include without limitation:
- i. Changes to habitat and critical habitat, including calving grounds, mating grounds, nesting grounds, summer or winter range, migration routes, or any other habitat features necessary for the protection and propagation of any wildlife, taking into account:
 - 1) Human related activities that will disrupt necessary life cycle functions of wildlife.
 - 2) Elimination, reduction and/or fragmentation of wildlife habitat.
 - 3) Disruption of necessary migration or movement patterns, preventing wildlife from using their entire habitat.
 - 4) Displacement of wildlife species into areas that cannot support or sustain the species over the long term.
 - 5) Fragmentation of large areas of native vegetation and habitat by existing and proposed Project.
 - 6) Protection of rare landscape elements such as locally rare vegetation, unique rock formations, sheltered draws or drainage ways.
 - 7) Maintenance of connections among wildlife habitats and provisions to identify and protect corridors for movement.
 - ii. Changes in threatened or endangered species.

- iii. Changes to habitat and critical habitat conditions necessary for the protection and propagation of aquatic species.
- k. **Benefits Outweigh the Loss of Resources:** The benefits accruing to the County and its citizens from the proposed Project outweigh the losses of any natural, agricultural, recreational, grazing or commercial resources within the County, or the losses of opportunities to develop such resources.
- l. **Best Alternative:** The proposed Project represents the alternative that best complies with these Regulations.

(2) Siting and Operational Criteria.

a. The Proposed Project and Appurtenant Facilities Shall be Located to Minimize Disturbance to Surface Areas:

1. Project production facilities shall, to the extent practicable, be located in centralized areas to serve the maximum number of wells.
2. All off-site collection and injection pipelines shall, to the extent practicable, share existing dedicated rights-of-way. All pipelines shall be painted and/or landscaped to blend with the environment. For pipelines to be installed adjacent to public roads, applicant shall consult with the Archuleta County Road and Bridge Department in order to minimize impacts on existing and future road needs.
3. Project drill sites shall be constructed adjacent to existing roads to the extent practicable.

b. Setback Requirements: Unless other mitigation techniques would justify a lesser setback, the following setback shall apply to structures and wells appurtenant to the proposed Project. Where state, federal, and County setback requirements differ, the most stringent setback requirements shall control.

Property Boundary	100'
Public Roads	100'
Residence	300'
School	1320'
Hospital	1320'
Any Other Permanent Structure/Development	300'

- c. **Removal and Disposal of Drilling Wastes upon Completion of Drilling:** Within sixty (60) calendar days after completion of the drilling of a well, all drilling wastes must be removed from the drilling site and disposed of in accordance with applicable federal and state regulations.
- d. **Zero Discharge System:** The geothermal facility shall utilize a zero discharge system.
- e. **Use of Directional or Slant Drilling:** The proposed Project may utilize directional or slant drilling when beneficial.
- f. **The Project Will Not Cause a Nuisance:** The proposed Project will not cause excessive noise and vibration levels, dust, fumes, glare, exterior artificial light, and odor. In addition:
 1. All vehicles and construction equipment will be properly maintained to minimize exhaust emissions and will be properly muffled to minimize noise.
 2. All work in preparation of the site for drilling shall be done between the

hours of 7 a.m. and 7 p.m. for any wells within 300 feet of residential structures whose owners or occupants have requested mitigation.

3. Drill pipes shall be racked and/or made up between the hours of 7 a.m. to 7 p.m. for wells within 300 feet of residential structures whose owners or occupants have requested mitigation.
 4. Well venting and testing within 300 feet of residential structures whose owners or occupants have requested mitigation shall be accompanied by the use of an effective muffling device or “silencer.”
 5. Impulse noises such as sudden steam venting shall be controlled by discharge through a muffler or other sound attenuating system, as appropriate.
 6. Outdoor Lighting shall meet all requirements of Section 5.4.4.
 7. If the geothermal system remains nonfunctional or inoperative for a continuous period of one year, the system shall be deemed to be abandoned and shall constitute a public nuisance. The abandoned system shall be removed by the owner, at the owner’s expense, and the impact area restored to be compatible with surrounding uses and as agreed to by the County.
- g. Leak Detection and Spill Protection:** All production equipment shall be maintained in a manner that prevents leaking and spilling.
 - h. Impact Area Shall Be Reclaimed Upon Cessation of Project Operation:** When the operation of the permitted Project has ceased, all facilities and appurtenances shall be dismantled and removed, and the impact area shall be restored as requested by the landowner and agreed to by the County in the approved reclamation plan.
 - i. Signage:** All Project well sites shall have a durable sign bearing the current name and number of the well; emergency telephone number; name and/or insignia of the operator and the owner. The sign shall be displayed at all times from the commencement of drilling operations until the well has been abandoned.
- (3) Operational Conflict Waiver:** The County may waive one or more of the permit approval criteria set forth in this Section 2.5.6.8 accordance with the following procedure:
- a. State and Federal Operational Conflict Defined:**
 1. **State Operational Conflict:** A state operational conflict exists if the application of the County standard(s) to the conduct of the Commercial Use of Geothermal Resources would:
 - i. Conflict with a state statute, regulation or other requirement; and
 - ii. Materially impede or destroy the state’s interest in Commercial Use of Geothermal Resources.
 2. **Federal Operational Conflict:** A federal operational conflict exists if compliance with both a federal statute, regulation or other requirement and the County standard(s) is a physical impossibility, or when the application of the County standard(s) to the Commercial Use of Geothermal Resources would stand as an obstacle to the accomplishment of the full purposes and objectives of Congress expressed in the federal statute, regulation or other requirement.

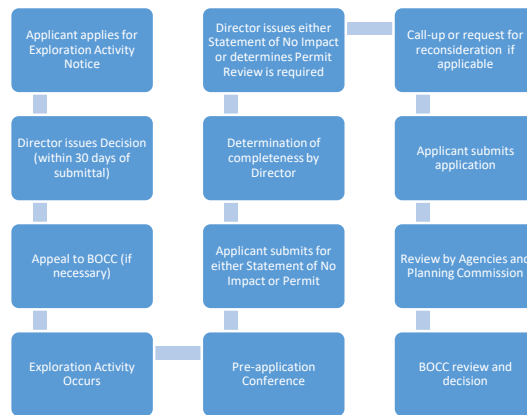
- b. Request for Operational Conflict Waiver:** The applicant may make a written request to the Director to waive a criterion for Operational Conflict Waiver hearing at any time during the Permit application review process, but no later than fourteen (14) calendar days following a final decision on the Permit.
1. The Director shall schedule a public hearing by the Board at the next regularly scheduled meeting for which proper notice can be accomplished following receipt of the Request for Operational Conflict Waiver.
 2. Notice of Public Hearing.
 - i. Not less than fourteen (14) calendar days prior to the hearing, the Director shall publish a notice of public hearing in a newspaper of general circulation in the area where the proposed Project is located. The applicant shall be responsible for the cost of publication.
 - ii. Not less than fourteen (14) calendar days prior to the date of the public hearing, the applicant shall mail written notice of the public hearing to the owners of record of all adjacent property, by certified mail, return receipt requested.
 - iii. The list of property owners to be notified shall be compiled by the applicant using the most current list of property owners on file with the County Assessor.
 - iv. The applicant is responsible for the accuracy of lists of property owners to whom written notice is provided. If the applicant makes reasonable good faith efforts to accomplish the notice responsibilities identified above, then the failure of any property owner to receive notice shall not affect the validity of the decision.
- c. Determination on Request for Operation Conflict Waiver:** If the Board determines that the applicant has met its burden of proof with a preponderance of evidence that application of the standard(s) to the proposed Project will result in an operational conflict with a state or federal statute, regulation, or other requirement, the Board may waive the standard(s) to the extent necessary to avoid the operational conflict. The Board may impose conditions that are necessary to minimize any negative impacts of the waiver.

(4) Waiver of Standards for Technical Infeasibility or Enhanced Protection: At any time during the application process the County may waive one or more of the permit approval criteria set forth in Section 2.5.6.8 in accordance with the following procedures:

- a. Technical Infeasibility:**
1. **No Economical Technology:** There is no economical technology commercially available to conduct the Commercial Use of Geothermal Resources in compliance with the approval criterion; and
 2. **Protection of Public Health, Safety, Welfare and the Environment:** The conduct of Commercial Use of Geothermal Resources, if the approval criterion is waived will be protective of public health, safety, welfare and the environment.
- b. Definition of Enhanced Protection:** The waiver of one or more criteria allows implementation of an alternate approach that enhances protection of public health, safety, welfare and the environment.

- c. **Request for Waiver of Standards for Technical Infeasibility or Environmental Protection:** The applicant may make a written request to the Director for waiver of one or more approval criteria for technical infeasibility or enhanced protection at any time during the application process.
- d. **Determination on Request for Waiver:** The Board shall consider a request for waiver during its review and final decision on the proposed Project. If the Board determines that the applicant has met its burden of proof with a preponderance of evidence that application of the approval criterion to the proposed Project is technically infeasible or that protection of public health, safety, welfare and the environment will be enhanced by a proposed alternate approach; the Board may waive the approval criterion. The Board may impose conditions on the waiver that are necessary to minimize any negative impacts.

FIGURE 2-1: PERMIT REVIEW FLOWCHART



DEPARTMENT NOTE: Sections in 25% font have not been implemented in Archuleta County because they are not yet defined areas.

2.6 TRANSFER OF DEVELOPMENT RIGHTS (TDR) PROGRAM

2.6.1 Purpose:

The transfer of development rights program is a planning incentive for cooperatively managing growth between Archuleta County, the Town of Pagosa Springs, and willing property owners, and is established for the following purposes:

- 2.6.1.1 To achieve the desire future conditions generally consistent with the Community Plan.
- 2.6.1.2 To encourage the preservation of large land parcels in agricultural use.
- 2.6.1.3 To encourage infill development and redevelopment in urban areas.
- 2.6.1.4 To encourage landowners in designated sending areas to forego or limit development by receiving compensation for their development rights.

2.6.1.5 To provide an opportunity for landowners in designated receiving areas to obtain a higher return on investment by developing at an increased density.

2.6.1.6 To encourage intergovernmental cooperation and coordination in order to achieve the above purposes.

2.6.2 Sending Areas:

The following provisions are established for sending areas:

2.6.2.1 Sending areas shall be limited to the AF or AR zoning districts. In addition, an eligible sending site shall be within a Scenic Overlay district or Wildlife Habitat Overlay district, unless otherwise approved by the Board of County Commissioners.

2.6.2.2 The number of development rights eligible for transfer shall be limited to the maximum density allowed in the zone district in which the sending site is located. For example, seventy (70) acres of land zoned AR would be eligible to have a maximum of two (2) development rights transferred.

2.6.2.3 An owner of a sending site in a sending area may voluntarily sell their development rights to an owner of a receiving site, or other buyer, at a market value established by the seller and the buyer.

2.6.2.4 A transfer of development rights shall be evidenced in a deed restriction signed by the owner of record of the sending site from which development rights are being transferred. The deed restriction shall be in a form approved by the Director of County Development and shall identify:

- (1) The transferee;
- (2) The transferor;
- (3) The legal description of the sending site from which the development rights are being transferred; and
- (4) The number of development rights being transferred from the sending site.

2.6.2.5 The deed restriction shall be recorded in the real property records of Archuleta County clearly stating the number of development rights that have been transferred. The deed restriction may also include a conservation easement.

2.6.2.6 Upon recordation of the deed restriction, a TDR certificate shall be issued by the Director of County Development identifying the number of development rights transferred, and the book and page number of the recorded deed restriction.

2.6.2.7 Once a TDR certificate is issued, future development of a sending site shall be limited to the remaining density not extinguished by the sale of development rights, and may only be developed as either a Conservation PUD per Section 3.1.6.4 of these Regulations or a

Rural Land Use Process Subdivision per Section 4.5 of these Regulations.

2.6.2.8 An owner of a sending site choosing not to participate in the TDR program shall retain the option to develop their property as otherwise provided for in these Regulations.

2.6.3 Receiving Areas:

The following provisions are established for receiving areas:

2.6.3.1 Existing zoning limits the development potential of properties within receiving areas to a base density. For a parcel to be developed at a density greater than the base density within a receiving area, the owner shall use one (1) or more development rights from a TDR certificate.

2.6.3.2 The transfer ratio of a development right shall be 1:1; for each single (1) development right transferred, one (1) additional dwelling unit is eligible as additional density on a receiving site.

2.6.3.3 Development rights and TDR certificates proposed for use on a receiving site shall originate from a sending site within Archuleta County. Development rights not used from a TDR certificate may be transferred to a new TDR certificate.

2.6.3.4 An eligible receiving site shall be within either an Urban Service Overlay District or the Town of Pagosa Springs, unless otherwise approved by the Board of County Commissioners.

2.6.3.5 Receiving sites proposed within the Town of Pagosa Springs shall require approval by the Town of Pagosa Springs.

2.6.3.6 TDR certificates may be used on a receiving site only with the approval of a PUD per Section 3.1.6 of these Regulations, unless otherwise approved by the Board of County Commissioners.

2.6.3.7 An owner of a receiving site choosing not to participate in the TDR program shall retain the option to develop their property as otherwise provided for in these Regulations. However, no rezoning to a higher density shall be permitted within a receiving area in unincorporated Archuleta County.