

SECTION 6 – DEDICATIONS, GUARANTEES AND TITLE RESTRICTIONS

6.1 GENERAL REQUIREMENTS

6.1.1 Dedication Required:

The County shall require all residential major subdivisions and PUD's to provide sites, land or cash-in-lieu of land for mitigation of the impacts of new growth on parks and trails, roads, schools and needed open space.

6.1.2 General Standards:

- 6.1.2.1** The purpose of the dedication and/or payment is to provide the public facilities and/or services made necessary as a consequence of the development, in an amount roughly proportional to the impact of the development upon such facilities and/or services or the increased need for them brought about by the development. The developer shall have the option, in its sole discretion, to accept the County's calculation of the required dedication, or to perform such studies as are necessary to demonstrate the actual impact of the development upon public services and facilities, and the resulting appropriate dedication or other contribution.
- 6.1.2.2** The County may require the dedication of areas or sites of suitable, type, size and location for public use for parks, open space, trails or other necessary public facilities, in accordance with the criteria set out in Section 6.1.3, based upon either the fair market value of a percentage of the acreage, a flat fee per lot or tract or, in the case of any other method, such basis as may be agreed upon between the County and the developer.
- 6.1.2.3** The County may accept a cash payment in lieu of dedicated land if the public interest will be served thereby. Such cash payments must be earmarked and used for a specified public purpose for parks, open space, trails and other necessary public facilities. Such in-lieu payment is to be applied against expenses incurred by the County in the provision of off-site facilities made necessary or desirable by the immediate or future increase in population caused by or attributable to the development. Property values shall be established by appraisal, provided in the first instance by the developer, and accepted by the Board. Minimum payment for cash in lieu of land dedication shall be one thousand dollars (\$1,000) for any required dedication.
- 6.1.2.4** The County may accept subdivided land (lots) in lieu of cash payments equal in value to cash payment. Such land shall be used only to sell or trade for specified public purposes for schools, parks, open space, trails and other necessary public facilities.

- 6.1.2.5** The developer may fulfill such other arrangements or conditions, memorialized in the site improvements or PUD agreement, as may be desirable or necessary to alleviate the effects of development and to promote the public health, safety and welfare of the present and future residents and inhabitants of the County as a whole.
- 6.1.2.6** In those cases where portions of the sites and land areas to be dedicated are in such locations, configurations or sizes to render dedication of those portions of the sites and land areas unacceptable to the Board, the applicant at the option of the Board, shall be required to dedicate to Archuleta County those sites and land areas which will meet the needs of Archuleta County in accordance with this Section 6 and cash in lieu of the dedication of the unacceptable portions of the sites and land areas. The value of the combination of both the land dedication and the cash in lieu of land shall not exceed the full market value of the total required dedication of sites and land areas. Full market value shall be established in accordance with Section 6.1.2.3.
- 6.1.2.7** All moneys collected by the County under this Section shall be deposited in an interest-bearing account which clearly identifies the category, amount or fund of capital expenditure for which the moneys were collected. Each such category, account or fund shall be accounted for separately. Any interest or other income earned on such moneys shall be credited to the account.
- 6.1.2.8** All land to be dedicated as required by this Section shall be designated on the final approved plat as outlots, and these outlots shall not be building lots. Such outlots shall be deeded to Archuleta County at the time of recording of the final plat. Title insurance acceptable to Archuleta County provided by a title insurance company authorized to do business in the State of Colorado and a certificate of representations and warranties concerning title and usability of the property shall be required at the time of recording of the final plat.

6.1.3 Criteria for Dedications:

The County in formulating the appropriate combination of the options set forth above, shall take into consideration the following criteria:

- 6.1.3.1** The size of the proposed development.
- 6.1.3.2** The projected additional population associated with the proposed development.
- 6.1.3.3** The projected needed generated by the development for road, school, park and open space services and facilities, the provision of which is not covered by other requirements herein.
- 6.1.3.4** The impact of the proposed development on the implementation of the Community Plan and its component parts, including transportation, parks and recreation.

6.1.4 Developer Option to Conduct Study:

The developer may, in its sole discretion, elect to fund a study of the needed dedications for the project, taking into account the criteria of Section 6.1.3. The County shall consider such study in making its final decision.

6.2 PARK AND TRAIL DEDICATION

6.2.1 Trails and Sidewalks:

Residential, commercial and industrial developments shall provide a network of public sidewalks within the development and that provide access from public parking areas to buildings open to the general public. Residential, commercial and industrial developments shall also provide a sidewalk or trail where property is adjacent to the right-of-way. This sidewalk or trail shall run parallel to the right-of-way along the entire length of the property adjacent to the right-of-way.

6.2.2 Criteria for Park and Trail Dedications:

In determining which land areas are appropriate for dedication as parks and/or trails, the Board shall consider the following criteria:

6.2.2.1 The placement of park lands in such a manner as to assist in enhancing the environment, and in preserving community integrity in the most practical, attractive manner possible.

6.2.2.2 The assurance of the continuity of open space links, trails, and other major components of the recreation system.

6.2.2.3 The assurance that areas set aside for parks lands have been examined for compliance with all regional plans and particularly the Community Plan statement, if any, for park and open spaces.

6.2.2.4 The assessment of the suitability of proposed land dedications for park and recreation.

6.2.2.5 The examination of the size, shape, topography, geology, presence and condition of ground cover and timber, condition of soil, drainage, location, access and availability of water to lands proposed for park and trail purposes.

6.2.2.6 The assurance of the protection of natural and historical features, scenic vistas, watersheds, timber and wildlife.

6.2.2.7 Park lands that are intended to be used for trail rights-of-way, (linear parks for pedestrian, equestrian or bicycle use) shall conform to the following criteria:

6.2.2.7.1 The land may either be set aside as a dedicated easement or as a deeded outlot.

- 6.2.2.7.2** The minimum width for such trail easement or outlot shall be based on the particular reasonable needs of the trail, its location, the surrounding terrain and the projected usage but in no instance shall be less than twelve (12) feet in width and in all cases the easement shall be of adequate width to handle the proposed uses.
- 6.2.2.7.3** There shall be adequate provision for public access to the trail easement within the subject property.
- 6.2.2.7.4** The trail easement may overlap and include other property previously included in other easements such as ditch, canal or utility, public open space or other easement provided no easement compromises the functional use of any other easement.

6.2.2.8 Park land may be considered as part of the land set aside for open space or preservation as provided for in an approved subdivision or PUD's.

6.2.2.9 Land with a slope of twelve (12) percent or more shall not be considered.

6.2.3 Cash in Lieu of Trail Dedication:

6.2.3.1 If the Planning Department or County Engineer determines that a sidewalk or trail is not deemed feasible due to topographic constraints or other site conditions, or if the sidewalk or trail will not provide a continuous pathway in the near future, a "cash-out" option is available. The developer will place funds for sidewalk/trail development into an escrow fund. The amount to be placed in the escrow fund shall be equal to the amount of actual construction of said sidewalk/trail. These funds will then be used by the County or the County's designee for future trails and/or sidewalk construction with the following restrictions:

6.2.3.1.1 Funds will be used for trails or sidewalks within a three (3) mile radius of the proposed development.

6.2.3.1.2 Funds may be used for trails/sidewalk planning studies.

6.2.3.2 For those uses which are located in the more rural areas of the County, and where the County Engineer and the Planning Department have determined that sidewalks or trails construction would be unnecessary, and further, that there is no likelihood of sidewalks or trails being constructed within a three-mile radius of the project and within a five (5) year time period, this requirement may be waived by the Planning Department.

6.3 ROAD DEDICATIONS

6.3.1 Conditions of Approval:

6.3.1.1 All roads, streets, alleys or other public traffic ways located within the development, the benefit of which is to the current or future residents of the development, shall be dedicated as public rights-of-way unless specifically approved as private rights-of-way and so designated on the plat or other document of approval. Roads shall be conveyed to the County at the time of filing of the final approved plat or other document of approval.

6.3.1.2 The developer must comply with the Archuleta County Road & Bridges Design Standards and Construction Specifications (adopted by Resolution 2005-40 on November 2, 2005), including without limitation Sec. 27.7.2.1 (Requirement for Subdivision Improvements Agreement & Financial Guarantee), Sec. 27.0.5.1 (New Roads and Recreational Pathways to be built by Applicants) and Sec. 27.0.6.1 (Upgrading Needed to Accommodate New Development)

6.4 SCHOOL LAND DEDICATION

6.4.1 Purpose:

The purposes of this section are to:

6.4.1.1 Recognize that new residences generate additional demands and burdens on the existing school system and the need for additional facilities;

6.4.1.2 Recognize that the necessity for, and cost of, new or expanded schools be properly attributed to and paid for by new residential development in accordance with the needs and burdens generated by such development; and

6.4.1.3 Provide a dedication methodology that closely approximates the additional school needs and burdens generated by new residential development, links the requirements to be imposed to the additional needs and demands upon the school systems generated by new residential development and imposes a dedication requirement that is roughly proportional to the demands and burdens created by new residential development.

6.4.2 Applicability:

The school dedication or payment in lieu requirements set forth in this section shall apply to new residential developments only.

6.4.3 School Land Dedication Criteria:

The applicant shall designate on the final plat the land that will be dedicated for future school use. The designated land shall be intended to primarily serve the needs of the

future inhabitants of the development and surrounding developments. The following criteria will be used to evaluate whether land proposed for dedication is appropriate for school purposes:

- 6.4.3.1** Whether the size, location, and shape of the site are appropriate for a school site.
- 6.4.3.2** Whether the site has been approved by the appropriate school district.
- 6.4.3.3** Assurance that utilities will be extended by the developer or other entity to property boundaries of site and that site development will include necessary street(s), curb, gutter, sidewalks and street lighting.
- 6.4.3.4** Slope of land: no more than three (3) percent for a school building site.
- 6.4.3.5** Opportunity for shared use with other community facilities.
- 6.4.3.6** Whether there is direct access to a collector or local streets for elementary, middle or K-8 school or direct access to an arterial or collector streets for a high school.

6.4.4. Fees in Lieu of School Land Dedication

The County may accept a cash payment in lieu of the dedication of all or any portion of the required school land dedication. Such fees-in-lieu shall be calculated as described in Section 6.1.2.2.

6.4.5 Collection and Administration of Fee-in-Lieu and Land Dedications for Schools:

- 6.4.5.1** School fees paid pursuant to this section shall be made payable to the County at the time of final subdivision plat or PUD approval or issuance of building permit, whichever occurs first.
- 6.4.5.2** Monies collected by the County through the fee-in-lieu process shall be kept in a separate, specially designated account for each school district and shall be accounted for in accordance with C.R.S. Section 29-1-801 et seq. The school districts within the County shall be eligible to obtain the monies collected within their district, if a need is determined. Eligible uses include planning for future school sites and the purchase of land for school sites. The expansion of existing school buildings, and investments to increase school capacity, are eligible with the approval of the County.
- 6.4.5.3** Land reserved for school sites shall be dedicated to the County and held in ownership by the County until such time as there is sufficient student demand for a school on the site. If there is insufficient student demand and the school district and County have determined that there is not a need for a school on the site, that land may be sold by the County. The owner of the land at the time of subdivision, or assigns, shall have the right of first refusal to purchase the site at

the cost of the original fee-in-lieu plus reasonable yearly interest earnings. The proceeds of the sale, minus reasonable costs incurred by the County in the ownership and sale of the site, shall be paid to the appropriate school district. The County and appropriate school district shall review any land that is held by the County for a period of ten (10) years to determine its need and viability as a school site. If it is determined that the land should not be sold, subsequent reviews shall be conducted thereafter at five-year intervals to determine need and viability.

6.4.5.4 Prior to transferring land or payment of a fee-in-lieu to the school district, the school district shall establish the need for the school site to the satisfaction of the County. The determination of need shall be based on the following criteria:

6.4.5.4.1 Whether the school district has formally adopted a plan which designates the location as the site of a future school.

6.4.5.4.2 The proposed location is in conformance with the Community Plan.

6.4.5.4.3 If a fee-in-lieu is requested, the school district has a contract for the purchase of the school site.

6.5 OPEN SPACE

6.5.1 For multi-family development, a minimum of twenty-five (25) percent of the total platted area shall be devoted to open-air recreation or other common open space, available to all owners and residents of the project, either physically or visually. For single-family, commercial and industrial developments, the minimum requirement shall be fifteen (15) percent of total platted area. The County may consider the size, location and character of particular parcels in meeting this requirement.

6.5.2 The amount of open space shall be calculated exclusive of street right-of-ways, parking lots, individually owned yards, school sites, fire station sites and utility sites. Of the required open space, not more than half may be water surface such as lakes, ponds, rivers, etc. Single activity facilities such as a golf course, tennis courts, etc., shall not comprise the total required open space land area.

6.5.3 If applicable, facilities may be required for employees in higher density developments, such as outdoor picnic areas, benches, walking paths, bicycle paths, etc.

6.5.4 There shall be a method assured by deed restriction or covenant, binding the owners in perpetuity to a method of maintenance of the common open space areas and other common facilities, including private streets, grounds, sidewalks, street lighting, etc.

6.6 EASEMENTS

- 6.6.1** Easements for the installation and maintenance of utilities shall not be less than twenty (20) feet in total width, and shall be provided along the perimeter of the project and along lot lines where there is a minimum of ten (10) feet on each side of the lot line. A twenty (20) foot easement for utilities shall be provided along all lot or parcel boundaries adjoining a street. Advice of the various utility suppliers shall be obtained and given full consideration by the developer in this matter.
- 6.6.2** Easements for existing utilities shall be provided in appropriate locations.
- 6.6.3** Easements for runoff or storm drainage or flood control may be required as deemed necessary and appropriate.
- 6.6.4** If the proposed project lies within the Airport Influence Area, as identified on a map in the Planning Department, an Avigation Easement shall be required. It shall be the responsibility of the applicant to determine if any portion of the lot(s) may be unbuildable, due to the required compliance with F.A.R. Part 77.
- 6.6.5** Development occurring on land containing irrigation ditches, canals, or operating under legal water rights, shall comply with the following, as required by the respective ditch company or ditch owners:
- 6.6.5.1** Irrigation ditches and canals shall be protected through the provision of adequate right-of-way easements to provide access for equipment to clean and maintain the ditch.
 - 6.6.5.2** No structures shall be placed within these right-of-ways or easements without written permission from the appropriate ditch company or ditch owners.
 - 6.6.5.3** Ditch or canal right-of-way or easements shall not be used as access to projects. Gates of adequate width shall be provided for the maintenance of ditches by ditch right holders.
 - 6.6.5.4** Fences shall be designed and placed in such a manner as to not interfere with the easement.
 - 6.6.5.5** The number of ditch crossings, locations, and sizes shall be approved by the ditch company or ditch owners.

6.7 DEVELOPMENT PHASING

- 6.7.1** Phased development may be approved by the County, however, each phase developed shall be able to exist in a stable manner irrespective of the completion of the balance of the project.
- 6.7.2** If phased development is proposed for the project, all phases shall be clearly shown on the development plans.
- 6.7.3** Phased development shall be subject to any new regulations that have been adopted prior to consideration of the next phase of development.
- 6.7.4** Future phases, components or amendments within existing projects shall occur in accordance with the requirements of current regulations.

6.8 FINANCIAL GUARANTEES FOR PUBLIC IMPROVEMENTS

6.8.1 General Requirements:

All public improvements required in association with a subdivision plat must be completed to the County's satisfaction prior to final approval of the plat (See Section 4.4.3). The public improvements required shall be finally determined at the time of approval of the Preliminary Plan (See Section 4.3.3), and shall include the following, unless waived as a part of such approval: roads and associated features as required by the County's Road & Bridge Standards (See Section 6.3.1.2), sidewalks, trails, water and sewer lines, including distribution and collection lines, all drainage, detention and retention facilities and parks designed to serve project residents. The requirements of Section 6.8.2 through 6.8.9 apply to developments not requiring subdivision approval; Section 6.8.10 applies to all developments.

6.8.2 Improvements Agreement Required:

No development shall be approved by the Board of County Commissioners until the developer has submitted an improvements agreement or similar contract setting forth the plan, parties responsible and method for the construction of all required public improvements shown on the final documents of approval. The agreement or contract shall adhere to the Archuleta County Road & Bridge Design Standards and Construction Specifications (Resol. 2005-40; November 2, 2005) and shall, in the judgment of the Board of County Commissioners, make reasonable provision for completion of the specified improvements in a specified time period, with appropriate phasing, as a condition for acceptance by the Board, and for satisfaction of the requirements of Section 4.

6.8.3 Security:

Suitable security in an amount stipulated in the improvements agreement shall accompany the final submission to ensure completion of the public improvements according to design and time specifications. Concurrently with the final approval, the developer shall furnish the County with, at the County's option, one of the following:

cash, certified funds, a certificate evidencing good and sufficient performance and payment bond or letter of credit to secure the performance and completion of the public improvements to be dedicated to the County, in an amount equal to one hundred twenty-five (125) percent of the estimated cost of said improvements.

6.8.4 Unacceptable Security:

No letter of credit or performance bond drawn upon a company, bank or financial institution having any relationship to the developer or any principal, director, officer or shareholder of the developer (other than the relationship of depositor or checking account holder) shall be acceptable. The County may reject any security for any reason.

6.8.5 Compliance:

If the improvements required to be installed are not constructed in accordance with the required specifications, the County shall notify the developer of the noncompliance and establish schedules for the correction of the noncompliance. If the Board of County Commissioners determines that any or all of the improvements will not be constructed in accordance with the specifications, the County shall have the power to annul the final approval, either fully or in part and withdraw from the deposit of collateral such funds as are necessary to construct the improvements in accordance with the specifications previously established.

6.8.6 Inspection and Enforcement:

Should a developer not provide suitable security to ensure completion of the required public improvements, no final approval shall be accepted by the Office of the County Clerk and Recorder until security is accepted approved by the Board of County Commissioners. As the required public improvements are completed, the developer may apply in writing to the Board of County Commissioners for a partial or full release of the collateral. If the Board determines that the improvements have been made in accordance with the final approval and the improvement agreement, a portion of the security shall be released, provided that the Board of County Commissioners retains sufficient security to cover the cost of the incomplete improvement.

6.8.7 Partial Release of Security:

From time to time, as work to be performed and improvements to be constructed progress to completion, the County may, upon its inspection of and satisfaction with the completion of improvements or work, cause or request that so much of the security required hereunder be released as corresponds to the completed improvements or work, provided, however that the County shall retain twenty (20) percent of the original amount until the expiration of the two year warranty period. Consent to release of funds or security shall not constitute acceptance by the County of such improvements or work for maintenance purposes.

6.8.8 Release of Security:

Except as may be provided in any subdivision improvements agreement, the County shall not accept responsibility for the operation or maintenance of any improvements until completion of the improvements and final acceptance thereof by the County. Upon

written application by the developer for a certificate of completion, and provided that all payments and other performances herein agreed to be made and performed by the developer have been made and completed, the County shall issue a certificate of completion. Except for defects appearing within two (2) years after the date of the certificate and the retention of twenty (20) percent security required by Section 6.9.6, the County will release the developer from all further liability as to the completed improvements. Upon issuance of a certificate of completion, all improvements specified in the certificate shall be deemed approved and accepted by the County whereupon the specified improvements shall be owned, operated and maintained by the County.

6.8.9 Certificate of Occupancy:

No certificate of occupancy shall be issued for any improvements if such agreement is in default or until the remaining improvements have been installed to serve the properties for which a certificate of occupancy is sought, unless funds or a performance bond sufficient to guarantee completion and satisfactory to the County have been provided. In the event such funds are insufficient to complete the improvements, the County, in addition to any other remedy, may revoke any or all certificates of occupancy relating to the development. No application shall be further processed concerning property which is owned, in whole or in part, by a developer who is in default of any improvements agreement or contract for any development within the County, or who is in default of any agreement with the County for the payment of any fee or charge.

6.8.10 Warranty:

Prior to any County acceptance of any improvement, the developer shall provide the County with a written warranty of work in a form acceptable to the Planning Director (which warranty may be part of the improvements agreement) with respect to the improvements to be constructed, warranting that the work will be free of all defects in design, materials and construction, and will remain serviceable for a period of two (2) years after completion.

6.9 PROCEDURE FOR ACCEPTANCE OF STREETS AND ROADS

The Archuleta County Road & Bridge Design Standards & Construction Specifications (Resol. 2005-40; November 2, 2005); as amended from time to time, shall govern acceptance of new streets and roads.

6.10 MAINTENANCE

6.10.1 Common Open Space:

6.10.1.1 In the event that the organization established to own and maintain common open space, or any successor organization fails, at any time after establishment of the project to maintain the common open space in reasonable order and condition in accordance with the plan, the County may serve written notice upon such organization or the residents of the project, setting forth the manner in which the organization has failed to maintain the common open space in reasonable

condition. Said notice shall include a demand that such deficiencies of maintenance be cured within thirty (30) days thereof and shall state the date and place of a hearing thereon, which shall be held within fourteen days of the notice. At such hearing, the County may modify the terms of the original notice as to deficiencies and may give an extension of time within which they shall be cured.

6.10.1.2 If the deficiencies set forth in the original notice or in the modifications thereof are not cured within said thirty days or any extension thereof, the County, in order to preserve the taxable values of the properties within the project and to prevent the common open space from becoming a public nuisance, may enter upon said common open space and maintain the same for a period of one (1) year. Said entry and maintenance shall not vest in the public any right to use the common open space except when the same is voluntarily dedicated to the public by the owners.

6.10.1.3 Before the expiration of said year, the County shall, upon its initiative or upon the written request of the organization theretofore responsible for the maintenance of the common open space, call a public hearing upon notice to such organization, or to the residents of the project to be held by the Board of County Commissioners, at which hearing such organization or the residents of the project shall show cause why such maintenance by the County shall not, at the election of the County, continue for a succeeding year. If the Board of County Commissioners determines that such organization is ready and able to maintain said common open space in reasonable condition, the County shall cease to maintain said common open space at the end of said year. If the Board of County Commissioners determines that such organization is not ready and able to maintain said common open space in a reasonable condition, the County may, in its discretion, continue to maintain said common open space during the next succeeding year and, subject to a similar hearing and determination, in each year thereafter.

6.10.1.4 The cost of such maintenance by the County shall be paid by the owners of properties within the project that have a right of enjoyment of the common open space, and any unpaid assessments shall become a tax lien on said properties. The County shall file a notice of such lien in the office of the County Clerk and Recorder upon the properties affected by such lien within the project and shall certify such unpaid assessments to the Board of County Commissioners and County Treasurer for collection, enforcement, and remittance in the manner provided by law for the collection, enforcement, and remittance of general property taxes.

6.10.2 Roads:

Owner(s) of property served by new subdivision roads shall be responsible for their maintenance. See Section 4.3.2.5.

6.10.3 Covenants:

Private covenants shall be imposed upon new development for the protection and maintenance of the private open space and other common areas and amenities of the development, including private roadways, sidewalks, trails and drainage facilities. Copies of proposed covenants shall be submitted to the County for review prior to final project approval. While private covenants may address matters which are also governed by these Regulations, no such private covenants shall supersede these Regulations. To the extent these Regulations are more stringent than the covenants, the Regulations shall control. To the extent the covenants are more stringent, they may be enforced by private action, but not by the County. A private covenant may not permit what these Regulations prohibit.