

SECTION 2 – LAND USE REVIEW

2.1 GENERAL

2.1.1 Land Use Permit Required:

2.1.1.1 Any change in land use, unless expressly exempt from permit requirements in Section 2.1.2, shall require a Land Use Permit before commencing the development or activity associated with the land use change. All land use changes must also obtain building and construction permits pursuant to the uniform codes adopted by the County, and must comply with all other applicable County requirements. "Land use change," as used in these Regulations, is a general and inclusive term, and is defined in Section 11 of these Regulations.

2.1.1.2 A land use change is inclusive of any action listed as an "approval requested" in Table 1: Review Process Chart, Section 2.2.2.

2.1.1.2.1 For land use changes that do not involve a division of land, approval of the proposed land use change will constitute a Land Use Permit.

2.1.1.2.2 For land use changes that involve a division of land, final plat approval will constitute a Land Use Permit.

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 if the use or activity is proposed for areas of the County that are zoned Agricultural/Forestry or Agricultural Ranching:

2.1.2.1 Agricultural operations that do not require a Land Use Permit include:

2.1.2.1.1 Production, cultivation, growing, and harvesting of crops and plants.

2.1.2.1.2 Sustainable and/or restoration forest practices on non-industrial on 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.

2.1.2.1.3 Raising and breeding livestock, but not including confined animal feedlot operations.

2.1.2.1.4 Harvesting, storage, grading, packaging, processing, distribution, and sale of agricultural commodities occurring at the point of

production.

- 2.1.2.2 One (1) single-family dwelling unit associated with an agricultural operation that is established in compliance with these Regulations.
- 2.1.2.3 Accessory structures and dwellings that are associated with the exempt uses and activities herein do not require a Land Use Permit.
- 2.1.2.4 *In any district where permitted (AR-Agricultural Rural, AE-Agricultural Estate, RR-Residential Rural, and R-Residential) one (1) single family detached dwelling is exempt from a land use permit.*
- 2.1.2.5 *In any district where permitted (AR-Agricultural Rural, AE-Agricultural Estate, RR-Residential Rural) a second single family detached dwelling is exempt from a land use permit as long as the lot is three (3) acres or more.*
- 2.1.2.6 *Uses associated with Conservation Easements.*

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

SECTION 2 – LAND USE REVIEW

May 2006

Amended October 2006

Amended November 2009

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:**TABLE 1: REVIEW PROCESS**

<u>Approval Requested</u>	<u>Pre-App</u>	<u>Sketch</u>			<u>Preliminary</u>			<u>Final</u>				<u>Notes</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>	
Floodplain Development Permit	M							A			APP	
Sign Permit	M							A			APP	
Temporary Use Permit	M							A			APP	
Minor O&G Permit	M							A			APP	
Minor S&G Permit	M							A			APP	
Major O&G Permit	M							M	H	H		
Major S&G Permit	M							M	H	H		
Access Permit	M							M	P	H		
Use by Right	A											
Conditional Use Permit	M							M ¹	H	H		
Concept Review	M	M		H				M	H	H		
General Development Plan	M	M				H		M	H	H		
PUD	M	M	P ²		M	H	APP	M	H	H		² Sec 4.2.3.2
Rezoning	M							M	H	H		
Major Subdivision	M	M	P ²		M	H	APP	M	P	H		² Sec 4.2.3.2
Minor Impact Subdivision	M	M	P ²					M	P	H		² Sec 4.2.3.2
Rural Land Use Process	M	M	P ²		M	H	APP	M	P	H		² Sec 4.2.3.2
Site Specific Development Plan	M									H		
Amended Plat -Major	M	M	P ²		M	H	APP	M	P	H ³		² Sec 4.2.3.2 ³ Sec 4.6.4.3.1, Sec 4.6.4.3.2
Amended Plat-Minor	M	M	P ²					M	P	H ³		² Sec 4.2.3.2 ³ Sec 4.6.4.3.1, Sec 4.6.4.3.2
Lot Line Adjustment	M							M	P ⁴	P ⁴		⁴ Sec 4.6.4.3.3
Lot Consolidation	M							M		P		

<u>Approval Requested</u>	<u>Pre-App</u>	<u>Sketch</u>			<u>Preliminary</u>			<u>Final</u>				<u>Notes</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>	
Subdivision Vacation	M							M	P	H		
Variances	M										H	

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

2.2.3 Public Notice Requirements:

The requirements of this Section apply only to public hearings required by these Regulations and as shown on the Review Process Chart. Where that chart 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.

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*, the Director of County Development shall cause to be sent, by first class U. S. mail, 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 public right-of-way or water course, and

2.2.3.3.1 Owners of property included within the application.

2.2.3.3.2 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.

2.2.3.3.3 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.

2.2.3.4 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.

2.2.3.5 Public Notice Requirements Chart. Table 2 identifies for which requested approvals public notice is required, either by publishing, posting, or mailing:

TABLE 2: PUBLIC NOTICE REQUIREMENT

Approval Requested	NOTICE REQUIRED		
	Publish	Post	Mail
Major O&G Permit	X	X	X
Major S&G Permit	X	X	X
Access Permit	X	X	
Conditional Use Permit	X	X	X
Preliminary PUD	X	X	X
Final PUD	X	X	
Rezoning	X	X	X
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	

Key: **PUD** Planned Unit Development
 O&G Oil and Gas
 S&G Sand and Gravel

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 one hundred eighty (180) days of the pre-application meeting, a new pre-application meeting must be scheduled before the formal application will be accepted.

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. 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.

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 permits, plat approvals, zoning amendments, variances and other administrative relief. The fee schedule will be adopted periodically by the Board of County Commissioners and is available from the Planning Department. In addition to the application fee, outside consulting fees 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. The express purpose of this distribution is to solicit review comments and to ensure that the proposal complies with all applicable development standards and requirements. 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).

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.

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.

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 2.2.1.

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 recommend to the Board of County Commissioners either to approve, approve with conditions, or deny the application. The Planning Commission can also table the request to a future meeting date.

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 shall expire and become null and void if:

2.2.11.1.1 For sketch plan or preliminary approvals, 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

2.2.11.1.2 For final approvals, a building permit is not issued for the work authorized within one (1) year from the date of final approval, or if a one-time, one (1) year extension of such original approval has not been approved by the Board of County Commissioners; or if the work is ceased for a period of one hundred eighty (180) days or more at any time after work is commenced.

2.2.11.2 For final approval of rezonings, planned unit developments, and conditional use permits, a public hearing before the Planning Commission or Board of County Commissioners, as appropriate, in the manner required for final review shall be held 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 building permit shall expire if the work authorized is not commenced within one year from the date of issuance.

2.2.12 Concept Review

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.

November 2009

2.2.12.1 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.

November 2009

2.2.12.2 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.

2.2.13 General Development Plan:

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.

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

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

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

2.2.13.2 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.

November 2009

2.3 VESTED PROPERTY RIGHTS

2.3.1 Generally:

For those developments for which the landowner wishes the creation of vested rights, the approval by the County of the project at a hearing conducted at the request of the landowner, which hearing may be combined with the hearing on approval of the project, after all other required stages of the development review process. Failure of the landowner to request 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:

No site-specific development plan shall be approved until after a public hearing before the Board of County Commissioners, preceded by written notice of such hearing. Such notice may, at the County’s option, be combined with the notice required by Section 30-28-116, C.R.S., for amending regulations, or with any other required notice. At such hearing, interested persons shall have an opportunity to be heard.

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. 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.

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 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 Qualification for Variance:

Variations 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. Such variations shall be heard by the Board of Adjustment, and action taken which shall be consistent with the Section 1.2.4.4 of these Regulations and shall not be detrimental to the general welfare of the County and its residents.

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 supplemental data.

2.4.3 Review Procedure:

2.4.3.1 The Planning Department shall prepare a written report and present it to Board of Adjustment. The report shall address the variance request as it relates to compliance or non-compliance with the standards for the grant of denial of variations in Section 1.2.4.4.

2.4.3.2 The Board of Adjustment shall approve, continue or disapprove the variance request at the public hearing. If the Board of Adjustment continues the request, a determination will be made within five (5) working days rendering a written decision to the applicant.

2.4.3.3 Appeals to a BOA decision shall be in accordance with the procedure set forth in Section 1.2.4.5

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:

2.5.1.1.1 The notice and public hearing requirements of Section 24-65.1-404,

C.R.S. have been followed;

2.5.1.1.2 These Regulations are necessary because of the intensity of current and foreseeable development pressures on and within this County; and

2.5.1.1.3 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:

2.5.1.4.1 The specific development or activity is covered by a current building permit issued by Archuleta County;

2.5.1.4.2 The specific development or activity has been approved by the electorate of Archuleta County;

2.5.1.4.3 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;

2.5.1.4.4 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

2.5.1.4.5 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:

2.5.1.5.1 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.

2.5.1.5.2 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.

2.5.1.5.3 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.

2.5.1.5.4 These Regulations are intended to be applied in addition to, and not in lieu of, all other regulations of Archuleta County.

2.5.1.5.5 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:

2.5.1.5.5.1 Section 28-8-702, C.R.S., sewage treatment plant site approval;

2.5.1.5.5.2 Section 25-8-501, C.R.S., point source pollutant discharge permit;

2.5.1.5.5.3 Section 208 (33 U.S.C. Section 1288) area-wide wastewater treatment management planning;

2.5.1.5.5.4 Section 303 (33 U.S.C. Section 1313) river basin water quality management planning;

2.5.1.5.5.5 Disposal of sewage sludge (33 U.S.C. Section 1345);

2.5.1.5.5.6 Section 32-1-201, C.R.S., Special District Control Act;

2.5.1.5.5.7 16 U.S.C. Section 661-666(c) (1970), the Fish and Wildlife Coordination Act;

2.5.1.5.5.8 Section 102(c) 42 U.S.C. Section 4321, et seq., the National Environmental Policy Act; and

2.5.1.5.5.9 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:

2.5.1.8.1 Designation: That legal procedure specified by Section 24-65.1- 401, *et seq.*, C.R.S., carried out by the Board of County Commissioners.

2.5.1.8.2 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.

2.5.1.8.3 Legal description: Any description from which it is possible to locate accurately on the ground the boundaries of the land being described.

2.5.1.8.4 Matter of state interest: An area of state interest or an activity of state interest or both.

2.5.1.8.5 Permit Authority: The Board of County Commissioners.

2.5.1.8.6 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.

2.5.1.8.7 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:

2.5.2.1.1 The Board of County Commissioners may in its discretion designate and adopt regulations for the administration of any matter of state interest.

2.5.2.1.2 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.

2.5.2.3 Notice of Public Hearing, Mailing List, Publication:

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

2.5.2.3.2 The time and place of the hearing;

2.5.2.3.3 The place at which materials relating to the matter to be designated and any guidelines and regulations for the administration thereof may be examined;

2.5.2.3.4 The telephone number where inquiries may be answered;

2.5.2.3.5 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:

2.5.2.5.1 State and federal agencies, as deemed appropriate in the discretion of the Board of County Commissioners;

2.5.2.5.2 Persons on the mailing list (subsequent to the initial adoption of guidelines and regulations);

2.5.2.5.3 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

2.5.2.5.4 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:

2.5.2.6.1 Testimony and evidence from all persons or organizations desiring to appear and be heard, including County staff;

2.5.2.6.2 Any documents that may be offered; and

2.5.2.6.3 The recommendations of the Archuleta County Planning Commission, if any.

2.5.2.7 Record of Designation Proceeding:

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

2.5.2.7.1.1 A copy of the notice of the hearing;

2.5.2.7.1.2 The certificate of publication of the notice of the hearing and a listing of all persons to whom the notice was mailed;

2.5.2.7.1.3 The names and addresses of persons who presented

written or oral statements or offered documentary evidence;

2.5.2.7.1.4 Any written statements or documents presented in support of or in opposition to the proposed designation of the matter of state interest;

2.5.2.7.1.5 Any recording or transcript of the hearing which has been prepared pursuant to Section 2.5.2.11;

2.5.2.7.1.6 The order of designation of the area or activity of state interest; and

2.5.2.7.1.7 A map or maps depicting each area of state interest designated.

2.5.2.7.2 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:

2.5.2.8.1 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.

2.5.2.8.2 In making any such designation, the Board shall take into consideration:

2.5.2.8.2.1. All testimony, evidence and documents taken and admitted at the public hearing;

2.5.2.8.2.2 The intensity of current and foreseeable development pressures in the Archuleta County; and

2.5.2.8.2.3 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:

2.5.2.10.1 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;

2.5.2.10.2 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 Section 1.307, 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:

2.5.3.2.1 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.

2.5.3.2.2 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.

2.5.3.2.3 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:

2.5.3.3.1 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.

2.5.3.3.2 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 2.301.

2.5.3.3.3 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 2.303(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:

- 2.5.3.4.1** 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.
- 2.5.3.4.2** The purpose and intent of these Regulations must be satisfied by the terms of the agreement.
- 2.5.3.4.3** 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.
- 2.5.3.4.4** 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.
- 2.5.3.4.5** Exercise of the provisions of this Section 2.4.3.6 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:

- 2.5.4.2.1** 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.
- 2.5.4.2.2** The Permit Authority shall hear testimony and receive evidence, including:
 - 2.5.4.2.2.1** The recommendations of the Archuleta County Planning Commission, if any;
 - 2.5.4.2.2.2** Testimony and evidence from any and all persons or organizations desiring to appear and be heard, including County staff; and
 - 2.5.4.2.2.3** Any documents that may be offered.
- 2.5.4.2.3** 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.
- 2.5.4.2.4** 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.
- 2.5.4.2.5** The Permit Authority shall collect and preserve the following record of the public hearing:
 - 2.5.4.2.5.1** The permit application;
 - 2.5.4.2.5.2** 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;

- 2.5.4.2.5.3 Any written statements or documents presented in support of or in opposition to the permit application;
- 2.5.4.2.5.4 The names and addresses of all persons who presented oral or written statements, appeared as witnesses, or offered documentary evidence;
- 2.5.4.2.5.5 Any recording or transcript of the hearing.
- 2.5.4.2.5.6 Written minutes of the Permit Authority relating to the public hearing;
- 2.5.4.2.5.7 The resolution of the Permit Authority granting or denying the permit application; and
- 2.5.4.2.5.8 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:

2.5.4.4.1 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.

2.5.4.4.2 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.

2.5.4.4.3 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.

2.5.4.4.4 The Permit Authority shall state, in writing, reasons for its decision

on a permit application, and its findings and conclusions.

2.5.4.4.5 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:

2.5.4.5.1 Issuance of Permits:

2.5.4.5.1.1 The permit shall be issued on the form adopted by the Board of County Commissioners.

2.5.4.5.1.2 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

2.5.4.6.1 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.

2.5.4.6.2 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:

2.5.4.6.2.1 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

2.5.4.6.2.2 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.

2.6 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 desired 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:
 - 2.6.2.4.1** The transferee;
 - 2.6.2.4.2** The transferor;
 - 2.6.2.4.3** The legal description of the sending site from which the development rights are being transferred; and

- 2.6.2.4.4** 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.