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**EL PASO COUNTY
LAND DEVELOPMENT CODE**

APPENDIX B

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

ADOPTED: June 6, 2013

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CHAPTER 1

ADMINISTRATIVE REGULATIONS

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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.; and Section 29-20-101, et seq., 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.

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: June 6, 2013 with respect to Chapters One through Five, inclusive, hereof, and August 6, , 2013 with respect to Chapter Six:

- (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) These Regulations shall not apply to the division, subdivision or resubdivision of land, which complies with the Land Development Code, the El Paso County Engineering Criteria Manual and the City of Colorado Springs and the El Paso County Drainage Criteria Manual, and provided the threshold of Section 6.105(3) is not exceeded.
- (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

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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.

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, as amended from time to time.
- (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, as amended from time to time.
 - (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 administered by the Pikes Peak Area Council of Governments (as to wastewater treatment only);

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- (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;
 - (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 in writing that the County application and review process be coordinated with that of the other agency or agencies. 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. The County shall provide the applicant, in writing, a copy of its decision upon such coordination request.
- (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) *Administrative Approval*: an approval of development under these Regulations which is granted, with or without conditions, by the Director in consultation with the County Engineer under Section 2.202 of these Regulations.
- (2) *Board of County Commissioners*: the Board of County Commissioners, El Paso County, State of Colorado.
- (3) *County*: El Paso County, Colorado.
- (4) *Designation*: that legal procedure specified by Section 24-65.1- 401, et seq., C.R.S., carried out by the Board of County Commissioners.
- (5) *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.
- (6) *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.

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- (7) *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.
- (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. Permit shall also include an Administrative Approval issued by the Director of Development Services under Section 2.202, as the context requires.
- (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 and a receipt for the same is issued to the applicant.

- (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

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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;
- (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.

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- (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 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.

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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 Administrative Approval Required

- (1) No person may conduct a designated activity of state interest, or develop in a designated area of state interest, without first obtaining an Administrative Approval, a Permit, 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 an Administrative Approval 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 twenty eight (28) 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 type, extent and location of impacts associated with the Project;
 - (e) Any additional information requested by the Director as may be reasonably necessary to make the Administrative Approval 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 may include, as relevant to the specific application, 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 meeting, the Department shall establish an estimated fee in an amount reasonable and necessary to cover costs of determining whether an Administrative Approval 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. The Department shall provide to the applicant, upon completion of the aforementioned review, an itemized accounting of expenses incurred by the County and shall, in accordance with County disbursement procedures, refund to the applicant any unexpended portion of the fee payment.

2.202 Administrative Approval

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 an Administrative Approval 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) Administrative Approval. The Director may determine that an Administrative Approval 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, and any conditions, requirements or mitigation measures imposed under Section

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2.202(4)(a). If the Director issues an Administrative Approval, 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 an Administrative Approval 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 Director's Determination on an Administrative Approval. Upon the Director's determination on an Administrative Approval, the Department shall notify the applicant by mail, and shall notify the Permit Authority, the County Administrator and the County Attorney of the determination by e-mail or memorandum.
- (4) Legal effect of an Administrative Approval.
 - (a) The Administrative Approval may include conditions, requirements and mitigation measures imposed by the Director.
 - (b) The Administrative Approval 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 Administrative Approval as issued by the Director, the Administrative Approval shall be invalid and a Permit under these Regulations is required.
- (5) Reconsideration and Appeal of an Administrative Approval.
 - (a) Within fourteen (14) days after the date of notice of the Director's determination on an Administrative Approval under Section 2.202(3), the applicant may file a written request for reconsideration with the Director. Such request must be accompanied with such modifications to the application and/or additional information as the applicant wishes the Director to consider, along with the factual or legal basis for the request.
 - (b) In processing the petition, the Director may request such additional details from the applicant as he or she may believe necessary, and may hold a face-to-face meeting with the applicant to assist in deciding upon the merits of the request.
 - (c) The Director shall act on the request for reconsideration within fourteen (14) days of its receipt and shall notify the applicant of his or her decision in the manner set forth in Section 2.202(3). Only one (1) such request is permitted.

- (d) If no request for reconsideration is filed within the required period, the Director's decision on the Administrative Approval is final and non-appealable.
 - (e) The Director's decision may be appealed only by the applicant to the Permit Authority by the filing of a written appeal with the Department within fourteen (14) days of the date of notice of the Director's decision on the reconsideration request. The Permit Authority shall consider the appeal at a hearing conducted in substantially the same manner as set forth in Section 2.401 and 2.402(1).
- (6) Revocation of Administrative Appeal: In the event the Director has reason to believe that the condition imposed in an Administrative Approval has been violated by the Permittee, the Director may temporarily suspend the Administrative Approval for a period of thirty (30) days. Before imposing such a temporary suspension, the Director 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 ten (10) days of the date of such notice, demonstrate to the Director why temporary suspension should not be ordered. Within ten (10) days thereafter, the Director shall make a decision, as follows:
- (a) If the Director determines there is no violation, the matter is closed and the Administrative Approval remains in effect.
 - (b) If the Director finds a violation exists, the Administrative Approval shall be suspended for thirty (30) days. During such period, the applicant shall either:
 - (i) Correct the violation;
 - (ii) Request an extension of time to correct the violation, or
 - (iii) Request a show cause hearing before the Permit Authority, which shall be conducted in substantially the manner set forth in Section 2.401 and 2.402(1)

Article 3 **Permit Applications**

2.301 Permit Application

- (1) If an Administrative Approval 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

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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) 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.
- (4) In the event of any litigation challenging a permit or the Permit Authority's action on the same, each party shall bear its own attorney fees and costs and such shall automatically become a condition of any issued permit.

2.303 Submission Requirements for All Permit 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. To the extent an applicant has prepared or submitted materials for a federal, state or local permit, which are substantially the same as required herein, a copy of those materials may be submitted to satisfy the corresponding submission required below. 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 irrelevant or insignificant 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 may file a written appeal of the same within five (5) days with the County Administrator, which decision on the same shall be final and non-appealable. Thereafter, 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

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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.
 - (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

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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 relevant 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.
 - (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 relevant 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 relevant to the Project and 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.

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- (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) If relevant to the Project design, 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) Financial feasibility of the Project.
- (a) Relevant bond issue, loan and other financing approvals or certifications (ex: approved bond issues; bond counsel opinion).
 - (b) Business plan that generally describes the financial feasibility of the Project.
- (10) Local infrastructure and services impacts. An 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: 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.
- (11) Recreational Opportunities. Description of the impacts and net effect of the Project on present and potential recreational opportunities.

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- (12) Areas of Paleontological, Historic or Archaeological Importance. 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. Description 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, considering particulate matter and aerosols, oxides, hydrocarbons, oxidants, and other chemicals, temperature effects and atmospheric interactions.
- (15) Visual Quality. Description of the impacts and net effect that the Project would have on visual quality, considering viewsheds, scenic vistas, unique landscapes or land formations within view of the Project area.
- (16) Surface Water Quality.
 - (a) Map and/or description of all surface waters relevant to 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 relevant to the Project. 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.

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- (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 relevant to the Project.
 - (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; Terrestrial and Aquatic Animals, Plant Life and Habitat. Applicant shall only provide description of foregoing natural conditions, animal and plant life at, but not to exceed, the level of detail required by other federal or state permits or reviews which are applicable to the Project.
- (20) 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.
- (21) 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.
- (22) 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.
- (23) 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 applicable 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.

- (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 was mailed to them.

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:

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- (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, and has submitted a land use application, in lieu of processing such application, the Permit Authority may decide to 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 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 is in general conformance with the El Paso County Master Plan, Water Quality Management Plan, NPDES Phase II Permit, 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) Likelihood that the Project will/will not cause or contribute to urban sprawl or "leapfrog" development.

- (b) Significant changes in the amount of impervious surfaces.
 - (c) Contiguity of development associated with the Project to existing growth centers.
 - (d) Changes to unique land forms.
 - (e) Changes in the amount or character of open space.
 - (f) Changes to traffic patterns, road capacity and congestion.
- (3) **The Project is financially feasible.** The determination of financial feasibility of the Project may include but is not limited to the following considerations:
- (a) The business plan submitted by the applicant.
 - (b) Relevant bond issue, loan and other financing approval or certifications (ex: approved bond issue; bond counsel opinion).
- (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 local infrastructure and 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) 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.
 - (b) 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.

- (c) Need for temporary roads to access the Project for construction and maintenance.
- (d) Change in demand for public transportation.
- (6) **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 hunting experiences.
 - (g) Changes to open space.
 - (h) Changes to existing conservation easements.
 - (i) Changes to regional or neighborhood parks.
- (7) **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 in visibility and microclimates.
 - (b) Applicable air quality standards.
- (8) **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 landscape character types of unique land formations.

- (d) Compatibility of structure size and color with scenic vistas and view sheds.
 - (e) Changes to open space.
 - (f) Changes to existing conservation easements.
 - (g) Changes to impacts to regional or neighborhood parks.
- (9) **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 to the topography, natural drainage patterns, soil morphology and productivity, soil erosion potential, and floodplains.
 - (k) Changes to stream sedimentation, geomorphology, and channel stability.
 - (l) Changes to lake and reservoir bank stability and sedimentation, and safety of existing reservoirs.
- (10) **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.
- (11) **The Project will not significantly degrade wetlands and riparian areas, terrestrial or aquatic plant or animal life.** The determination of effects of the Project on these areas shall include the considerations raised in the applicable federal and/or state permits.
- (12) **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
- (13) **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: increase in odors, dust, fumes, glare, heat, noise, vibration or artificial light.
- (14) **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.
- (15) **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.
- (16) **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

- (1) 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) A government-sponsored project providing a public utility service, e.g. water, wastewater, gas or electric, shall not be subject to this provision with respect to future operations to the extent such operations utilize existing infrastructure for which a Permit or Administrative Approval under these Regulations has been obtained, and which are consistent with the originally intended scope and use of that infrastructure for which a permit has been obtained, subject to any limitations or conditions to the contrary contained in the original permit approval.

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 unless a Permit condition requires 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 security shall be to assure that all requirements of the permit for mitigation and site remediation are adequately guaranteed.
- (4) The amount of the financial security 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; and
 - (b) The estimated cost of complying with the mitigation requirements of the Permit.
 - (c) Other financial security provided by the applicant in connection with the same Project.
- (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.
- (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 deemed additional security and 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;

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- (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; or
 - (c) The mitigation requirements have been satisfactorily completed.
- (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.
- (15) With respect to security required for an Administrative Approval under Section 2.202, the Director shall exercise all of the powers and functions as described herein for the Permit Authority.
- (16) The County Attorney shall have authority to approve the form of security presented.

2.508 Revocation or Suspension of Permits

- (1) In the event the Director has reason to believe that the condition imposed on the Permit has been violated by the holder of the Permit, the Director may temporarily suspend the Permit for a period of thirty (30) days. Before imposing such a temporary suspension, the Director 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 ten (10) days of the date of such notice, demonstrate to the Director why temporary suspension should not be ordered. Within ten (10) days thereafter, the Director shall make a decision, as follows:
 - (a) If the Director determines there is no permit violation, the matter is closed and the permit remains in effect.
 - (b) If the Director finds a violation exists, the permit shall be suspended for thirty (30) days. During such period, the applicant shall either:
 - (i) Correct the violation;
 - (ii) Request an extension of time to correct the violation, or
 - (iii) Request a show cause hearing before the Permit Authority, which shall be conducted in substantially the manner set forth in Section 2.401 and 2.402(1).
 - (c) The Director may extend the time period for the correction of a violation upon the request of the Permittee.
- (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 containing a summary of 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.
- (5) With respect to Administrative Approval under Section 2.202, the Director shall perform the functions of the Permit Authority described herein.

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, who may follow the enforcement procedures in Chapter 11 of the El Paso County Land Development Code 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.

CHAPTER 3

EFFICIENT UTILIZATION OF MUNICIPAL AND INDUSTRIAL WATER PROJECTS

Article 1 General and Introductory Provisions

- 3.101 Designation of Activity of State Interest
- 3.102 Purpose and Intent
- 3.103 Definitions
- 3.104 Applicability

Article 2 Permit Applications and Procedures

- 3.201 Application Submission Requirements
- 3.202 Review Criteria

Article 1 General and Introductory Provisions

3.101 Designation of Activity of State Interest

The "Efficient Utilization of Municipal and Industrial Water Projects" is a designated matter of state and local interest in El Paso County as an activity of state interest. No person may engage in development, including construction, expansion, reoperation, or other significant change in use of a municipal and/or industrial water project wholly or partially within unincorporated El Paso County without first obtaining a permit pursuant to these Regulations.

3.102 Purpose and Intent

The purpose and intent of this Chapter shall be:

- (1) To protect the public health, safety, convenience, order, property and welfare of present and future inhabitants of El Paso County and the State of Colorado.
- (2) To ensure planned, orderly, efficient and economical land use development.
- (3) To provide for the needs of agriculture, existing businesses, residential communities, and recreation now and in the future in El Paso County and adjacent communities which are integral to the economy of El Paso County.
- (4) To ensure that municipal and industrial water projects are located to avoid conflict with County land use plans.
- (5) To regulate municipal and industrial water projects that could cause extensive water and air pollution or that would otherwise degrade or threaten environmental quality within the County or the beauty of its landscape and the integrity of its waterways, rivers and creeks.
- (6) To ensure that municipal and industrial water projects emphasize the most efficient use of water, including to the extent permissible under existing law, and when appropriate, the recycling, reuse, and conservation of water.
- (7) To ensure that new municipal and industrial water be concentrated in areas which would result in the proper utilization of existing treatment plants and the orderly distribution of water and sewage systems of adjacent communities.
- (8) To ensure that major extensions of municipal and industrial water systems be permitted only in areas in which the anticipated growth and development that may occur as a result of such extensions can be accomplished within the financial and environmental capacity of the area to sustain such growth and development.
- (9) To protect lands from development which would cause immediate or foreseeable material danger to significant wildlife habitat or threaten or endanger a wildlife species.
- (10) To preserve areas of historical and archaeological importance.

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- (11) To regulate location of activities and developments which may result in significant changes in population density.
- (12) To provide for planned development of services and facilities.
- (13) To regulate use of land and water resources on the basis of impact thereof on the community or surrounding areas, including existing and proposed development.
- (14) To provide planned and orderly use of land and water resources and protection of the environment in a manner consistent with constitutional rights and private property rights.
- (15) To ensure that new development will pay for itself to the maximum extent practicable and to ensure that the present residents of El Paso County will not have to unduly subsidize new development through increased cost of public services or degradation of the quality of life.

3.103 Definitions

- (1) *Efficient utilization of water.* The employment of methods, procedures, techniques and controls to encourage use of water that will yield the greatest possible benefits including social, economic, environmental, aesthetic, agricultural, commercial and recreational benefits, and that will promote, where feasible and appropriate, the conservation of water in particular uses, and that emphasizes, to the extent permissible under law, the recycling and reuse of water.
- (2) *Industrial:* Any development of natural resources, business or trade, commercial activity, processing, fabrication, alteration or manufacture of raw or semi-processed materials, manufactured goods or any components thereof, and commercial feedlots. "Industrial" includes the provision of water directly or indirectly by a private entity or individual for domestic, municipal or industrial uses. "Industrial" does not include agricultural crop production or livestock watering.
- (3) *Municipal and industrial water project:* A water supply system and all related components through which a water supply from either surface or subsurface, alluvial or groundwater, renewable or non-renewable sources is derived for municipal or industrial uses or both. A water supply system includes wells, diversion facilities, pumps, conduits, canals, pipes, ditches, storage tanks, reservoirs or other impoundments, through which a water supply is obtained directly or by trade, substitution, augmentation or exchange, and also includes those components for returning unconsumed flows back to the stream system. The filing of an application in court or with the Colorado Ground Water Commission to adjudicate the use of water and obtaining a decree or determination, in and of itself, shall not constitute the development of a water project.

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- (4) *Municipal use*: use of water by the general public whether supplied by a municipality or by private or special district providers.
- (5) *Project or proposed project*: The site selection, construction, development, operation, reoperation, enlargement or expansion, conversion of an existing facility or structure to a municipal or industrial use, or material change of a development proposed under these Regulations throughout its life cycle including all ancillary structures, facilities, improvements, and activities, and all integrated components thereof. If a project is to be phased over time or is composed of distinguishable elements, the impacts of all phases or elements of the Project must be considered together when reviewing the project hereunder and determining if it satisfies these Regulations.
- (6) *Recycling*: the treatment of wastewater in a manner that will replenish its quality to the standard established by the Colorado Department of Public Health and Environment where permissible by Colorado water law.
- (7) *Source development area*: a geographic area or region wholly or partially within the unincorporated territory of the County which will be developed, altered, or affected in connection with the development of a municipal or industrial water project.

3.104 Applicability

- (1) This Chapter 3 applies to development of municipal and industrial water projects, wholly or partially within unincorporated El Paso County.
- (2) A municipal or industrial water project is exempt from this Chapter if it falls within one of the following categories:
 - (a) The maintenance, repair, replacement of an existing component or facility of a Project if it does not constitute a material change, does not cause negative impacts different from the existing Project, and does not otherwise exacerbate existing impacts.
 - (b) Replacement of an existing water diversion or storage structure without change in the point of diversion, type or place of use of the water, or yield.
 - (c) Irrigation facilities used for agricultural purposes.
 - (d) A proposed municipal water project with a new or increased diversion per year, or new or increased storage capacity, of less than 500 acre-feet.
 - (e) A proposed industrial water project with a new or increased diversion per year, or a new or increased storage capacity, of less than 500 acre-feet.

Article 2 **Permit Applications and Procedures**

The procedures concerning permit applications, notice and conduct of permit hearings, review of Permit Authority decisions, and the issuance and content of permits to engage in the

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designated activity of a municipal or industrial water project shall comply with the provisions set forth in Chapter 2 and the additional provisions of this Chapter.

3.201 Application Submission Requirements

In addition to the materials listed at Section 2.303, application for a permit to conduct a new municipal or industrial water project shall be accompanied by the following information in the number required by the Director:

- (1) Description of efficient water use, recycling and reuse technology the Project intends to use. Such description shall include estimated stream transit losses of water, reservoir evaporation losses, and power and energy requirements of the Project and alternatives to the Project.
- (2) Map and description of other municipal and industrial water projects and providers in the vicinity of the Project, including their capacity and existing service levels, location of intake and discharge points, service fees and rates, debt structure and service plan boundaries and reasons for and against hooking on to those facilities.
- (3) Description of the water to be used by the Project and to the extent identified by the Director in consultation with the applicant, alternatives, including: the source, amount, the quality of such water; the applicant's right to use the water, including adjudicated decrees or determinations and any substitute water supply plans, and applications for decrees or determinations; proposed points of diversion and changes in the points of diversion; the existing uses of the water; adequate proof that adequate water resources have been or can and will be committed to and retained for the Project, and that applicant can and will supply the Project with water of adequate quality, quantity, and dependability; and approval by the respective Designated Ground Water Management District if applicable. If an augmentation or replacement plan for the Project has been decreed or determined or an application for such plan has been filed in the court or with the Ground Water Commission, the applicant must submit a copy of that plan or application.
- (4) Loss of Agricultural Productivity
 - (a) Information on any agricultural water rights in the region converted to provide water for the Project, now or in the future.
 - (b) Information on the amount of irrigated agricultural lands taken out of production, and a description of revegetation plans.
 - (c) Economic consequences of any loss of irrigated agriculture, including loss of tax base, in the region.
 - (d) Information as to loss of wildlife habitat, loss of topsoil, or noxious weed invasion, as a result of the transfer of water rights and subsequent dry-up of lands.

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- (e) Information on impacts to agricultural head gates and water delivery systems.

3.202 Review Criteria

A Permit to conduct the designated activity of a municipal or industrial water project shall be approved if the Permit Authority finds the application complies with the following criteria and the relevant criteria at Section 2.405. If the Permit Authority finds the application does not comply with any one or more of these criteria, the application shall be denied or may be approved with conditions.

- (1) **The Project shall emphasize the most efficient use of water, including the recycling, reuse and conservation of water.** The determination of whether the Project emphasizes the most efficient use of water may include but is not limited to the following considerations:
 - (a) Whether the Project uses readily available conservation techniques.
 - (b) Whether the Project recycles water to the extent allowed by law.

CHAPTER 4

SITE SELECTION AND CONSTRUCTION OF MAJOR NEW DOMESTIC WATER AND
SEWAGE TREATMENT SYSTEMS AND MAJOR EXTENSIONS OF EXISTING DOMESTIC
WATER AND SEWAGE TREATMENT SYSTEMS

Article 1 General Provisions

- 4.101 Designation of Activities of State Interest
- 4.102 Purpose and Intent
- 4.103 Definitions
- 4.104 Applicability

Article 2 Permit Applications and Procedures

- 4.201 Application Submission Requirements
- 4.202 Review Criteria

Article 1 General Provisions

4.101 Designation of Activities of State Interest

Any activity wholly or partially within the unincorporated jurisdiction of El Paso County which falls within one or more of the following categories shall be considered to be site selection and construction of major new domestic water and sewage treatment systems and/or major extension of existing domestic water and sewage treatment systems, which activities are hereby designated as activities of state interest requiring a permit under these Regulations. No person may engage in construction, expansion, reoperation or other significant change in use of the following activities wholly or partially within unincorporated El Paso County without first obtaining a permit pursuant to these Regulations.

- (1) New water supply systems, new water treatment plants, or extensions of those systems or plants including water storage tanks, and line extensions that serve more than 250 single-family equivalents.
- (2) Water service for commercial and/or industrial use equal to or greater than an amount equivalent to that in paragraph (1) above.
- (3) Domestic Sewage Systems. A project which is planned for or requires the creation of a major new sewage treatment system(s) or a major extension(s) of an existing sewage treatment system(s), which means any new collector sewer lines, return flow lines, pumping structure or treatment facilities proposed for:
 - (a) New wastewater treatment plants, extensions or expansions to existing plants, or individual sewage disposal systems (on-site wastewater treatment systems) that have an average flow of more than 2,000 gallons per day;
 - (b) Wastewater lift stations that pump wastewater from areas too low to drain into available sewers receiving an average flow of more than 2,000 gallons per day;
 - (c) Wastewater interceptors, as defined at Section 4.103;
 - (d) Service for commercial and/or industrial use that serves an equivalent of more than 250 single-family equivalents, and that is not served at the time of permit application.
- (4) This designation does not include extensions of water or sewer lines for which construction plans have been or are subject to approval as part of a subdivision development under the LDC.

4.102 Purpose and Intent

The purpose and intent of this Chapter shall be:

- (1) To ensure that new domestic water and sewage treatment systems and/or major extensions of the same are constructed in areas which will result in the proper

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utilization of existing treatment plants and the orderly development of domestic water and sewage systems of adjacent communities.

- (2) To ensure that site selection and construction of major new domestic water and sewage treatment systems and/or major extensions of the same are conducted in such a manner as to minimize environmental impacts associated with such development.
- (3) To ensure that site selection and construction of major new domestic water and sewage treatment systems and/or major extensions of the same are planned and developed in a manner so as not to impose an undue economic burden on existing or proposed communities.
- (4) To ensure that the impacts to County roads of site selection and construction of major new domestic water and sewage treatment systems and/or major extensions of the same are adequately mitigated.

4.103 Definitions

For the purpose of this Chapter, the following definitions will apply:

- (1) *Collector sewer line* means a sewage treatment system's pipe, conduit, ditch, natural water course, or combination thereof which is designed to accept and transport wastewater from privately owned service lines from individual structures and properties to the system's treatment plant. A collector sewer line for the purpose of this regulation includes common lateral sewers and interceptor sewers. Not included in this definition are privately owned individual on-site sewage disposal system lines and privately owned service lines.
- (2) *Domestic water and sewage treatment system* means a wastewater treatment plant, water treatment plant, or water supply system, including systems whose service area is, or will be, outside the unincorporated area of El Paso County.
- (3) *Interceptor* means a waste water interceptor sewer with an internal pipe diameter of equal to or greater than 24 inches intercepting wastewater from a final point in a collection system and conveying the waste directly to a treatment plant, or meeting other requirements of the CDPHE to be classified as an interceptor.
- (4) *Return flow* means a sewage treatment system's pipe, conduit, ditch, natural water course, or combination thereof, which is designed to transport wastewater, commonly known as effluent, from the system's treatment plant to a point of discharge. A point of discharge includes a natural water course, ditch, groundwater recharge area, injection well, evaporation basin, or water supply system's transmission line.
- (5) *Wastewater treatment plant* means the facility or group of units used for treatment of wastewater from sewer systems and for the reduction and handling of solids and gases removed from such wastes.
- (6) *Water distribution line* means a water supply system's pipe, conduit, ditch, natural water course, or combination thereof which is designed to transport water of a

potable or non-potable quality, commonly referred to as treated or raw water, and having the characteristic that it allows customer service taps.

- (7) *Water supply system* means the system of pipes, structures and facilities through which a water supply is obtained, treated and sold or distributed for human consumption or household use, including systems whose service area is, or will be, outside the unincorporated area of El Paso County.
- (8) *Water transmission line* means a water supply system's pipe, conduit, ditch, natural water course, or combination thereof which is designed to transport water of a potable or non-potable quality, commonly referred to as treated or raw water, and having the characteristic that it does not allow customer service tap.
- (9) *Water treatment plant* means the facility or facilities within the water supply system, which can alter the physical, chemical or bacteriological quality of the water.

4.104 Applicability

These Regulations shall apply to the site selection for all major new domestic water and sewage treatment systems and the construction thereof as described at Section 4.101 and defined at Section 4.103. They shall also apply to the expansion or major extension of existing domestic water or sewage treatment systems.

Article 2 Permit Applications and Procedures

4.201 Application Submission Requirements

In addition to the materials listed at Section 2.303, applications for a permit to locate or construct a major new domestic water or sewage treatment system and/or major extension thereof shall be accompanied by the following information, in the number required by the Director:

- (1) Preliminary review and comment on the proposal by the appropriate agency of the Colorado Department of Natural Resources and the Colorado Department of Public Health and Environment within sixty (60) days of the date of submittal of the proposal for review.
- (2) Scope of Proposal
 - (a) Provide detailed plans of the proposal, including proposed system capacity and service area plans mapped at a scale acceptable to the Department.
 - (b) Provide a description of all existing or approved proposed domestic water or sewage treatment systems within the Project area.
 - (c) Describe the design capacity of each domestic water or sewage treatment system facility proposed and the distribution or collection network proposed in the Project area.
 - (d) Describe the excess capacity of each treatment system and distribution or collection network in the affected community or Project area.

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- (e) Provide an inventory of total commitments already made for current water or sewage services.
 - (f) Describe the operational efficiency of each existing system in the Project area, including the age, state of repair and level of treatment.
 - (g) Describe the existing water utilization, including the historic yield from rights and use by category such as agricultural, municipal and industrial supply obligations to other systems.
- (3) Demonstration of Need
- (a) Provide population trends for the Project area, including present population, population growth and growth rates, documenting the sources used.
 - (b) Specify the predominant types of developments to be served by the proposed new water and/or sewage systems or extensions thereof.
 - (c) Specify at what percentage of the design capacity the current system is now operating:
 - (i) Water treatment system.
 - (ii) Wastewater treatment system.
 - (d) Specify whether present facilities can be upgraded to accommodate adequately the ten-year projected increase needed in treatment and/or hydraulic capacity.
- (4) Description of the water to be used by the Project and, to the extent identified by the Director in consultation with the applicant, alternatives, including: the source, amount, the quality of such water; the applicant's right to use the water, including adjudicated decrees or determinations and any substitute water supply plans, and applications for decrees or determinations; proposed points of diversion and changes in the points of diversion; the existing uses of the water; adequate proof that adequate water resources have been or can and will be committed to and retained for the Project, and that applicant can and will supply the Project with water of adequate quality, quantity, and dependability; and approval by the respective Designated Ground Water Management District if applicable. If an augmentation or replacement plan for the Project has been decreed or determined or an application for such plan has been filed in the court or with the Ground Water Commission, the applicant must submit a copy of that plan or application.
- (5) Loss of Agricultural Productivity
- (a) Information on any agricultural water rights in the region converted to provide water for the Project, now or in the future.
 - (b) Information on the amount of irrigated agricultural lands taken out of production, and a description of revegetation plans.

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- (c) Economic consequences of any loss of irrigated agriculture, including loss of tax base, in the region.
 - (d) Information as to loss of wildlife habitat, loss of topsoil, or noxious weed invasion, as a result of the transfer of water rights and subsequent dry-up of lands.
 - (e) Information on impacts to agricultural head gates and water delivery systems.
- (6) The financial impact analysis of site selection and construction of major new water and sewage treatment facilities and/or major extension of existing domestic water and sewage treatment systems shall include but need not be limited to the following items:
- (a) A review and summary of any existing engineering and/or financial feasibility studies, assessed taxable property valuations and all other matters of financial aid and resources in determining the feasibility of the proposed new facility, including:
 - (i) Service area and/or boundaries.
 - (ii) Applicable methods of transmitting, storing, treating and delivering water and collecting, transmitting, treating and discharging sewage, including effluent and/or sludge disposal.
 - (iii) Estimated construction costs and period of construction of each new or extension facility component.
 - (iv) Assessed valuation of the property to be included within the service area boundaries.
 - (v) Revenues and operating expenses of the proposed new or extension facility, including but not limited to historical and estimated property taxation, service charges and rates, assessments, connection and tap fees, standby charges and all other anticipated revenues of the proposed new facility.
 - (vi) Amount and security of the proposed debt and method and estimated cost of debt service.
 - (vii) Provide the details of any substantial contract or agreement for revenues or for services to be paid, furnished or used by or with any person, association, corporation or governmental body.

4.202 Review Criteria

A permit for the conduct of site selection and construction of major new domestic water and sewage treatment systems and/or major extension of existing domestic water and sewage treatment systems shall be approved if the application complies with the following criteria and the relevant criteria at Section 2.405. If the Permit Authority finds that the application does not comply, the application shall be denied or may be approved with conditions:

- (1) **There is sufficient existing and projected need to warrant and support the proposed Project.**
- (2) **New domestic water and sewage treatment systems or extensions shall be constructed in areas which will result in the proper utilization of existing treatment plants and the orderly development of domestic water and sewage treatment systems of adjacent communities.**
- (3) **Site selection and construction of major new water and sewage treatment facilities and/or major extensions of domestic water and sewage treatment systems will not create growth and development which is incompatible with and cannot be accommodated by the local financial capacity of the area or residents to be served.**
- (4) **Site selection and construction of major new water and sewage treatment facilities and/or major extensions of domestic sewage treatment systems will not overburden the existing systems and current and projected future demand for the service can be met within existing and proposed capacity.**
- (5) **The activity will not create proliferation of special districts, or overlapping of the boundaries of special districts.**
- (6) **The proposed activity is the best alternative available for the provision of water and/or sewer service to the geographical area affected by the proposal.**
- (7) **Economic impacts including, but not limited to, taxable property, agriculture, NPDES permitted facilities, and recreation related to the proposed activity have been identified and will be compensated for or mitigated.**
- (8) **To the extent feasible, wastewater and water treatment facilities shall be consolidated with existing facilities within the area.** The determination of whether consolidation is feasible shall include but is not limited to the following considerations:
 - (a) Whether there is an opportunity for consolidation.
 - (b) The environmental, financial and social feasibility of consolidation.
- (9) **The Project shall emphasize the most efficient use of water, including the recycling, reuse and conservation of water.** The determination of whether the Project emphasizes the most efficient use of water may include but is not limited to the following considerations:

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- (a) Whether the Project uses readily available conservation techniques.
 - (b) Whether the Project recycles water to the greatest extent allowed by law.
- (10) **The Project will not result in excess capacity in existing water or wastewater treatment services or create duplicate services.** The determination of whether the Project will result in excess capacity or create duplicate services may include but is not limited to the following considerations:
- (a) Whether the Project creates overlapping or competing service areas.
 - (b) Whether the Project differs significantly from the provider's facility plan.
 - (c) Whether the Project impacts other water and wastewater permits.
 - (d) Whether the activity will not create proliferation of special districts, or overlapping of the boundaries of special districts.

CHAPTER 5

SITE SELECTION AND CONSTRUCTION OF MAJOR FACILITIES OF A PUBLIC UTILITY

Article 1 General Provisions

- 5.101 Designation of Activity of State Interest
- 5.102 Purpose and Intent
- 5.103 Definitions
- 5.104 Applicability; Prohibitions

Article 2 Permit Application and Procedures

- 5.201 Application Submission Requirements
- 5.202 Review Criteria

Article 1 **General Provisions**

5.101 Designation of Activity of State Interest

- (1) The following activity of state interest is hereby designated: site selection and construction of major facilities of a public utility. No person may engage in development, including construction, expansion, reoperation, relocation or other significant change in use of such activity wholly or partially within unincorporated El Paso County without first obtaining a permit pursuant to these Regulations.
- (2) The issuance of a permit for this activity is contingent upon the subsequent approval of the major facility by the Public Utilities Commission, Colorado Department of Public Health and Environment, U.S. Environmental Protection Agency, or other regulatory agencies, where required by appropriate statute or regulation.

5.102 Purpose and Intent

The purpose and intent of these Regulations contained in this Chapter 5 are:

- (1) To regulate the site selection and construction of major facilities of a public utility to prevent significant deterioration or degradation of existing air and water quality in El Paso County;
- (2) To avoid or reduce conflicts with the El Paso County Master Plan;
- (3) To regulate the site selection and construction of major facilities of a public utility to preserve the health and welfare of the citizens of El Paso County; and
- (4) To avoid or reduce incompatible uses adjacent to County roads and County trails and to avoid unreasonable or burdensome expenditure of public resources by minimizing impacts by public utilities to said County roads and County trails.

5.103 Definitions

For the purpose of this Chapter, the following definitions shall apply:

- (1) *Appurtenant facilities* means any building, structure or other property which is incidental to, and customarily found in connection with, major facilities of public utilities and are operated and maintained for the benefit or convenience of the occupants, employees, customers or visitors of such major facilities.
- (2) *Major facilities of a public utility* means transmission lines, power plants, substations, pipelines, and storage areas of utilities as herein separately defined.
- (3) *Pipeline* means any pipeline and appurtenant facilities thereto, designed for, or capable of, transporting natural gas, manufactured gas, or other petroleum derivatives.

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- (4) *Power plant* means any of the following:
 - (a) Any fossil fuel, biofuel, or similar electrical energy generating facility or addition thereto with a generating capacity of fifty (50) megawatts or more, and any appurtenant facilities.
 - (b) Any solar or wind electrical energy generating facility or addition thereto with a generating capacity in excess of five hundred (500) kilowatts, and any appurtenant facilities.
 - (c) Any nuclear or hydropower electrical generating facility of five hundred (500) kilowatts or more.
- (5) *Public utilities* mean those utilities as defined by Section 39-4-101 and Section 40-1-103, C.R.S.
- (6) *Storage area* means any facility, including appurtenant facilities, designed to store eighty million (80,000,000) cubic feet or more of natural or manufactured gas, or thirty-five thousand (35,000) barrels or more of petroleum derivatives, or any expansion or series of expansions of an existing storage facility to accommodate eighty million (80,000,000) cubic feet or more of natural or manufactured gas, or thirty-five thousand (35,000) barrels or more of petroleum derivatives.
- (7) *Site selection and construction* means and includes the initial site selection and construction of a facility as well as any subsequent relocation, reconstruction or upgrade of such facility.
- (8) *Substation* means any facility designed to provide switching, voltage transmission, or voltage control required for the transmission of electricity at one hundred fifteen (115) kilovolts or more, but does not have as a primary purpose the transformation of voltage to fifty (50) kilovolts or less for distribution purposes.
- (9) *Transmission line* means any electric transmission line and appurtenant facilities used to transmit electricity.

5.104 Applicability; Prohibitions

- (1) This Chapter 5 shall apply to the site selection and construction of all major facilities of a public utility wholly or partially within the unincorporated territory of El Paso County.
- (2) Unless approval has been granted pursuant to the El Paso County Engineering Criteria Manual at Chapter 4 and Sections 5.3 and 5.5, no electric transmission line or pipeline shall be constructed, located, relocated, reconstructed, enlarged or upgraded within 105 feet of the centerline of any County road with a current or proposed classification as arterial or expressway, as set forth in the El Paso County Major Transportation Corridors Plan and in the El Paso County

Engineering Criteria Manual, except to cross such road at or near a perpendicular angle or to provide service to an individual utility customer.

- (3) A Permit is not required under this Chapter for the following activities: repair or storm damage, reframing, pole replacement, re-conductor and maintenance in the normal course of business without increasing the voltage rating of the transmission line, or reconstructing, upgrading or replacing substation equipment inside an existing substation or within an existing substation fence.
- (4) A permit under this Chapter 5 is required to construct, locate, relocate, reconstruct, enlarge or upgrade any electric transmission line and appurtenant facilities used to transmit electricity at 115 kilovolts or more at any location within the unincorporated area of El Paso County.
- (5) A permit under this Chapter 5 is required to construct, locate, relocate, reconstruct, enlarge or upgrade any pipeline and appurtenant facilities of twelve (12) inches or more in diameter which creates a hoop stress of twenty (20) percent or more at their specified minimum yield strength.
- (6) This Chapter shall not apply to interstate natural gas pipeline facilities regulated preemptorily by the Federal Energy Regulatory Commission (FERC), or its successor, provided the following requirements and procedures are complied with by persons or entities proposing to site and construct the interstate natural gas pipeline facility whenever site selection and construction of such facility will be partly located within El Paso County.
- (7) The requirements of these Regulations shall not be deemed to waive the requirements of Section 40-5-101, et seq., C.R.S., if applicable, that a public utility obtain a certificate of public convenience and necessity.

5.105 Review, Notification and Final Action. Notwithstanding Section 2.02 and Article 4 of Chapter 2 of these Regulations, the Director shall notify the applicant of any additional information required to render an application for an Administrative Approval or a Permit complete within 28 days of initial submittal of the application, and the Director and the Permit Authority, as appropriate, shall take final action on the application within 90 days of the date a complete application is received.

Article 2 Permit Application and Procedure

5.201 Application Submission Requirements

In addition to the materials listed at Section 2.303, all applications to locate or construct a major facility of a public utility shall be accompanied by the following information, in the number required by the Director:

- (1) Vicinity map showing the proposed site and the surrounding area. The Project area to be shown shall be defined as follows:

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- (a) If a power plant is proposed, the area within fifty (50) miles radius from the site;
 - (b) If new transmission lines or pipelines are proposed, provide a map showing all existing transmission lines and pipelines for a distance of two (2) miles radius beyond any reasonable alternative studied.
 - (c) For upgrades of existing transmission lines or gas pipelines, a map showing all existing transmission lines and pipelines within one (1) mile on either side of the proposed alignment.
 - (d) For all other major facilities of a public utility, the area within ten (10) miles radius of the site if another major facility is proposed.
- (2) Type of facility - specify where applicable:
- (a) The voltages and lengths of transmission lines.
 - (b) Type of poles used, with graphic depictions.
 - (c) Power source and generating capacity.
 - (d) The functions and sizes of substations.
 - (e) The diameters and lengths of pipelines.
 - (f) The capacities of the storage tanks and types of petroleum derivative to be stored.
 - (g) Corridor locations and dimensions.
 - (h) Service area.
- (3) Resource area (e.g., source of power being generated or transmitted, source of petroleum derivative being transported).
- (4) Projected development schedule.
- (a) Specify timetable for planning (e.g., federal permits, other State permits, local zoning, etc.).
 - (b) Estimate beginning and completion of construction and beginning of operation of facility.
- (5) Hazards and emergency procedures:
- (a) Describe hazards, if any, of fire, explosion and other dangers to the health, safety and welfare of employees and the general public.

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- (b) Describe hazards, if any, of environmental damage and contamination due to solid waste, hazardous waste, petroleum products, hazardous, toxic, and explosive substances or materials used at, or activities taking place at, the proposed facility.
 - (c) Describe emergency procedures to be used in the event of fire, explosion or other event which may endanger the public health, safety and welfare.
- (6) The applicant shall supply an analysis of non-structural alternatives to the Project, such as conservation of energy use, no development or management (different scheduling, conservation programs, facility design, land trades etc.), if applicable.
- (7) The applicant shall supply an analysis of structural alternatives to the Project, such as alternate locations and routes, alternative types of facilities, use of existing rights-of-way, and joint use of rights-of-way with other utilities and upgrading of existing facilities.
- (8) Detailed description of the need for the proposed development or activity, including but not limited to:
 - (a) The present population of the area to be served and the total population to be served when the project is operating at full capacity.
 - (b) The predominant type of users or communities to be served by the proposal.
 - (c) The percentage of the design capacity at which the current system is now operating.
 - (d) If the proposal is for construction of a new facility and the capacity of that facility exceeds a ten-year projected increase in demand, a detailed explanation of the excess service capacity and the cost of the excess capacity.
 - (e) The relationship of the proposal to the applicant's long-range planning and capital improvement programs.
 - (f) A description of the user needs and user patterns to be fulfilled by the proposed Project.
 - (g) A description of the relationship of the Project to other existing and planned utility facilities of a similar nature, other communication or energy generation and transmission facilities, local government capital improvement programs and special district expansion programs.
- (9) Environmental impact analysis.
 - (a) Land use:

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- (i) Specify how the proposed development will utilize existing easements or rights-of-way for any associated distribution or collector networks.
- (b) Information regarding other utility facilities:
 - (i) A map showing each existing major facility of a public utility within the County of the type proposed for development.
 - (ii) The design capacity of each such facility, the excess capacity of each such facility and the percentage of capacity at which each such facility operates.
 - (iii) Whether present facilities can be upgraded to adequately accommodate a ten-year projected increase in demand for services to be offered by the proposed project.
- (10) Applicants seeking a permit for the site selection and construction of a power plant shall submit, in addition to those requirements set forth above, a map locating and describing resource areas to be utilized as sources of energy.
- (11) Applicants seeking a permit for the site selection and construction of transmission lines or substations shall submit the following additional documents and information:
 - (a) Computer modeled electromagnetic field measurement within the proposed transmission line easement for that portion of the transmission line between substations or transition sites; and
 - (b) Measures taken to comply with the concept of prudent avoidance with respect to planning, siting, construction and operation of transmission lines, which may be those steps taken to comply with CCR 723-3 Section 3206(9)(b) or similar authority, for projects where other similar authority is applicable.

5.202 Review Criteria

A permit to conduct site selection and construction of a major facility of a public utility shall be approved if the Permit Authority finds the application complies with the following criteria and the relevant criteria at Section 2.405. If the Permit Authority finds the application does not comply, the application shall be denied or may be approved with conditions.

- (1) **All reasonable alternatives to the proposed action, including use of existing rights-of-way and joint use of rights-of-way wherever uses are compatible, have been adequately assessed and the proposed action represents the best interests of the people of this County and presents the best utilization of resources in the impact area.**

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- (2) A satisfactory program to mitigate and minimize adverse impacts has been presented.
- (3) Unless approval has been granted pursuant to the El Paso County Engineering Criteria Manual at Chapter 4 and Sections 5.3 and 5.5 no electric transmission line or pipeline shall be constructed, located, relocated, reconstructed, enlarged or upgraded within 105 feet of the centerline of any County road with a current or proposed classification as arterial or expressway, as set forth in the El Paso County Major Transportation Corridors Plan and in the El Paso County Engineering Criteria Manual, except to cross such road at or near a perpendicular angle or to provide service to an individual utility customer.
- (4) Electric transmission lines and pipelines shall be located so as to discourage traffic congestion, incompatible uses, and expansion of the demand for government services beyond the reasonable capacity of the community or region, and to avoid unreasonable or burdensome expenditure of public resources.
- (5) Major facilities of a public utility shall be administered so as to minimize disruption of the service provided by the utility and preserve desirable existing community patterns.

CHAPTER 6

FLOODPLAIN NATURAL HAZARD AREAS

Article 1 General Provisions

- 6.101 Designation of Area of State Interest
- 6.102 Boundaries of Floodplain Natural Hazard Areas
- 6.103 Purpose and Intent
- 6.104 Definitions
- 6.105 Applicability
- 6.106 Relationship to Other Requirements

Article 2 Permit Applications and Procedures

- 6.201 Application Submission Requirements
- 6.202 Map Requirements
- 6.203 MDDP Report Requirements
- 6.204 Drawing Requirements
- 6.205 Review Criteria

Article 1 General Provisions

6.101 Designation of Area of State Interest

The following area of state interest is hereby designated: floodplain natural hazard areas. No person may conduct development, as defined in Section 6.104, within such area without first obtaining a permit pursuant to these Regulations. No person may engage in development, as hereinafter defined, within the floodplain natural hazard areas of El Paso County described on **Exhibit D** without first obtaining a permit pursuant to these Regulations.

6.102 Boundaries of Floodplain Natural Hazard Areas

The boundaries of all floodplain natural hazard areas on the maps listed at **Exhibit D** shall be established by flood elevations. In the event of a conflict over the location of any such boundary as shown on the maps, reference shall be made to the flood elevation, which shall take preference over the boundaries shown on the maps.

6.103 Purpose and Intent

The purpose and intent of this Chapter shall be to:

- (1) Promote the public health, safety and general welfare and protect private property.
- (2) Regulate various floodplains constituting natural hazards of state interest, development of which are likely to cause the unreasonable or burdensome expenditure of public resources or which will pose a continuing and greater future danger to life and property without proper regulation of their use and occupation.
- (3) Protect floodplain areas from impact of increased stormwater discharge.
- (4) Minimize significant hazards to public health and safety or to property in flood hazard areas, to encourage open space activities such as agriculture and recreation, and to ensure that any combination of these activities is conducted in a mutually compatible manner.
- (5) Prohibit the placement of fill, materials and structures which would significantly obstruct flood flows and stormwater discharge to the potential damage of others or cause potentially damaging debris to be carried downstream.
- (6) Protect the public from the burden of avoidable financial expenditures for flood control and stormwater projects and flood relief measures.
- (7) Minimize damage to public utilities, roads, streets and bridges.
- (8) Protect the County and its residents from:
 - (a) Stream bank erosion;

- (b) Siltation;
- (c) Increased stormwater control costs for downtown development, local governments or communities;
- (d) Adverse impacts to the natural habitat of wetland animal and plant species;
- (e) Adverse impacts to aquatic species;
- (f) Adverse impacts on significant wildlife habitat or adverse impacts to threatened or endangered animal or plant species and/or their critical habitat; or
- (g) Adverse impacts to open space, conservation easements, regional or neighborhood parks, public trails, or County infrastructure including roads and drainage structures.

6.104 Definitions

As used in this Chapter, the following definitions shall apply:

- (1) *Development* means activity by a public or private entity which increases or causes an increase in stormwater discharge, in volume, quantity, duration or frequency at any point within the areas described on the maps attached at **Exhibit D** in a manner that varies from pre-development conditions in an amount greater than the limits established at Section 6.105(3).
- (2) *Debris-fan floodplain* means a floodplain that is located at the mouth of a mountain valley tributary stream as such stream enters the valley floor.
- (3) *Drainage Basin Planning Study (DPBS)* means the study of a major drainage basin in El Paso County with respect to the long-term buildout of that basin and the general categories and location of mitigation measures for such impacts or drainage impacts on a basin-wide basis.
- (4) *Dry wash channel and dry wash floodplain* mean a small watershed with a very high percentage of runoff torrential rainfall.
- (5) *Floodplain* means an area adjacent to a stream, which area is subject to flooding as the result of the occurrence of an intermediate regional flood and which are thus so adverse to past, current, or foreseeable construction or land use as to constitute a significant hazard to public health and safety or to property. The term includes but is not limited to:
 - (a) Mainstream floodplains;
 - (b) Debris-fan floodplains; and

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- (c) Dry wash channels and dry wash floodplains.
- (6) *Mainstream floodplain* means an area adjacent to a perennial stream, which area is subject to periodic flooding.
- (7) *Master Development Drainage Plan (MDDP)* means the master plan for drainage for new development which identifies existing drainageways tributary to the new development which may include natural streams and/or existing facilities such as channels, ponds, bridges, culverts, and other man-made structures. The plan shall present alternative solutions for drainage problems identified in the DBPS for the basin, and for new drainage impacts which may be introduced by the new development. Downstream facilities must be thoroughly analyzed with respect to new development drainage impacts in terms of quantity, duration, and volume of runoff.
- (8) *Mudflow* means the downward movement of mud in a mountain watershed because of peculiar characteristics of extremely high sediment yield and occasional high runoff.
- (9) *Natural hazard area* means an area containing or directly affected by a natural hazard.
- (10) *Siltation* means a process which results in an excessive rate of removal of soil and rock materials from one location and rapid deposit thereof in adjacent areas.
- (11) *Thalweg* means the line defining the lowest points along the length of a river bed or valley.

6.105 Applicability

- (1) This Chapter applies to applications for permits to engage in development, as herein defined, in all designated floodplain natural hazard areas within El Paso County as described in **Exhibit D**. Development activities located anywhere within El Paso County, which result in increased stormwater discharge above the limits established at Section 6.105(3) at any point in unincorporated El Paso County within the designated areas shown on the maps at **Exhibit D**, are activities requiring an Administrative Approval or a Permit under these Regulations, unless exempted below.
- (2) Any person seeking to undertake development in or affecting any designated or regulated floodplain natural hazard area as defined herein, shall first obtain an Administrative Approval or a Permit pursuant to these Regulations.
- (3) The following development activities are subject to the requirements of these Regulations:
 - (a) Step One: Impervious Cover Calculation. Development activities resulting in an increase in impervious cover (degree of imperviousness)

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above the following levels are subject to these Regulations and proceed to Step Two.

- (i) Residential development: greater than 50% increase in impervious cover (degree of imperviousness) above existing conditions;
- (ii) Commercial development: greater than 75% increase in impervious cover (degree of imperviousness) above existing conditions;
- (iii) Industrial development: greater than 75% increase in impervious cover (degree of imperviousness) above existing conditions;

Development activities resulting in an increase in impervious cover (degree of imperviousness) below the foregoing limits are exempt and do not require a permit under these Regulations.

(b) Step Two: Is total phased development greater than 10 acres?

- (i) If No=> No additional review or 1041 process is required.
- (ii) If Yes=> Does a Drainage Basin Planning Study (DBPS) for the respective basin exist?

If No=> City and/or County may require the development to complete a DBPS. If required, completion and approval through public hearing process of a DBPS will satisfy 1041 permitting for the development.

If Yes=> Provide a Master Development Drainage Plan (MDDP) for the entire phased development being proposed. (See Step Three below).

(c) Step Three: Master Development Drainage Plan

Development falling above the limits in Step One, and for which a Master Development Drainage Plan (MDDP) has been developed and approved (by the County or a municipality; as appropriate), are eligible to be processed for an Administrative Approval under Section 2.202. If the Administrative Approval is granted, no further action under these Regulations is required. If no MDDP is submitted or approved, or no Administrative Approval is granted, a Permit is required under these Regulations, and an application must be submitted and reviewed as described in Chapter 2 and Article 2 of this Chapter.

(d) Developments within Incorporated Municipalities.

These Regulations apply to stormwater discharge at points in the unincorporated portion of El Paso County, which discharge is created by development, as herein defined anywhere in the County, including, within unincorporated municipalities. The following options are available to proponents of such development:

- (i) Submit an application for review of the development as set forth in Steps Two and Three above; or
- (ii) The municipality may agree to municipal stormwater discharge permit process with limited County review, performed as an Outside Agency Review (OAR) by County staff.

6.106 Relationship to Other Requirements

The requirements of this Chapter 6 are in addition to those contained in the Pikes Peak Regional Building Code, and specifically without limitation, Section 313 thereof, pertaining to floodplains, and the City-County Drainage Criteria Manual and the El Paso County Engineering Criteria Manual.

Article 2 **Permit Applications and Procedures**

6.201 Application Submission Requirements

In addition to the materials listed at Section 2.303, applications for a permit to engage in development in any designated floodplain natural hazard area shall be accompanied by the following information, maps, requirements and data in the number required by the Director:

- (1) A complete application form.
- (2) A plan certified by a professional engineer, registered in the State of Colorado, locating the proposed development with respect to the following:
 - (a) The boundaries of the designated or regulated floodplain natural hazard area.
 - (b) Descriptions of any construction activity which would affect the hydraulic capacity of the floodplain.
 - (c) Section 404 of the Federal Clean Water Act permit, if applicable.
- (3) The following maps or drawings:
 - (a) A map showing the stream and channel, the designated floodplain natural hazard area surrounding the channel, the area to be occupied or affected, in terms of altered stormwater runoff flows, by the proposed development and all available flood elevation studies, water surface elevations and base flood elevations.

- (b) A map with surface view showing elevations or contours of the ground, pertinent structures, fill or storage elevations, size location and spatial arrangement of all proposed and existing structures on the site, location and elevation of streets, water supply systems, sanitary facilities and soil types.
 - (c) Drawings showing the profile of the bottom of the channel at the thalweg and the water surface profiles described in such Paragraph a., above. The elevations of fill and structures must be shown. The applicant shall submit the elevation (in relation to mean sea level) of the lowest floor, including the basement, of the structure and, where the lowest floor is below grade on one (1) or more sides, the elevation of the floor immediately above.
- (4) The applicant shall submit evidence that the applicant has made adequate coordination with upstream, downstream or adjacent persons or communities and organizations that might be adversely affected by any development, fill, encroachment or alteration or relocation of a watercourse, including but not limited to, the Fountain Creek Watershed, Flood Control, and Greenway District.

6.202 Map Requirements

- (1) Verification shall be provided identifying the source of the topography and the date it was produced.
- (2) All maps required to be submitted with a permit application shall be of a scale sufficiently detailed to allow the Development Services Director and/or the Permit Authority to determine whether the proposed development and the topographic features of the land meet the requirements of these regulations. In no event shall the scale of these maps be less than one (1) inch equaling one hundred (100) feet.
- (3) All required maps shall show existing topographic contours at no greater than two (2) foot intervals.
- (4) All maps prepared by private contractors or consultants shall meet the following standards of accuracy: Ninety (90) percent of the contour lines must be within one-half ($\frac{1}{2}$) contour interval and the remaining contour lines must be within one (1) contour interval.
- (5) All maps submitted by an applicant seeking a permit to develop a specific site shall show existing (dash line) and finished (solid line) elevation contours of the site at an interval of no greater than one (1) foot within a designated flood hazard area.

6.203 MDDP Report Requirements

- (1) Location and description of the proposed development stating the proposed land use acreage and adjacent features to the site.
- (2) Calculations for design peak flows from all off-site tributary areas
- (3) Calculations for design peak flows from all onsite contributing drainage areas
- (4) Discussion and analysis of existing downstream facilities with particular focus on facilities which will have inadequate capacity based on increase in runoff in terms of increase in peak flowrates, duration, and volume of runoff. Alternatives shall be identified for downstream improvements required to address potential impacts.
- (5) Discussion of drainage problems anticipated within the development and their solutions.

6.204 Drawing Requirements.

- (1) All regulatory floodplain and proposed areas inundated by 100-year recurrence interval
- (2) Existing topography
- (3) Location and size of open channels, bridges, culverts, storm sewers, and ponding areas
- (4) Identify all drainage areas/basins tributary to the development
- (5) Identify drainage sub-basins within the proposed development
- (6) Location of all proposed streets/highways classified as arterials or greater
- (7) Drawing scale shall be between 1"=50' to 1"=500"

6.205 Review Criteria

A permit to engage in development in or affecting a designated floodplain natural hazard area shall be approved if the Permit Authority finds the application complies with the following criteria and the relevant criteria at Section 2.405. If the Permit Authority finds the application does not comply, the application shall be denied or may be approved with conditions.

- (1) **Adequate mitigation measures have been proposed, including financial security to guarantee the same, to mitigate the following:**
 - (a) **Detention and/or retention of storm water;**

- (b) **Erosion and sediment control for any development related land disturbance or construction;**
- (c) **Any necessary measures including channel protection and engineered outfalls;**
- (d) **Water quality controls, including water quality capture volume and determination of the need for temporary and/or permanent best management practices (BMP); and**
- (e) **Adequate provision for maintenance of all drainage-related facilities required by the development.**

EXHIBIT A, Page 1

**ORDER OF
DESIGNATION OF ACTIVITY
OF STATE INTEREST**

Pursuant to Section 24-65.1-101, et seq., C.R.S., on June 6, 2013, the Board of County Commissioners of El Paso County designated the following as activities of state interest:

Efficient utilization of municipal and industrial water projects;

Site selection and construction of major new domestic water and sewage treatment systems and/or major extension of existing domestic water and sewage treatment systems; and

Site selection and construction of major facilities of a public utility.

Such activities may not be conducted within the unincorporated area of El Paso County without a permit pursuant to these regulations. Procedures for obtaining such a permit are available at the Development Services Department, 2880 International Circle, Colorado Springs, Colorado 80910.

Date: _____.

ATTEST:

County Clerk and Recorder

Chair
Board of County Commissioners
El Paso County, Colorado

[S E A L]

EXHIBIT A, PAGE 2

ORDER OF
DESIGNATION OF AREA
OF STATE INTEREST

Pursuant to Section 24-65.1-101, et seq., C.R.S., on June 6, 2013, the Board of County Commissioners of El Paso County designated the following lands as an area of state interest:

Floodplain natural hazard areas of El Paso County shown on **Exhibit D**.

No one may engage in development on said lands without a permit pursuant to these regulations. Maps or other descriptive materials showing the precise boundary of the area and procedures for obtaining a permit are available at the Development Services Department, 2880 International Circle, Colorado Springs, Colorado 80910.

Date: _____.

ATTEST:

County Clerk and Recorder

Chair
Board of County Commissioners
El Paso County, Colorado

[SEAL]

Exhibit B

**APPLICATION FOR A PERMIT TO CONDUCT A
DESIGNATED ACTIVITY OF STATE INTEREST
OR TO ENGAGE IN DEVELOPMENT IN A
DESIGNATED AREA OF STATE INTEREST**

To: Permit Authority, El Paso County

Re: _____
as a matter of state interest.

From: (Applicant's Name)
(Address)
(Telephone)

Date Submitted:

Date Received and Accepted as Complete:

1. Matter of State Interest.

The applicant requests that a permit be issued for each of the items checked below:

A permit to conduct one or more of the following matters of state interest:

- Efficient utilization of municipal and industrial water projects
- Site selection and construction of major new domestic water and sewage treatment systems and/or major extension of existing domestic water and sewage treatment systems
- Site selection and construction of major facilities of a public utility
- Development in areas containing or having a significant impact upon floodplain natural hazard areas

2. Proposed Activity or Development.

General description of the specific activity or development proposed:

3. Location of Development:

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:

4. Legal Description.

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The legal description, including the acreage, of the tract of land upon which the development or the activity is to be conducted, by metes and bounds or by government survey description: (attach additional sheets if necessary):

5. Owners and Interests.

Set out below the names of those persons holding recorded legal, equitable, contractual and option interests and any other person known to the applicant having any interest in the property described in paragraph 4, above, as well as the nature and extent of those interests for each person, provided that such recorded interests shall be limited to those which are recorded in the El Paso County Clerk and Recorder's Office, the land office of the Bureau of Land Management for this State, the Office of the State Board of Land Commissioners of the Department of Natural Resources, or the Secretary of State's Office of this State (attach additional sheets if necessary):

6. Submission Requirements.

Submission requirements described in the Guidelines and Regulations for Areas and Activities of State Interest of El Paso County for each of the activities or areas checked in paragraph 1 above, are attached to this application. Those attachments are identified, by letter or number, and described by title below:

7. Additional Information Required:

Attach any additional information required by the Guidelines and Regulations, and as may be required by the Development Services Department Director..

8. Duration of Permit.

The Applicant requests a permit for a period of _____ years.

9. Application Fee.

The required application fee is submitted herewith.

APPLICANT:

By: _____
(Name)
(Title)

Exhibit C

PERMIT
ISSUED TO CONDUCT A
DESIGNATED ACTIVITY OF STATE INTEREST
OR
TO ENGAGE IN DEVELOPMENT IN A
DESIGNATED AREA OF STATE INTEREST
IN
EL PASO COUNTY, COLORADO

Pursuant to Guidelines and Regulations for Areas and Activities of State Interest of El Paso County heretofore adopted by the Board of County Commissioners, the County has received an application from _____ (hereinafter "Applicant") for a permit to conduct the following matter(s) of state interest:

and has approved that application.

This permit authorizes the Applicant:

1. To conduct the following activity / development: _____

2. On the following-described tract of land:

3. For the following period: _____; expiring _____, 20____

4. In accordance with the plans and/or specifications approved by the Permit Authority on _____, 20____, as well as the guidelines for administration adopted by the County for:

[insert matter of state interest]

5. On the condition that the Applicant proceeds in conformity with all applicable federal and state statutes, regulations and permits as well as all applicable local land use controls including, but not limited to, applicable comprehensive or master plans, subdivision regulations, zoning and building codes.

6. And on the following additional conditions:

This permit shall not be effective until the Applicant has filed the proper security with the Permit Authority, pursuant to provisions of the Administrative and Permit Regulations in the amount of (\$_____).

This permit is valid for use only by the Applicant and may not be transferred. In the event that the Applicant fails to take substantial steps to initiate the above development or activity

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within twelve (12) months from the date of this permit or, if such steps are taken, in the event the Applicant fails to complete the development or activity with reasonable diligence, this permit may be revoked by the Permit Authority.

Date: _____, 20____

EL PASO COUNTY PERMIT AUTHORITY

By: _____

Chair

Board of County Commissioners
El Paso County, Colorado

ATTEST:

County Clerk and Recorder

Exhibit D

MAPS OF EL PASO COUNTY FLOODPLAIN NATURAL HAZARD AREAS

The following maps are incorporated herein by reference:

- (1) Flood Insurance Rate maps published by FEMA and as contained within the Flood Insurance Study, El Paso County Colorado and Incorporated Areas, revised August 23, 1999, as such maps are from time-to time amended, supplemented or revised, and as the same are on file and available for public inspection at the offices of the Pikes Peak Regional Building Department, 2880 International Circle, Colorado Springs, Colorado.
- (2) Incorporated Outfalls Discharging Into Unincorporated El Paso County, April 30, 2013.

EXHIBIT D-1 MAPS

The Exhibit D-1 Maps of the Floodplain Natural Hazard Area designated in the "Guidelines and Regulations for Areas and Activities of State Interest for El Paso County" consists of Flood Insurance Rate maps published by FEMA and as contained within the Flood Insurance Study, El Paso County Colorado and Incorporated Areas, revised August 23, 1999, as such maps are from time-to time amended, supplemented or revised, which are on file and available for public inspection during normal business hours at the offices of the Pikes Peak Regional Building Department and the El Paso County Development Services Department, both located at 2880 International Circle, Colorado Springs, Colorado.

EXHIBIT D-2

