

DRAFT FOR PUBLIC REVIEW 04-30-2013

**EL PASO COUNTY
LAND DEVELOPMENT CODE**

APPENDIX B

**GUIDELINES AND REGULATIONS FOR
AREAS AND ACTIVITIES OF STATE INTEREST**

ADOPTED: _____, 2013

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Article 1 Introductory and General Provisions

1.101 Title and Citation

These various sections constituting Chapters 1 through 6 are entitled and may be cited as the "Guidelines and Regulations for Areas and Activities of State Interest of El Paso County," or "these Regulations." Chapter I of these Regulations may be cited as the "Administrative Regulations." References herein to various Chapters, Articles and Sections are to those within these Regulations and not to the El Paso County Land Development Code ("LDC"), unless specifically so cited.

1.102 Purpose and Findings

- (1) 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.
- (2) The Board of County Commissioners finds that:
 - (a) The notice and public hearing requirements of Section 24-65.1-404, C.R.S. have been followed;
 - (b) These Regulations are necessary because of the intensity of current and foreseeable development pressures on and within this County;
 - (c) These Regulations are necessary for the preservation of the public health, safety and welfare;
 - (d) Except as otherwise provided in Chapter 6, these Regulations apply to the entire unincorporated territory of El Paso County; and
 - (e) 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.

1.103 Authority

The 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

1.104 Applicability

These Administrative Regulations shall apply to all proceedings concerning identification, designation and regulation of any developments in any area of state interest or any activity of state interest which have been or may hereafter be designated by the Board of County Commissioners.

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1.105 Exemptions

The portions of these Regulations which are authorized exclusively under Section 24-65.1-101, et seq., C.R.S., as amended, shall not apply to any development in an area of state interest or any activity of state interest if, on the effective date of these Regulations: _____, 2013:

- (1) The specific development or activity is authorized by a valid building permit issued by the Pikes Peak Regional Building Department on behalf of the County;
- (2) The specific development or activity was directly approved by the electorate of the State or of the County; provided that approval by the electorate of any bond issue shall not, in and of itself be construed to be an approval of the specific development or activity;
- (3) The specific development or activity is to be on land which has been finally approved, with or without conditions, for planned unit development or for a use other than a subdivision substantially the same as a planned unit development, and a Site Development Plan has been approved by El Paso County prior to the effective date of these Regulations for the development or activity which would otherwise be subject to these Regulations;
- (4) The specific development or activity is to be on land which has been zoned by the County expressly and specifically for a use by right for the use contemplated by the development or activity and a Site Development Plan has been approved for the specific development or activity which would otherwise be subject to these Regulations;
- (5) The specific development or activity is to be on land with respect to which a final plat for a subdivision has been finally approved and recorded, with or without conditions.
- (6) The day-to-day operations of an existing project or facility, or a minor change in the operation of an existing project or facility, including retrofitting or updating technology, so long as the change in operation does not constitute a material change and does not cause negative impacts different from that of the existing facility or project or otherwise exacerbate existing impacts. The determination of minor change, material change, and negative or exacerbating impacts shall be made by the Development Services Department Director.
- (7) These Regulations shall not apply to any use otherwise lawfully existing on the date the area or activity is designated or subjected to these Regulations which use becomes nonconforming as a result of the adoption of these Regulations, provided, when such a nonconforming use shall be discontinued for one year or more or a nonconforming structure is damaged or destroyed to the extent of at least fifty (50) percent of the County Assessor's assessed value, any reuse, reconstruction, or replacement of such structure shall be deemed a new use and shall be subject to these Regulations. Additionally, expansion of a legal nonconforming use shall require a permit.

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1.106 Relationship of These Regulations to Other Requirements

- (1) Whenever these Regulations are found to be inconsistent with any other resolution, ordinance, code, regulation, or other enactment of El Paso County, the enactment imposing the more restrictive standards or requirements shall control.
- (2) These Regulations are intended to be applied in addition to, and not in lieu of, all other regulations of El Paso County, including, without limitation, the El Paso County Zoning and Subdivision Regulations (Land Development Code) and Section 313 of the Pikes Peak Regional Building Code.
- (3) Approval of location for a facility under LDC Section 5.3.3 and/or C.R.S. § 30-28-110, et seq. does not obviate and shall not substitute for the need to obtain a permit for that facility under these Regulations.
- (4) 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 Sections 24-65.1-202 and 24-65.1-204, C.R.S., the statutory criteria shall control.
- (5) In the event these Regulations are found to be more stringent than the statutory criteria for administration of matters 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.
- (6) Permit requirements included in these Regulations shall be in addition to and in conformance with all applicable state and federal water quality and environmental laws, rules and regulations, including but not limited to the following:
 - (a) Section 25-8-701, et seq., C.R.S., sewage treatment plant site approval;
 - (b) 5 C.C.R. § 10002-22 Regulation No. 22, Site Location and Design Approval Regulations for Domestic Wastewater Treatment Works;
 - (c) Section 25-8-501, et seq., C.R.S., point source pollutant discharge permits;
 - (d) Section 208 (33 U.S.C. Section 1288) area-wide wastewater treatment management planning;
 - (e) Section 303 (33 U.S.C. Section 1313) river basin water quality management planning;
 - (f) Disposal of sewage sludge (33 U.S.C. Section 1345);
 - (g) Section 32-1-201, C.R.S., Special District Control Act;
 - (h) 16 U.S.C. Section 661-666(c) (1970), the Fish and Wildlife Coordination Act;

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- (i) Section 102(c) (42 U.S.C. Section 4321, et seq.) the National Environmental Policy Act;
 - (j) Section 404 of the Federal Clean Water Act; and
 - (k) Current clearance letter or take permit for the Project issued by the U.S. Fish & Wildlife Service for threatened or endangered animal or plant species.
- (7) Review or approval of a project by a federal or state or local agency does not obviate and shall not substitute for, the need to obtain a permit for that Project under these Regulations. Any applicant for a permit under these Regulations that is also subject to the regulations of other agencies may request that the County application and review process be coordinated with that of the other agency. If practicable, and in its discretion, the County may attempt to eliminate redundant application submittal requests and may coordinate its review of the application with that of other agencies as appropriate.
- (8) The applicant shall comply with all applicable federal and state laws, regulations, ordinances, review and permit requirements, and other agency requirements, if any, of applicable agencies including, but not limited to, the Colorado Division of Wildlife, Colorado Department of Transportation, U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service regarding the Endangered Species Act, particularly as it relates to the Preble's Meadow Jumping Mouse as a listed threatened species.
- (9) For projects located in known Preble's Meadow Jumping Mouse habitat, approval of a permit is subject to the applicant obtaining the approval of the U. S. Fish & Wildlife Service (FWS) to undertake development activities since the property is located in known Preble's Meadow Jumping Mouse ("PMJM") habitat, and therefore, development on the site may directly affect continued existence of the PMJM. Therefore, prior to issuance of the permit, applicant shall obtain approval from the FWS for the same and shall provide evidence of said approval to the Permit Authority and the Development Services Department.

1.107 Maps

- (1) Each map referred to in designations and regulations for any particular matter of state interest adopted by the Board of County Commissioners is deemed adopted therein as is set out in full.
- (2) Maps referred to in any such designation and regulation shall be filed with and be available for inspection at the office of the El Paso County Development Services Department.

1.108 Duties of the Board of County Commissioners

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

1.109 Severability

If any section, clause, provision, or portion of these Regulations should be found to be unconstitutional or otherwise invalid by a court of competent jurisdiction, the remainder shall not be affected thereby.

1.110 Definitions

The words and terms used in these Regulations shall have the meanings set forth below unless the context requires otherwise or unless the term is more specifically defined elsewhere herein:

- (1) *Board of County Commissioners*: the Board of County Commissioners, El Paso County, State of Colorado.
- (2) *County*: El Paso County, Colorado.
- (3) *Designation*: that legal procedure specified by Section 24-65.1- 401, et seq., C.R.S., carried out by the Board of County Commissioners.
- (4) *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.
- (5) *Development Services Department, or "Department" or DSD*: the administrative department within El Paso County government responsible for certain permitting and administrative functions as set forth in these Regulations.
- (6) *Director*: the person designated by resolution of the Board of County Commissioners to manage the Development Services Department or that person's equivalent position or delegated representative.
- (7) *FONSI*: A Finding of No Significant Impact.
- (8) *Land Development Code, or LDC*: the El Paso County Land Development Code, as amended from time to time by the Board of County Commissioners.
- (9) *Layman's description*: a general, nonlegal description and the popular name, if any, of the tract of land upon which the activity or development is to be conducted. The term "general description" means "layman's description."
- (10) *Legal description*: any description from which it is possible to locate accurately on the ground the boundaries of the land being described.
- (11) *Material change*: any change in a Project as approved under these Regulations which significantly changes the nature of impacts considered by the Permit Authority in approval of the original Permit or in the case of a development not previously issued a permit, a structural modification, change of use, change of operation, change of user, which significantly changes the nature of the development and its associated impacts.

- (12) *Matter of state interest*: development in an area of state interest or conduct of an activity of state interest or both.
- (13) *Mitigation*: avoiding an impact; minimizing impacts by limiting the degree or magnitude of the action or its implementation; rectifying the impact by repairing, rehabilitating or restoring the impact area, facility or service; or compensation for the impact by replacing or providing for the replacement of biological or physical conditions, services or facilities.
- (14) *Permit*: a permit issued under these Regulations to conduct an activity of state interest and/or to engage in development in an area of state interest.
- (15) *Permit Authority*: the Board of County Commissioners.
- (16) *Person*: any private individual, partnership, corporation, association, company, or any public or corporate body, including the state and federal government, and including any political subdivision, agency, instrumentality, or corporation thereof.
- (17) *Project*: the facility and/or development which is the subject of an application or an approved Permit under these Regulations.
- (18) *Receipt of Application*: the time at which the completed application is accepted by the Director.
- (19) *Site Development Plan*: the development plan for one or more lots showing the existing and proposed conditions of the lot and any improvements existing or to be constructed on the lot. This includes topography, vegetation, drainage, floodplains, wetlands and waterways, landscaping and open spaces, walkways, means of ingress and egress, circulation, utility services, structures and buildings, signs and lighting, berms, buffers and screening devices, surrounding development, and other information that may be reasonably required for the Director to determine compliance with the requirements of these Regulations, and subsequently authorize issuance of a building or development permit.

Article 2 Designation of Matters of State Interest

1.201 Board of County Commissioners to Make Designations

Designations and amendments of designations may be initiated in two ways:

- (1) The Board of County Commissioners may in its discretion designate and adopt regulations for the administration of any matter of state interest.
- (2) The Board of County Commissioners, in its sole subjective discretion, may refer a proposed matter of state interest to the Planning Commission for review and recommendation. 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.

1.202 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.

1.203 Notice of Public Hearing, Mailing List, Publication

- (1) The Development Services Department shall prepare a notice of the designation hearing which shall include:
 - (a) The time and place of the hearing;
 - (b) The place at which materials relating to the matter to be designated and any guidelines and regulations for the administration thereof may be examined;
 - (c) 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) The Development Services Department shall maintain a mailing list of those persons requesting they be placed on the list and paying to the Department an annual fee of twenty dollars (\$20) 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.
- (3) At least thirty (30) days but no more than sixty (60) days before the public hearing, the Development Services Department 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:
 - (a) Persons on the mailing list (subsequent to the initial adoption of guidelines and regulations);
 - (b) In the discretion of the Development Services Department, any person considered likely to be affected by the proposed designation; and
 - (c) 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 Development Services Director.

1.204 Record of Designation Proceeding

The Development Services Department shall collect and preserve the following record of the public hearing:

- (1) A copy of the notice of the hearing;

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- (2) The certificate of publication of the notice of the hearing and a listing of all persons to whom the notice was mailed;
- (3) The names and addresses of persons who presented written or oral statements or offered documentary evidence;
- (4) Any written statements or documents presented in support of or in opposition to the proposed designation of the matter of state interest;
- (5) Any recording or transcript of the hearing as provided in Section 1.202;
- (6) The written order of designation of the area and/or activity of state interest; and
- (7) A map or maps depicting each area of state interest designated.

1.205 Adoption of Designation and Regulations

- (1) At the conclusion of the hearing, or within thirty (30) days thereafter, the Board of County Commissioners may adopt, adopt with modification, or reject the proposed designation which was the subject of public hearing.
- (2) In making any such designation, the Board shall take into consideration:
 - (a) All testimony, evidence and documents taken and admitted at the public hearing, including that presented by County staff;
 - (b) The intensity of current and foreseeable development pressures in El Paso County;
 - (c) The matters and considerations set forth in any applicable guidelines or model regulations issued by state agencies; and
 - (d) 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.
- (3) 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 by order and adopt regulations for the administration thereof.
- (4) Each designation order (sample form attached as **Exhibit A**) adopted by the Board of County Commissioners shall:
 - (a) 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;
 - (b) State reasons why the particular area or activity is of state interest, the dangers that would result from uncontrolled development of any

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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;

- (c) Specify the regulations applicable to the designated matter of state interest.

1.206 Recording of Notice of Designation

The order of 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.

CHAPTER 2

PERMIT REGULATIONS

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Article 1 Permit Authority

2.101 Title and Citation

These various sections constituting Chapter 2 of the "Guidelines and Regulations for Areas and Activities of State Interest of El Paso County" may be cited as the "Permit Regulations."

2.102 Purpose and Intent

The purpose and intent of the Permit Regulations is to facilitate the process for application, review, issuance and administration of permits for matters of state interest consistent with statutory requirements and criteria set forth in Section 24-65.1-101, et seq., C.R.S.

2.103 Permit Authority Established

- (1) The El Paso County Permit Authority is hereby established, the members of which shall be the Board of County Commissioners.
- (2) Except as otherwise specifically set forth in these Regulations, the Permit Authority shall exercise all powers and duties described in this Chapter 2.

2.104 Permit or Finding of No Significant Impact (FONSI) Required

- (1) No person may conduct a designated activity of state interest, or develop in a designated area of state interest, without first obtaining a Finding of No Significant Impact (FONSI), a Permit under these Regulations or a Permit amendment under these Regulations.
- (2) No permit for a permanent use in a County right-of-way or on County owned properties and no grading permit, excavation permit or building permit shall be issued by the County for the purposes of development in an area of state interest and/or conduct of a designated activity of state interest without first obtaining a FONSI or a Permit pursuant to these Regulations.
- (3) When approval is sought to conduct more than one activity of state interest and/or engage in development in more than one area of state interest, the application may be completed for all such activities or developments and may be reviewed simultaneously and a single Permit issued.

2.105 Judicial Review

Any action seeking judicial review of a final decision of the Permit Authority shall be initiated within thirty (30) days after the decision is made, in the District Court in and for El Paso County, pursuant to Rule 106 of the Colorado Rules of Civil Procedure.

Article 2 **Pre-Application**

2.201 Pre-Application Procedure

- (1) Before submitting an application for a Permit under these Regulations, the applicant shall meet with the Development Services Department.
- (2) At or before the pre-application meeting, the applicant shall provide the Department with:
 - (a) Names and addresses of all persons or interests proposing the activity or development;
 - (b) Name and qualifications of the person(s) responding to the requirements detailed in these Regulations;
 - (c) A written summary of the Project including:
 - (i) Map prepared at an easily readable scale showing:
 - Boundary of the proposed Project
 - Relationship of the proposed Project to surrounding topographic and cultural features such as roads, streams and existing structures
 - Proposed buildings, improvements and infrastructure.
 - (d) Information that is sufficient for determining the nature of the Project and the degree of impacts associated with the Project;
 - (e) Any additional information requested by the Director as necessary to make the FONSI determination.
- (3) The purpose of the pre-application meeting is to permit the applicant and the staff to review the proposal informally and to coordinate with or request review and comment from other relevant agencies before substantial commitment of time and money is made. Topics of discussion shall include, but are not limited to:
 - (a) Characteristics of the activity, including its location or potential locations, significant natural and man-made features, with particular attention to natural hazard, resource or other special areas; the size and accessibility of the site; surrounding development and land uses; and its potential impact on surrounding areas, including potential environmental effects and planned mitigation strategies.
 - (b) The nature of the development proposed, including land use types and their densities; placement of proposed buildings and maintenance of common open space or treatment of public use areas; the preservation of natural features; proposed parking areas and internal circulation system, including trails, the total ground coverage of

paved areas and structures; and types of water and sewage treatment systems proposed.

- (c) Community policy considerations, including the review process and likely conformity of the proposed development with the policies and requirements of these Regulations.
 - (d) Applicable regulations, review procedures and submission requirements.
 - (e) Other regulatory reviews or procedures to which the applicant is subject, the applicant's time frame for the Project, and other concerns of the applicant.
- (4) Any comments or commitments made by the Department during this pre-application conference are only preliminary in nature and should not be relied upon by the applicant. All prospective applicants should be informed that formal comments cannot be made by staff until after the application is submitted.
- (5) Pre-Application Costs. Within seven (7) days after the pre-application conference, the Department shall establish an estimated fee in an amount reasonable and necessary to cover costs of determining whether a Finding of No Significant Impact (FONSI) or a Permit is required. The estimate will include the costs of copying, mailing, publications, labor, overhead and retention of consultants, experts and attorneys that the County deems necessary to advise it in making the Determination. Once the estimate is established, the Department shall notify the applicant in writing of said fee and its amount. Following receipt of such notice, the applicant shall present to the Department cash, cashier's check, or a certified check in the amount set. Until the fee is paid, no further action shall be taken in the pre-application process.

2.202 FONSI Determination

Based upon review of the pre-application submittals and the information obtained at the pre-application conference, and after receipt of the pre-application fee, the Director may determine that a Finding of No Significant Impact (FONSI) is warranted or that a Permit is required. Such determination shall be made by the Director within thirty (30) days after receipt of the fee and any additional information requested at the pre-application meeting.

- (1) Finding of No Significant Impact (FONSI). The Director may determine that a Finding of No Significant Impact (FONSI) should be issued if the construction or operation of the Project, as proposed, is unlikely to have any significant adverse impact to the County in consideration of the relevant Permit Application Review Criteria. If the Director issues a FONSI, the applicant does not need to submit a permit application, unless the Permit Authority deems that a Permit is necessary, following reconsideration as set forth below.
- (2) Permit Required. If the Director determines that a Finding of No Significant Impact (FONSI) is not appropriate based upon review of the pre-application

submittals and the information obtained at the pre-application meeting, then the applicant must obtain a Permit.

- (3) Notice of Department's Determination on a FONSI. Upon the Department's determination on a FONSI, the Department shall notify the applicant by mail, and shall notify the Permit Authority and the County Attorney of the determination by e-mail or memorandum.
- (4) Legal effect of FONSI.
 - (a) The FONSI may include conditions, requirements and mitigation measures imposed by the Director.
 - (b) The FONSI is limited to the Project as described at the pre-application meeting and in any supplementary information provided prior to the Director's decision.
 - (c) If the Project is revised to exceed or vary from the terms of the FONSI as issued by the Director, the FONSI shall be invalid and a Permit under these Regulations is required.
- (5) Reconsideration of determination on a FONSI.
 - (a) Call-up by the Permit Authority: Within fourteen (14) days after notice to it of the Director's determination on a FONSI, the Permit Authority, acting by a majority vote, may decide to reconsider the determination. Such reconsideration shall be scheduled by the Director.
 - (b) Any Applicant seeking a reconsideration of the Director's determination on a FONSI shall file a written request with the Director within fourteen (14) days of the date of the Director's determination on the FONSI.

Article 3 Permit Applications

2.301 Permit Application

- (1) If a FONSI is not granted, then any person desiring to engage in development in a designated area of state interest or to conduct a designated activity of state interest shall first apply for and obtain a permit from the Permit Authority, in the form attached hereto as **Exhibit B** or such form(s) as shall be approved by the Director, and maintained in the office of the Development Services Department. Applications for permits shall be submitted to the Development Services Department. 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 these Regulations.
- (2) A permit 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 determined to be incomplete by the Development Services Director, the Director 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 determined to be complete by the Development Services Director, the Director shall note upon the application the date and hour of its receipt.

- (3) The Permit Authority shall approve an application for a permit to develop within an area or conduct activity of state interest if the proposed development or activity complies with the applicable criteria in these Regulations. If the proposed development or activity does not comply with these criteria, the permit shall be denied or it may be approved with conditions.
- (4) 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, a single application may be completed for all such developments or activities and may be reviewed by the Permit Authority in one consolidated hearing, and, if approved, a single permit for all requested areas/activities may be granted.

2.302 Permit Application Fee and Costs

- (1) Within ten (10) days following receipt of a completed application for a permit, the Development Services Department shall determine and set an estimated fee in an amount necessary to cover the costs incurred in the review and action upon the permit application, including costs of copying, mailings, publications, labor, overhead and retention of consultants, experts and attorneys that the Department deems necessary to advise it on the application package, all hearings conducted therefor, and shall notify the applicant in writing of the fee. Not later than ten (10) days following receipt of such notice, the applicant shall present to the Department cash, or a cashier's or certified check in the amount set. Until the fee is paid to the Development Services Department, the application shall not be further processed. The Department will determine the final fee at the conclusion of the permit hearing, which must be paid by the applicant before the permit is issued.
- (2) The actual costs incurred by the County to process the application shall be deducted from the application fee. The Department shall keep an accurate record of the actual time and other costs required for processing the application. If the balance of fees falls below a minimum balance established by the Department, additional billings shall be made to the applicant commensurate with the additional costs incurred by the County. The County may cease processing the application pending receipt of additional installments. Any portion of the application fee which is not necessary to cover the cost of processing the application will be reimbursed to the applicant at the conclusion of all actions necessary to process the application. Any interest earned shall be refunded to the applicant.
- (3) As a condition of permit issuance, the applicant shall also agree to pay reasonable attorney fees and costs incurred by the County in the event of any litigation challenging the permit, including litigation brought by the applicant.

- (4) The Development Services Director reserves the right to waive all or a portion of the fees and costs imposed by this Section if determined to be reasonably justified by the Director.

2.303 Submission Requirements for All Applications; Waivers

In addition to specific submission requirements listed at Sections 3.201, 4.201, 5.201 and 6.201, all applications for a permit under these Regulations shall be accompanied by copies of the following materials in the number required by the Director. Additional materials may be required by the Director for a particular type of Project. The Development Services Director 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. A waiver of submission requirements may be granted by the Development Services Director 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. In the event the waiver request is denied, the applicant shall provide the required additional information before a hearing date will be scheduled.

- (1) Completed application form in the format attached as **Exhibit B** and approved by the Development Services Director.
- (2) The Director may require submission of any plan, study, survey or other information, in addition to the information required by this Section, at the applicant's expense, as in the Director's judgment is necessary to enable it to review and act upon the application.
- (3) Any application which requires compliance with § 24-65.5-101, et seq., C.R.S., (Notification to Mineral Owners of Surface Development) shall not be considered to have been submitted as complete until the applicant has provided a certification signed by the applicant confirming that the applicant or its agent has examined the records of the El Paso County Clerk and Recorder for the existence of any mineral estate owners or lessees that own less than full fee title in the property which is the subject of the application, and stating whether or not any such mineral estate owners or lessees exist. In addition, for purposes of the County convening its initial public hearing on any application involving property which mineral estate owners or lessees owning less than full fee title in the property have been certified by the applicant to exist, the application shall not be considered to have been submitted as complete until the applicant has provided an additional signed certification confirming that the applicant has, at least 30 days prior to the initial public hearing, transmitted to the County and to the affected mineral estate owners and lessees the notices required by C.R.S. §24-65.5-101, et seq.
- (4) Information describing the applicant.
 - (a) The names, addresses, including email address and fax number, organizational form, and business of the applicant and, if different, the owner of the Project.

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- (b) The names, addresses and qualifications, including those areas of expertise and experience with projects directly related or similar to that proposed in the application package, of individuals who are or will be responsible for constructing and operating the Project.
 - (c) Written authorization of the application package by the Project owner, if different than the applicant.
 - (d) Documentation of the applicant's financial and technical capability to develop and operate the Project, including a description of the applicant's experience developing and operating similar projects.
 - (e) Written qualifications of report preparers.
- (5) Information describing the Project.
- (a) Vicinity map showing the proposed site and the surrounding area.
 - (b) Executive summary of the proposal indicating the scope and need for the Project.
 - (c) Plans and specifications of the Project in sufficient detail to evaluate the application against the applicable Review Criteria.
 - (d) Descriptions of alternatives to the Project considered by the applicant. If the Director determines that the nature or extent of the proposal involves the potential for significant damage and warrants examination of other specific, less damaging alternatives, the Director may require the applicant to evaluate and present information on such additional alternatives as part of the application.
 - (e) Schedules for designing, permitting, constructing and operating the Project, including the estimated life of the Project.
 - (f) The need for the Project, including a discussion of alternatives to the Project that were considered and rejected; existing/proposed facilities that perform the same or related function; and population projections or growth trends that form the basis of demand projections justifying the Project.
 - (g) Description of all conservation techniques to be used in the construction and operation of the Project.
 - (h) Description of demands that this Project expects to meet and basis for projections of that demand.
 - (i) List of adjacent property owners and their mailing addresses.
- (6) Property rights, other permits and approvals.
- (a) Description of property rights that are necessary for or that will be affected by the Project, including easements and property rights proposed to be acquired through negotiation or condemnation.

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- (b) A list of all other federal, state and local permits and approvals that will be required for the Project, together with any proposal for coordinating these approvals with the County permitting process. Copies of any permits or approvals related to the Project that have been granted.
 - (c) Copies of all official federal and state consultation correspondence prepared for the Project; a description of all mitigation required by federal, state and local authorities; and copies of any draft or final environmental assessments or impact statements required for the Project.
- (7) Land Use.
- (a) Provide a map at a scale acceptable to the Department describing existing land uses and existing zoning of the proposed Project area and the Project service area, including peripheral lands which may be impacted. The land use map shall include but need not necessarily be limited to the following categories: residential, commercial, industrial, extractive, transportation, communication and utility, institutional, open space, outdoor recreation, agricultural, forest land and water bodies. Show all special districts (school, fire, water, sanitation, etc.) within the Project area.
 - (b) All immediately affected public land boundaries should be indicated on the map. Potential impacts of the proposed development upon public lands will be visually illustrated on the map as well as described in the text.
 - (c) Specify whether and how the proposed Project conforms to the El Paso County Master Plan.
 - (d) Specify whether and how the proposed Project conforms to applicable regional and state planning policies.
 - (e) Specify whether and how the proposed Project conforms to applicable federal land management policies.
 - (f) Describe the agricultural productivity capability of the land in the Project area, using Soils Conservation Service soils classification data.
 - (g) Describe the probability that the Project may be significantly affected by earthquakes, floods, fires, snow, slides, avalanches, rockslides or landslides and any measures that will be taken to reduce the impact of such events upon the Project.
 - (h) Specify if excess service capabilities created by the proposed Project will prove likely to generate sprawl or strip development.
 - (i) Specify whether the demand for the Project is associated with development within or contiguous to existing service areas.
- (8) The applicant shall supply a surface and subsurface drainage analysis.

- (9) Technical, managerial and financial feasibility of the Project.
 - (a) The estimated construction costs and period of construction for each development component and the total mitigation costs for the Project.
 - (b) Revenues and operating expenses for the Project.
 - (c) The amount of any proposed debt and the method and estimated cost of debt service.
 - (d) Details of any contract or agreement for revenues or services in connection with the Project.
 - (e) Description of the persons or entity(ies) who will pay for or use the Project and/or services produced by the development and those who will benefit from any and all revenues generated by it.
 - (f) Business plan or management plan for the Project.
- (10) Socioeconomic impacts. A comprehensive socioeconomic impact analysis that addresses the manner in which the applicant will comply with the relevant Permit Application Review Criteria. The impact analysis shall include the following information:
 - (a) Local Government Services
 - (i) Description of existing capacity of and demand for local government services including but not limited to roads, schools, water and wastewater treatment, water supply, emergency services, transportation, infrastructure, and other services necessary to accommodate the Project within El Paso County.
 - (ii) Description of the impacts and net effect of the Project to the capability of local governments that are affected by the Project to provide services.
 - (iii) Description of impacts and net effect of the Project on County resources (staff, finances, etc.).
 - (b) Housing: Description of impacts and net effect of the Project on housing during construction and operation stages of the Project.
 - (c) Description of impacts and net effect of the Project on financial burdens of residents.
 - (d) Description of impacts and net effect of the Project on the local economy and opportunities for economic diversification.
- (11) Recreational Opportunities. Description of the impacts and net effect of the Project on present and potential recreational opportunities.
- (12) Areas of Paleontological, Historic or Archaeological Importance.

- (a) Map and/or description of all sites of paleontological, historic or archaeological interest of the same.
 - (b) Description of the impacts and net effect of the Project on sites of paleontological, historic or archaeological interest.
- (13) Nuisance. Descriptions of noise, glare, dust, fumes, vibration, and odor levels anticipated to be caused by the Project.
- (14) Air Quality.
 - (a) Description of the airsheds to be affected by the Project, including the seasonal pattern of air circulation and microclimates.
 - (b) Map and/or description of the ambient air quality and state air quality standards of the airsheds to be affected by the Project, including particulate matter and aerosols, oxides, hydrocarbons, oxidants, and other chemicals, temperature effects and atmospheric interactions.
 - (c) Descriptions of the impacts and net effect that the Project would have on air quality during both construction and operation, and under both average and worst case conditions.
- (15) Visual Quality.
 - (a) Map and/or description of ground cover and vegetation, forest canopies, waterfalls and streams or other natural features within view of the Project area.
 - (b) Description of viewsheds, scenic vistas, unique landscapes or land formations within view of the Project area.
 - (c) Descriptions of the impacts and net effect that the Project would have on visual quality.
- (16) Surface Water Quality.
 - (a) Map and/or description of all surface waters to be affected by the Project, including description of provisions of the applicable regional water quality management plan, and NPDES Phase II Permit and necessary El Paso County Erosion and Stormwater Quality Control Permit ("ESQCP"), Section 404 Federal Clean Water Act Permit that applies to the Project and assessment of whether the Project would comply with those provisions.
 - (b) Existing data monitoring sources.
 - (c) Descriptions of the immediate and long-term impact and net effects that the Project would have on the quantity and quality of surface water under both average and worst case conditions.
- (17) Groundwater Quality.

- (a) Map and/or description of all groundwater, including any and all aquifers. At a minimum, the description should include:
 - (i) Seasonal water levels in each portion of the aquifer affected by the Project.
 - (ii) Artesian pressure in said aquifers.
 - (iii) Groundwater flow directions and levels.
 - (iv) Existing aquifer recharge rates and methodology used to calculate recharge to the aquifer from any recharge sources.
 - (v) For aquifers to be used as part of a water storage system, methodology and results of tests used to determine the ability of the aquifer to impound groundwater and aquifer storage capacity.
 - (vi) Seepage losses expected at any subsurface dam and at stream-aquifer interfaces and methodology used to calculate seepage losses in the affected streams, including description and location of measuring devices.
 - (vii) Existing groundwater quality and classification.
 - (viii) Location of all water wells potentially affected by the Project and their uses.
- (b) Description of the impacts and net effect of the Project on groundwater.

(18) Water Quantity.

- (a) Map and/or description of existing stream flows and reservoir levels.
- (b) Map and/or description of existing minimum stream flows held by the Colorado Water Conservation Board.
- (c) Descriptions of the impacts and net effect that the Project would have on water quantity.
- (d) Statement of methods for efficient utilization of water, including recycling and reuse.

(19) Floodplains, Wetlands and Riparian Areas.

- (a) Map and/or description of all floodplains, wetlands, and riparian areas to be affected by the Project, including a description of the types of wetlands, species composition, and biomass.
- (b) Description of the source of water interacting with the surface systems to create each wetland (i.e., sideslope runoff, over-bank flooding, groundwater seepage, etc.).

- (c) Description of the impacts and net effect that the Project would have on floodplains, wetlands and riparian areas, including any impact on the County's Wetland Mitigation Bank.

(20) Terrestrial and Aquatic Animals and Habitat.

- (a) Map and/or description of terrestrial and aquatic animals including the status and relative importance of game and non-game wildlife, livestock and other animals; a description of streamflows and lake levels needed to protect the aquatic environment; description of threatened or endangered animal species and their habitat.
- (b) Map and description of critical wildlife habitat, critical habitat of threatened or endangered animal species, and livestock range to be affected by the Project including migration routes, calving areas, summer and winter range, and spawning beds.
- (c) Description of the impacts and net effect that the Project would have on terrestrial and aquatic animals, habitat and food chain.
- (d) Current clearance letter or take permit for the Project issued by the U.S. Fish & Wildlife Service for threatened or endangered animal species.

(21) Terrestrial and Aquatic Plant Life.

- (a) Map and/or description of terrestrial and aquatic plant life including the type and density, and threatened or endangered plant species and habitat, including critical habitat.
- (b) Descriptions of the impacts and net effect that the Project would have on terrestrial and aquatic plant life.
- (c) Current clearance letter or take permit for the Project issued by the U.S. Fish & Wildlife Service for threatened or endangered plant species.

(22) Soils, Geologic Conditions and Natural Hazards.

- (a) Map and/or description of soils, geologic conditions, and natural hazards including but not limited to soil types, drainage areas, slopes, avalanche areas, debris fans, mud flows, rock slide areas, faults and fissures, seismic history, and wildfire hazard areas, all as relevant to the Project area.
- (b) Descriptions of the risks to the Project from natural hazards.
- (c) Descriptions of the impacts and net effect of the Project on soil and geologic conditions in the area.

(23) Hazardous Materials.

- (a) Description of all solid waste, hazardous waste, petroleum products, hazardous, toxic, and explosive substances to be used, stored, transported, disturbed or produced in connection with the Project, including the type and amount of such substances, their location, and the practices and procedures to be implemented to avoid accidental release and exposure.
 - (b) Location of storage areas designated for equipment, fuel, lubricants, and chemical and waste storage with an explanation of spill containment plans and structures.
- (24) Monitoring and Mitigation Plan.
- (a) Description of all mitigation that is proposed to avoid, minimize or compensate for adverse impacts of the Project and to maximize positive impacts of the Project.
 - (i) Describe how and when mitigation will be implemented and financed.
 - (ii) Describe impacts that are unavoidable that cannot be mitigated.
 - (b) Description of methodology used to measure impacts of the Project and effectiveness of proposed mitigation measures.
 - (c) Description, location and intervals of proposed monitoring to ensure that mitigation will be effective.
- (25) Additional Information. The Director may request that the applicant supply additional information related to the Project if the Director and/or the Permit Authority will not be able to make a determination on any one of the Review Criteria without the additional information. Such additional information may include applicant's written responses to comments by a referral agency.

2.304 Simultaneous Processing of Other County Permits.

In the event a special use permit, rezoning, or other land use permit is required under the LDC for a proposed activity which is also governed by these Regulations, review of the required permit under these Regulations may be combined with review of the other permit application pursuant to the following procedure:

- (1) The submission requirements for a special use permit, rezoning, or other land use permit as established by the Director may be combined with those for the relevant permit under these Regulations and duplication eliminated.
- (2) The Planning Commission hearing if required by the LDC for a special use permit, rezoning, or other land use permit must precede the Board of County Commissioners' hearing on the relevant permit under these Regulations.

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- (3) The Board of County Commissioners' hearing on the special use permit, rezoning, or other land use permit may be combined with the Board's hearing on the relevant permit under these Regulations.
- (4) At the close of the combined hearing, the Board shall act first on the special use permit, rezoning, or other land use permit application, and either approve, approve with conditions or deny the same, as contemplated by the LCD.
- (5) In the event the special use permit, rezoning, or other land use permit is denied, the Board shall not act upon the application for the relevant permit under these Regulations, in recognition of the fact that no permit under these Regulations may be issued if another required County permit is not obtained or is denied.
- (6) In the event the Board approves the special use permit, rezoning, or other land use permit application, with or without conditions, the Board then shall proceed to take action on the application for the relevant permit under these Regulations.
- (7) Subsequent to approval of a special use permit, rezoning, or other land use permit under this combined procedure, the permit holder shall, if required by the terms of the special use permit, rezoning, or other land use permit, apply for renewals of the same in the manner prescribed by the LDC.

Article 4 **Permit Hearing**

2.401 Notice of Permit Hearing

After receipt of a completed application for a permit, the Development Services Director 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 El Paso 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 1.203. On or before fifteen (15) days prior to the hearing, the applicant shall send a copy of the notice by U.S. Mail, first class postage prepaid, to all property owners adjacent to the real property to be occupied by the Project. The applicant shall also provide to the Director a list of such addressees accompanied by a certification that the notice mailing was made.

2.402 Conduct of Permit Hearing

- (1) The Permit Authority shall conduct the public hearing pursuant to the Board of County Commissioners General Hearing Rules in a manner affording procedural and substantive due process to the applicant, the general public, supporters of the project and any person who opposes issuance of the permit.
- (2) The Permit Authority shall hear testimony and receive evidence, including:

- (a) The recommendations of the El Paso County Planning Commission, if any;
 - (b) Relevant testimony and evidence from any and all persons or organizations desiring to appear and be heard, including County staff; and
 - (c) Any relevant documents that may be offered into evidence.
- (3) The Development Services Department shall collect and arrange for preservation the following record of the public hearing:
- (a) The permit application;
 - (b) A copy of the notice of the hearing, the certificate of publication of the notice of hearing, and a listing of all persons to whom the notice was mailed;
 - (c) Any written statements or documents presented in support of or in opposition to the permit application;
 - (d) The names and addresses of all persons who presented oral or written statements, appeared as witnesses, or offered documentary evidence;
 - (e) Written minutes of the Permit Authority relating to the public hearing;
 - (f) The resolution of the Permit Authority granting or denying the permit application; and
 - (g) A copy of the permit, if issued.
- (4) In cases in which the development or activity must also obtain approvals under other County regulations, the permit hearing required by these Regulations may be held at the same time as the final hearing required for such applications.

2.403 Action by the Permit Authority

- (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 forty-five (45) days after such receipt unless agreed to by the applicant.
- (2) The Permit Authority shall approve an application for a permit to engage in development in an area of state interest or for the conduct of an activity of state interest if the proposed Project or activity complies with all of the provisions of these Regulations governing such area or activity. The Permit Authority may attach reasonable conditions to its approval to ensure compliance with these Regulations. If the proposed Project does not comply with these Regulations governing the area or activity, the permit shall be denied or may be approved with conditions.

- (3) The burden of proof shall be upon the applicant to show compliance with the provisions of these Regulations governing the area or activity of state interest involved.
- (4) The Permit Authority shall state, in writing, reasons for its decision on a permit application, and its findings and conclusions.
- (5) The Permit Authority shall reach a decision on a permit application within sixty (60) days after the completion of the permit hearing, or the permit shall be deemed approved.

2.404 Combined Designation and Permit Hearing

If a person proposes to engage in a development in an area of state interest or to conduct an activity of state interest not previously designated, or for which regulations have not been adopted, the Permit Authority may hold one hearing for determination of designation and regulation, as well as for granting or denying the permit. No permit that is granted at the conclusion of any such hearing shall be authority to engage in development or to conduct an activity until the designation and regulations are finally determined.

2.405 Review Criteria for All Applications

In addition to the review criteria listed at Sections 3.202, 4.202, 5.202 and 6.202, all applications for a permit under these Regulations shall be evaluated against the following general criteria. Following some, but not all of the criteria listed in the above Sections and below are lists of considerations. These considerations are not criteria that the Project must satisfy; they serve solely as guidance. The considerations are in regular type and the actual criteria that the considerations relate to are in **bold type**. Where such terms as "reasonable," "feasible" and "adequate" are used in the foregoing criteria, the Development Services Director and/or the Permit Authority shall determine in each case what is or is not reasonable, feasible or adequate.

- (1) **The health, welfare and safety of the citizens of this County will be protected and served.**
- (2) **The proposed activity in in general conformance with the El Paso County Master Plan, Water Quality Management Plan, NPDES Phase II Permit, Wetlands Mitigation Bank, or other duly adopted plans of El Paso County.** The determination of conformance of the Project with these plans may include but is not limited to the following considerations:
 - (a) Whether the Project in in general conformance with and is consistent with applicable plans.
 - (b) Likelihood that the Project will/will not cause or contribute to urban sprawl or "leapfrog" development.
 - (c) Significant changes in the amount of impervious surfaces.
 - (d) Contiguity of development associated with the Project to existing growth centers.

- (e) Changes to unique land forms.
 - (f) Changes in the amount or character of open space.
 - (g) Changes to traffic patterns, road capacity and congestion.
- (3) **The Project is technically, managerially, and financially feasible.** The determination of technical, managerial and financial feasibility of the Project may include but is not limited to the following considerations:
- (a) Amount of debt associated with the Project.
 - (b) Debt retirement schedule and sources of funding to retire the debt.
 - (c) Estimated construction costs and construction schedule.
 - (d) Estimated annual operation, maintenance and monitoring costs.
 - (e) Business plan or management plan.
- (4) **The Project is not subject to significant risk from natural hazards.** The determination of risk from natural hazards to the Project may include but is not limited to the following considerations:
- (a) Faults and fissures.
 - (b) Unstable slopes including landslides, rock slides and avalanche areas.
 - (c) Expansive or evaporative soils and risk of subsidence.
 - (d) Wildfire hazard areas.
 - (e) Floodplains.
- (5) **The Project will not have a significant adverse effect on the capability of local governments affected by the Project to provide services, or exceed the capacity of service delivery systems.** The determination of the effects of the Project on local government services may include but is not limited to the following considerations:
- (a) Existing and potential financial capability of local governments to accommodate development related to the Project.
 - (b) Current and projected capacity of roads, schools, infrastructure, drainage and/or stormwater infrastructure, housing, and other services necessary to accommodate development, and the impact of the Project upon the current and projected capacity.
 - (c) Changes caused by the Project in the cost of providing education, transportation networks, water treatment and wastewater treatment, stormwater drainage, channel stabilization, bridges, emergency services, or other governmental services or facilities.

- (d) Changes in short or long term housing availability, location, cost or condition.
 - (e) Need for temporary roads to access the Project for construction and maintenance.
 - (f) Change in demand for public transportation.
 - (g) Reduction in the amount of water available for future water supply in the County.
- (6) **The Project will not create an undue financial burden on existing or future residents of the County.** The determination of the financial effects of the Project may include but is not limited to the following considerations:
- (a) Changes in assessed valuation.
 - (b) Tax revenues and fees to local governments that will be generated by the Project.
 - (c) Changes in tax revenues caused by agricultural lands being removed from production.
 - (d) Changes in costs to water users to exercise their water rights.
 - (e) Changes in costs of water treatment or wastewater treatment.
 - (f) Effects on wastewater discharge permits, including the County's NPDES Phase II Permit.
 - (g) Changes in total property tax burden.
 - (h) Changes in costs to prevent stream channel erosion or sedimentation, or the costs of bridging streams.
 - (i) Changes in costs arising from drainage and/or stormwater runoff impacts and/or changes in costs to drainage and/or stormwater runoff infrastructure.
- (7) **The Project will not significantly degrade any current or foreseeable future sector of the local economy.** The determination of the effects of the Project on the economy may include but is not limited to the following considerations:
- (a) Changes to projected revenues generated from each economic sector.
 - (b) Changes in the value or productivity of any lands that changes opportunities for economic growth and diversification.
 - (c) Changes in opportunities for economic growth and diversification.
- (8) **The Project will not have a significant adverse effect on the quality or quantity of recreational opportunities and experience.** The determination of

effects of the Project on recreational opportunities and experience may include but is not limited to the following considerations:

- (a) Changes to existing and projected visitor days.
 - (b) Changes in quality and quantity of fisheries.
 - (c) Changes in instream flows or reservoir levels.
 - (d) Changes in access to recreational resources.
 - (e) Changes to quality and quantity of hiking, biking, or horseback riding trails.
 - (f) Changes to the wilderness experience or other opportunity for solitude in the natural environment.
 - (g) Changes to hunting experiences.
 - (h) Changes to open space.
 - (i) Changes to existing conservation easements.
 - (j) Changes to regional or neighborhood parks.
- (9) **The Project will not significantly degrade air quality.** The determination of effects of the Project on air quality may include but is not limited to the following considerations:
- (a) Changes to seasonal ambient air quality.
 - (b) Changes in visibility and microclimates.
 - (c) Applicable air quality standards.
- (10) **The Project will not significantly degrade existing visual quality.** The determination of visual effects of the Project may include but is not limited to the following considerations:
- (a) Visual changes to ground cover and vegetation, waterfalls and streams, or other natural features.
 - (b) Interference with viewsheds and scenic vistas.
 - (c) Changes in appearances of forest canopies.
 - (d) Changes in landscape character types of unique land formations.
 - (e) Compatibility of building and structure design and materials with surrounding land uses.
 - (f) Changes to open space.

- (g) Changes to existing conservation easements.
 - (h) Changes to regional or neighborhood parks.
- (11) **The project will not significantly degrade surface water quality.** The determination of effects of the Project on surface water quality may include but is not limited to the following considerations:
- (a) Changes to existing water quality, including patterns of water circulation, temperature, conditions of the substrate, extent and persistence of suspended particulates and clarity, odor, color or taste of water.
 - (b) Applicable narrative and numeric water quality standards.
 - (c) Changes in point and nonpoint source pollution loads.
 - (d) Increase in erosion.
 - (e) Changes in sediment loading to waterbodies.
 - (f) Changes in stream channel or shoreline stability.
 - (g) Changes in stormwater runoff flows.
 - (h) Changes in trophic status or in eutrophication rates in lakes and reservoirs.
 - (i) Changes in the capacity or functioning of streams, lakes or reservoirs.
 - (j) Changes in flushing flows.
 - (k) Changes in dilution rates of mine waste, agricultural runoff and other unregulated sources of pollutants.
 - (l) Changes to the topography, natural drainage patterns, soil morphology and productivity, soil erosion potential, and floodplains.
 - (m) Changes to stream sedimentation, geomorphology, and channel stability.
 - (n) Changes to lake and reservoir bank stability and sedimentation, and safety of existing reservoirs.
 - (o) Changes to avalanche areas, mudflows and debris fans, and other unstable and potentially unstable slopes.
 - (p) Exacerbation of seismic concerns and subsidence.
- (12) **The Project will not significantly degrade groundwater quality.** The determination of effects of the Project on groundwater quality may include but is not limited to the following considerations:

- (a) Changes in aquifer recharge rates, groundwater levels and aquifer capacity including seepage losses through aquifer boundaries and at aquifer-stream interfaces.
 - (b) Changes in capacity and function of wells within the impact area.
 - (c) Changes in quality of well water within the impact area.
- (13) **The Project will not significantly degrade wetlands and riparian areas.** The determination of effects of the Project on wetlands and riparian areas may include but is not limited to the following considerations:
- (a) Changes in the structure and function of wetlands and riparian areas.
 - (b) Changes to the filtering and pollutant uptake capacities of wetlands and riparian areas.
 - (c) Changes to aerial extent of wetlands and riparian areas.
 - (d) Changes in species' characteristics and diversity.
 - (e) Transition from wetland to upland species.
 - (f) Changes in function and aerial extent of floodplains.
 - (g) Changes that would affect the County's Wetland Mitigation Bank.
- (14) **The Project will not significantly degrade terrestrial or aquatic animal life or its habitats.** The determination of effects of the Project on terrestrial or aquatic life may include but is not limited to the following considerations:
- (a) Changes that result in loss of oxygen for aquatic life.
 - (b) Changes in flushing flows.
 - (c) Changes in species composition or density.
 - (d) Changes in number of threatened or endangered species.
 - (e) Changes to habitat and critical habitat, including calving grounds, mating grounds, nesting grounds, summer or winter range, migration routes, or any other habitat features necessary for the protection and propagation of any terrestrial animals.
 - (f) Changes to habitat and critical habitat including stream bed and banks, spawning grounds, riffle and side pool areas, flushing flows, nutrient accumulation and cycling, water temperature, depth and circulation, stratification, and any other conditions necessary for the protection and propagation of aquatic species.
 - (g) Changes to the aquatic and terrestrial food webs.

- (15) **The Project will not significantly deteriorate terrestrial plant life or plant habitat.** The determination of effects of the Project on terrestrial plant life or habitat may include but is not limited to the following considerations:
- (a) Changes to habitat of threatened or endangered plant species.
 - (b) Changes to the structure and function of vegetation, including species composition, diversity, biomass, and productivity.
 - (c) Changes in advancement or succession of desirable and less desirable species, including noxious weeds.
 - (d) Changes in threatened or endangered plant species.
- (16) **The Project will not significantly deteriorate soils and geologic conditions.** The determination of effects of the Project on soils and geologic conditions may include but is not limited to the following considerations:
- (a) Loss of topsoil due to wind or water forces
 - (b) Changes in soil erodibility
 - (c) Physical or chemical soil deterioration
 - (d) Terrain deformation/mass wasting/subsidence
 - (e) Compacting, sealing and crusting
 - (f) Waterlogging
 - (g) Soil morphology and productivity
- (17) **The Project will not cause a nuisance.** The determination of nuisance effects of the Project may include but is not limited to the following considerations:
- (a) Increase in odors.
 - (b) Increase in dust.
 - (c) Increase in fumes.
 - (d) Increase in glare.
 - (e) Increase in heat.
 - (f) Increase in noise.
 - (g) Increase in vibration.
 - (h) Increase in artificial light.
 - (i) Increase in traffic impacts.

- (18) **The Project will not result in unreasonable risk of releases of hazardous materials.** The determination of the risk of release of hazardous materials caused by Project may include but is not limited to the following considerations:
- (a) Plans for compliance with federal and state handling, storage, disposal, and transportation requirements.
 - (b) Use of waste minimization techniques.
 - (c) Adequacy of spill prevention and response plans.
- (19) **The Project shall be necessary to meet community development and population demands in the areas to be served by the Project.** The determination of whether the Project meets community development and population demands may include but is not limited to the following considerations:
- (a) Relationship to reasonable growth projections and local land use plans.
 - (b) Relationship to other water and wastewater providers' service areas.
- (20) **Urban development, population densities, and site layout and design of storm water and sanitation systems shall be accomplished in a manner that will prevent the pollution of aquifer recharge areas.** The determination of potential for pollution of the aquifer recharge areas by the Project may include but is not limited to the following considerations:
- (a) Proximity of urban development and population densities to aquifer recharge areas.
 - (b) Proximity of stormwater and sanitation systems to aquifer recharge areas.
 - (c) Changes in water quality in the aquifer recharge areas.
- (21) **The Project shall be reasonably necessary to meet projected community development and population demands in the areas to be served by the Project, or to comply with regulatory or technological requirements.** The determination of whether the Project is reasonably necessary may include but is not limited to the following considerations:
- (a) Relationship to reasonable growth projections and local land use plans.
 - (b) Relationship to other providers' service areas.
 - (c) Whether the Project is not in compliance with regulatory or technological requirements or will not be in compliance in the near future.

Article 5 **Permits**

2.501 Issuance of Permit; Conditions

The permit shall be issued on the form adopted by the Permit Authority. An example permit is attached hereto as **Exhibit C**. The Permit Authority may attach any conditions to the permit to ensure that the requirements of these Regulations are continuously met. The Permit Authority may impose additional mitigation requirements and conditions on an applicant under the following procedure:

- (1) The Permit Authority shall make written findings that each such requirement and condition is necessary to ensure that the proposed project will not result in significant adverse net effect on the resources, values and conditions in the applicable chapter of these Regulations.
- (2) The Permit Authority shall also find in writing that each such requirement and condition is necessitated by the proposed Project.
- (3) All such findings shall be based on material in the administrative record.
- (4) The Permit Authority shall base the additional requirements and conditions on applicable design standards as adopted by the County to the extent that such standards then exist.

2.502 Term of Permit; Progress Reports

The Permit may be issued for an indefinite term or for a specific period of time, depending upon the size and complexity of the Project. Periodic progress reports may be required to be submitted to demonstrate that the applicant is completing the development with reasonable diligence. If the applicant fails to take substantial steps to initiate the permitted Project within twelve (12) months from the date of the permit or such other time period specified in the permit, if such steps have been taken but the applicant has failed to complete the development with reasonable diligence, then the permit may be revoked or suspended in accordance with Section 2.508.

2.503 Renewal

Permits issued under these Regulations may be renewed following the same procedure for approval of new permits. The Board may impose additional conditions at the time of renewal if necessary to ensure that the Project will comply with these Regulations.

2.504 Permit Amendment

Any material change, as determined by the Director, in the construction, use, or operation of a Project from that approved by the Permit Authority shall require a permit amendment. The amendment shall be processed in accordance with and subject to the same procedures and requirements set forth herein for a new permit.

2.505 Permit Administration, Enforcement and Inspection

The provisions of these Regulations and any permits issued hereunder shall be administered, enforced, and inspected in accordance with the provisions of this Chapter and Chapter 1.

2.506 Transfer of Permits

A permit may be transferred only with the written consent of the Permit Authority. The Permit Authority must ensure, in approving any transfer, that the proposed transferee can and will comply with all the requirements, terms, and conditions contained in the Permit and these Regulations; that such requirements, terms, and conditions remain sufficient to protect the health, welfare, and safety of the public; and that an adequate guarantee of financial security can be made.

2.507 Financial Security

- (1) Before any permit is issued, the Permit Authority may in its discretion require the applicant to file a guarantee of financial security deemed adequate by the Permit Authority and payable to El Paso County.
- (2) The security shall be signed by the applicant or permittee as principal and by a good and sufficient corporate surety licensed to do business in the State of Colorado, and it shall be made payable to the Board of County Commissioners. At the discretion of the Permit Authority, those persons holding any interest in the land on which the development or activity is to be conducted may also be required to join as principals.
- (3) The purpose of the financial guarantee shall be to assure that the applicant or permittee shall faithfully perform all requirements of the permit or applicable regulations adopted by the Board of County Commissioners.
- (4) The amount of the financial guarantee shall be established by the Permit Authority upon consideration of the following criteria:
 - (a) The estimated cost of returning the site of the permitted development or activity to its original condition or to a condition acceptable to the Permit Authority in accordance with standards adopted by the Permit Authority for the matter of state interest for which the permit is being granted;
 - (b) The estimated cost of completing the permitted development or activity; and
 - (c) The estimated cost of complying with the conditions of the permit.
- (5) Estimated cost shall be based on the applicant's submitted cost estimate plus the Permit Authority's estimate of the additional cost to bring in personnel and equipment to accomplish any unperformed purposes of the financial guarantee. The Permit Authority shall consider the duration of the development or activity and compute a reasonable projection of cost increases due to inflation. The Permit Authority may require as a condition

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- of the permit that the financial security shall be adjusted upon receipt of bids.
- (6) The Permit Authority may require that all or a portion of the amount of the financial guarantee shall be in cash deposited with the County Treasurer and placed in an interest-bearing account. Any interest earned shall be additional security returned to the applicant in the same manner as the original deposit.
 - (7) The financial guarantee may be released only when:
 - (a) The permit has been surrendered to the Permit Authority before commencement of any physical activity on the site of the permitted development or activity;
 - (b) The development or activity has been abandoned and the site thereof has been returned to its original condition or to a condition acceptable to the Permit Authority in accordance with standards adopted by the Permit Authority for the matter of state interest for which the permit was granted;
 - (c) The project has been satisfactorily completed; or
 - (d) All guaranteed permit conditions have been satisfied.
 - (8) Any security may be cancelled or reduced by a surety only upon receipt of the Permit Authority's written consent which may be granted only when such cancellation or reduction will not detract from the purposes of the security.
 - (9) If the license to do business in Colorado of any surety upon a security filed pursuant to these Regulations is suspended or revoked by any state or federal authority, then the applicant or permittee, within ten (10) days after receiving notice thereof, shall substitute a good and sufficient surety licensed to do business in the State. Upon failure of the permittee to make substitution of surety within the time allowed, the Permit Authority shall suspend the permit until proper substitution has been made.
 - (10) If the Permit Authority determines that a financial guarantee should be forfeited because of any violation of the permit, it shall provide written notice to the surety and to the permittee that the financial guarantee will be forfeited unless the permittee makes written demand to the Permit Authority within thirty (30) days after permittee's receipt of notice, requesting a hearing before the Permit Authority. If no demand is made by the permittee within said period, then the Permit Authority shall order the financial guarantee forfeited.
 - (11) The Permit Authority shall hold a hearing within thirty (30) days after the receipt of the demand by the permittee. At the hearing, the permittee may present statements, documents, and other information with respect to the alleged violation. At the conclusion of the hearing, the Permit Authority shall either withdraw the notice of violation or enter an order forfeiting the financial guarantee.

- (12) The cash deposit described in subsection (6) above may be used by the Permit Authority in the event of the default or alleged default of the permit holder only for the purposes of recovering on the surety or fulfilling the permit obligations of the permit holder. The Permit Authority may arrange with a lending institution which provides money for the permit holder that said institution may hold in escrow any funds required for said cash deposit. Funds shall be disbursed out of escrow by the institution to the County upon the Permit Authority's demand for the purposes specified in this Section.
- (13) If the forfeiture results in inadequate revenue to cover the costs of accomplishing the purposes of the financial guarantee, the El Paso County Attorney is hereby authorized to take such steps as deemed proper to recover such costs, including, without limitation, perfecting a lien upon any real property in the County owned by the permittee, by certifying such costs to the County Treasurer for collection in the same manner as real property taxes or by civil action.
- (14) Upon request, the Permit Authority may, in its sole and exclusive discretion, waive all or any portion of the financial security requirements.

2.508 Revocation or Suspension of Permits

- (1) In the event the Permit Authority has reason to believe that the condition imposed on any permit has 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 permittee written notice of the specific violation and shall allow the permit holder a period of at least ten (10) days to correct the violation. If the permittee does not concur that there is a violation, the permittee shall, within fifteen (15) days of the date of such notice, show cause to the Permit Authority why temporary suspension should not be ordered. If the violation is not corrected within the time period established in the Notice of Violation or written extension of time or the permittee requests a show cause hearing, a hearing shall be held within thirty (30) days.
- (2) In lieu of, 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 (Sections 2.401 through 2.403), and if it finds:
 - (a) A violation of any provision or condition of approval of the permit or applicable regulation for administration of the matter of state interest concerned; or
 - (b) The permittee 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 permittee 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 permittee'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.

- (c) Upon good cause shown, any revoked or suspended permit may be reinstated by the Permit Authority, within twelve (12) months after revocation or suspension.

2.509 Annual Review

- (1) Within thirty (30) days prior to each annual anniversary date of the granting of a permit the permittee shall submit a report to the Development Services Department 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) The Development Services Director shall review the report set forth in Section 2.509(1) within thirty (30) days from the date of submittal thereof. If the Development Services Director determines that the permittee has or is likely to have violated the provisions of the permit and/or applicable regulations, he/she shall schedule the matter for public hearing by the Permit Authority. 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 in accordance with Section 2.508.
- (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.
- (4) The Permit Authority may waive or modify the annual review requirements upon petition of the permittee and a showing of good cause therefor.

Article 6 **Administration, Enforcement and Penalties**

2.601 Enforcement and Penalties

- (1) Any person engaging in development in a designated area of a state interest or conducting a designated activity of state interest who does not obtain a Permit pursuant to these Regulations, who does not comply with Permit requirements, who acts outside the authority of an issued Permit, or who exceeds the permission granted in an issued permit has thereby acted unlawfully.
- (2) All unlawful acts pursuant to these Regulations may be referred to the Office of the County Attorney for the institution of an injunction, mandamus, abatement, or other appropriate action to prevent, enjoin, abate, or remove a violation of these Regulations to prevent a person from engaging in unlawful development or conducting an unlawful activity or to otherwise restore the premises to the condition that existed before the violation, and may be further subject to such other criminal or civil liability as may be prescribed by law.

2.602 Mapping Disputes

Where interpretation is needed as to the exact location of the boundary of any designated area and where there appears to be a conflict between a mapped boundary and actual field conditions, the Director shall make the necessary determination of the boundary. Any person contesting the location of the boundary shall be given an opportunity to appeal the decision to the Permit Authority. Any such appeal must be filed in writing with the Director within thirty (30) days of the date of the determination of boundary; otherwise, the determination of the Permit Authority will be final.

2.603 Inspection

- (1) The Development Services Director is hereby empowered and directed to inspect and examine the use, occupation or development in each and every area or conduct of any activity subject to these Regulations for the purpose of determining from time to time whether or not any use occupation, development or activity is in violation of any of the provisions of these Regulations or of any permit issued or required pursuant to these or other applicable regulations.
- (2) If a violation shall be found to exist, the Development Services Director shall by written order direct that such remedial action be taken forthwith as will result in full compliance with the applicable regulations, provided, however, that the issuance of such order shall in no way or manner be deemed a prerequisite to the institution of such enforcement proceedings as are set forth in these Regulations; and provided further, that compliance with such order shall not necessarily be deemed to be a defense to any alleged violation of these Regulations or other applicable regulations of El Paso County or the State of Colorado.