

Chapter Nine

SPECIAL DISTRICTS

9.1. GENERAL PROVISIONS AND PROCEDURES

9.1.1. Purposes

The purpose of this Chapter is to implement the BoCC's authority to review and approve service plans for proposed special districts and amendments of existing service plans under C.R.S. §§32-1-201, et seq. ('Control Act'), 1993, as amended. All provisions of this Chapter are intended to be in compliance with the authority and procedures specified in the Control Act and related statutes. To the extent that this Chapter does not expressly incorporate all applicable provisions of the Control Act and related statutes, those provisions shall still govern as stated in the Control Act or related statutes.

The procedures recognized in the Control Act and set forth in this Chapter are necessary for the orderly creation of special districts and for the logical extension of special district services throughout the County. The Control Act as implemented herein serves the purposes of preventing unnecessary proliferation and fragmentation of local government and avoiding excessive diffusion of local tax sources pursuant to C.R.S. §32-1-102.

The policies of the County regarding special districts are included with the Special District Policies, Model Service Plans and Annual Reports and Disclosure Forms, as adopted by the BoCC and as amended from time to time, and referenced in this Code.

Any special district requirements or policies as referenced in this Chapter are available through the Clerk to the BoCC.

9.2. SERVICE PLAN APPLICATION STEPS AND REQUIREMENTS

9.2.1. Application Submittal

Any person proposing the organization of a special district which includes property in the unincorporated County shall submit a service plan to the BoCC and obtain approval of the draft service plan from the BoCC prior to filing a petition for the organization of the special district in district court in accordance with the requirements of this Chapter (C.R.S. §32-1-202).

9.2.2. Pre-Submission Requirements (Early Assistance)

(A) Materials to be Submitted

The applicant shall submit the required copies of a letter of intent and all materials to the PCD including such other information as necessary to adequately describe the proposed service plan.

(B) Initial Review of Submitted Materials

The letter of intent and information submitted are circulated to the Clerk to the Board, OCA, and any involved county departments for initial review and comment. Issues or comments identified in the initial review shall be addressed and included in the draft service plan.

9.2.3. Draft Service Plan**(A) Materials to Be Submitted**

The applicant shall submit the required copies of the materials identified in the Procedures Manual to the PCD, along with any required fee as identified in the fee schedule. The applicant shall provide a copy to the Clerk to the BoCC pursuant to C.R.S., §32-1-202(1).

(B) Review of Draft Service Plan

To the extent time allows prior to the hearing, the PCD Director shall, at his/her discretion, refer information concerning the draft service plan to interested governmental units and any other relevant review agencies.

(C) Schedule Hearing

The PCD will coordinate the scheduling of the Planning Commission hearing and the BoCC hearing with the Clerk to the BoCC.

(D) State Reporting

The Clerk to the BoCC is responsible for any State reporting requirements regarding the filing of the draft service plan.

(E) Staff Report and Comments

The PCD is responsible for providing to the Planning Commission and BoCC any staff reports and written comments regarding the draft service plan.

(F) Planning Commission Review of Draft Service Plan

The following review procedure has been adopted pursuant to the procedure outlined in C.R.S. §30-28-112, and required by C.R.S. §32-1-202(1):

(1) Public Hearing

The Planning Commission shall consider the draft service plan or any major amendment to a service plan at a public hearing. The applicant for the draft service plan shall receive prior notice of the hearing. The applicant shall comply with applicable public hearing notice requirements in C.R.S. §32-1-204.

(2) Planning Commission Recommendation

The Planning Commission shall review the draft service plan and make a written recommendation in the form of a resolution on the draft service plan to the BoCC. The action by the Planning Commission may be in the form of recommending approval, disapproval, or approval with conditions. The Planning Commission shall make its recommendation within 30 days following the submission of the draft service plan with the Clerk and Recorder. The Planning Commission also may continue the hearing to a set date and time to resolve any outstanding issues, but shall not continue the hearing beyond the established recommendation deadline without the consent of the applicant. The applicant's consent to the continuance shall relieve the Planning Commission from having to make their recommendation within 30 days following submission of the draft service plan with the Clerk and Recorder.

(G) BoCC Review of and Action on Service Plan

The following review procedure has been adopted pursuant to the procedure required by C.R.S. §32-1-202 and C.R.S. §32-1-204:

(1) Set Hearing Date

At the next regular meeting of the BoCC which is held at least 10 days after the final Planning Commission action on the draft service plan, the BoCC shall set a date within 30 days for a public hearing on the draft service plan.

(2) Notice to Colorado Division of Local Government

The Clerk to the BoCC shall provide written notice of the date, time, and location of the public hearing to the Colorado Division of Local Government.

(3) Notice to Applicant

The BoCC shall provide written notice of the date, time, and location of the public hearing to the applicant for the special district and to the governing body of any existing municipality or special district which has levied an ad valorem tax within the preceding tax year and which has boundaries within a radius of 3 miles of the proposed special district boundaries. The governmental units noticed shall be interested parties in the public hearing process.

(4) Published Notice

The BoCC shall publish notice of the public hearing in a newspaper of general circulation in the County, the first publication of which shall be at least 20 days prior to the public hearing date. The publication shall constitute constructive notice to the residents and property owners within the boundaries of the proposed special district. The residents and property owners within the boundaries of the proposed special district shall be interested parties at the public hearing.

The published newspaper notice shall contain the following information:

- The date, time, location, and purpose of the hearing;
- A general description of the land contained within the boundaries of the proposed special district; and
- Information outlining the methods and procedures concerning the filing of a petition for exclusion of territory from the proposed district.

(5) Property Owner Notification

Not more than 30 days nor less than 20 days prior to the public hearing, the applicant for the special district shall send letter notification of the hearing to the property owners within the boundaries of the proposed special district, all as further required by C.R.S. §32-1-204(1.5). The written notification shall indicate that this is a notice of a hearing for the organization of a special district and shall indicate the date, time,

location, and purpose of the hearing, a reference to the type of special district and any other requirements of the statute, and shall include a complete return address, and shall include a point of contact for the applicant and stipulate that written requests for exclusion be directed to the Clerk to the BoCC.

(6) Joint Hearing

If the boundaries of the proposed special district include territory within the County and another County or counties, the BoCC of each of the respective counties, at their discretion, may hold a joint hearing on the proposed special district in accordance with the procedural requirements applicable to BoCC hearings on draft service plans (C.R.S. §32-1-205(1), referencing the hearing requirements of §32-1-204).

(7) Required Public Hearing Procedures

The hearing held by the BoCC shall be open to the public, and a record of the proceedings shall be made. Interested parties at the hearing shall be the following:

- The governing bodies of any existing municipality or special district which has levied an ad valorem tax within the preceding tax year and which has boundaries within a radius of 3 miles of the proposed special district; and
- The residents and property owners within the boundaries of the proposed special district.

All interested parties shall be afforded an opportunity to be heard under the rules of procedure as may be established by the BoCC. Any testimony or evidence which in the BoCC's determination is relevant to the organization of the special district shall be considered.

(8) Exclusions of Property from Proposed District

(a) Requesting Exclusion from the Special District

Any person owning property within the boundaries of the proposed special district who requests that their property be excluded from the special district prior to approval of the draft service plan shall submit the request to the Clerk to the BoCC no later than 10 days prior to the BoCC's public hearing on the draft service plan, but the BoCC shall not be limited in their action with respect to exclusion of territory based upon such request.

(b) Consideration of Requests for Exclusion

The BoCC may exclude certain properties from within the proposed boundaries of the special district prior to approval of the draft service plan, and shall consider those requests for exclusion of property filed in accordance with C.R.S. §32-1-203. The PCD shall provide an analysis of any requests for exclusion of property, which may be used as a basis for BoCC action pursuant to individual request for exclusion.

The applicant for the special district shall have the burden of proving that the exclusion of any property requested to be excluded is not in the best interests of the proposed special district.

The BoCC shall act on all requests for exclusion before they take final action issuing a resolution of approval for the special district.

(9) BoCC Authority to Act on Service Plan

The findings of the BoCC on the draft service plan shall be based solely upon the draft service plan and the evidence or recommendations presented at the BoCC's public hearing by the applicant for the special district, the Planning Commission, and any interested party.

The BoCC has the following authority in the review of any proposed draft service plan:

- To approve the draft service plan as submitted without condition or modification.
- To disapprove the draft service plan as submitted.
- To conditionally approve the draft service plan subject to the submission of additional information relating to, or the modification of, the draft service plan. The BoCC may exercise this power of conditional approval if they have satisfactory evidence, based on the public hearing, that the draft service plan does not comply with the required criteria for approval (C.R.S. §32-1- 203(2)) . The BoCC's final approval shall then be contingent upon the applicant modifying the draft service plan to include the changes, or providing the additional information, as the BoCC shall specifically state in their findings on the draft service plan. If the BoCC requires changes, modifications or additional information to the draft service plan before approval, the hearing will be continued until the changes, modifications, or additional information requirements are satisfied and incorporated into the draft service plan. Unless the continuation is to a date and time specific as announced at the hearing, re-notification of interested parties and parties requesting exclusion is required.

(10) Notice Concerning Decision

Within 20 days following BoCC action on the draft service plan, the BoCC shall advise the applicant for the proposed special district in writing of the BoCC action on the draft service plan.

(11) Recording the BoCC Action

(a) Approval

If the draft service plan is approved as submitted, a resolution of approval shall be issued to the proponent incorporating the findings of the BoCC.

(b) Disapproval

If the draft service plan is disapproved as submitted, the specific detailed reasons for the disapproval shall be set forth in writing.

(c) Conditional Approval

If the draft service plan is conditionally approved, the BoCC shall set forth in writing the conditions, changes or modifications to be made in, or the additional information relating to, the draft service plan, together with the reasons for the changes, modifications, or additional information. Upon incorporation of the specified conditions, changes, modifications, or additional information into the draft service plan (applicant shall provide 4 copies of the revised draft service plan to the PCD and shall provide a copy to the Clerk and Recorder) the BoCC shall issue a resolution of approval to the proponent of the special district.

(H) Criteria for Approval of Draft Service Plan**(1) Territory Which District May Cover**

A special district may be entirely within or entirely without, or partly within and partly without, one or more municipalities or counties, and may consist of noncontiguous tracts or parcels of property (C.R.S. §32-1-107(1)).

(2) Limitations on Approval of a Service Plan

No special district may be organized wholly or partly within an existing special district providing the same service (C.R.S. §32-1-107(2) and §32-1-202(2.1)). Nothing in this provision, however, shall prevent a special district providing different services from organizing wholly or partly within an existing special district.

(3) Petition Filed

No draft service plan shall be approved if a petition objecting to the draft service plan and signed by the owners of taxable real and personal property, which equals more than 50 percent of the total valuation for assessment of all taxable real and personal property to be included in the proposed special district, is filed with the BoCC no later than 10 days prior to the BoCC's public hearing on the draft service plan, unless such property has been excluded by the BoCC (C.R.S. §32-1-203(3.5)).

(I) Mandatory Criteria for Disapproval

The BoCC shall disapprove the draft service plan unless evidence satisfactory to it of each of the following is presented or, in the BoCC's discretion, the BoCC conditionally approves the draft service plan to cause compliance with these criteria (C.R.S. §32-1-203(2)):

- There is sufficient existing and projected need for organized service in the area to be served by the proposed special district;
- The existing service in the area to be served by the proposed special district is inadequate for present and projected needs;
- The proposed special district is capable of providing economical and sufficient service to the area within its proposed boundaries;
- The area to be included in the proposed special district has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.

(J) Discretionary Criteria for Disapproval

The BoCC may disapprove the draft service plan if evidence of the following, at the BoCC's discretion, is not presented (C.R.S. §32-1-203(2.5)):

- Adequate service is not, or will not be, available to the area through the County or other existing municipal or quasi-municipal corporations, including existing special districts, within a reasonable time and on a comparable basis;
- The facility and service standards of the proposed special district are compatible with the facility and service standards of each County within which the proposed special district is to be located and each municipality which is an interested party as defined in C.R.S. §32-1 -204 and this Code;
- The proposal is in substantial compliance with the El Paso County Master Plan;
- The proposal is in compliance with any duly adopted County regional, or State long-range water quality management plan for the area; or
- The creation of the proposed special district will be in the best interests of the area proposed to be served.

(K) Filing of Approved Service Plan

The approved service plan shall be filed as part of the petition for the organization of the special district in district court in accordance with State Statute. The approved service plan shall be considered the final service plan when an order is entered by the district court declaring the special district organized.

9.3. MATERIAL MODIFICATIONS TO COUNTY-FINAL SERVICE PLAN

9.3.1. County Approval of Substantial Modifications to Final Service Plan

Once a special district with territory in the unincorporated County has been organized pursuant to the terms of this Chapter and the Control Act, the Board of Directors of the special district may make material modifications to the final service plan only by petition to and approval by the BoCC pursuant to the procedures governing the review and approval of the original service plan submittals (C.R.S. §32-1-207(1)-(3), as amended).

9.3.2. Material Modification Defined

A material modification of a final service plan shall be a change of a basic or essential nature, including but not limited to the following:

- Any addition to the types of services provided by the special district;
- A decrease in the level of services provided by the special district;
- A decrease in the financial ability of the district to discharge the existing or proposed indebtedness; or
- A decrease in the existing or projected need for organized service in the area.
- Any service provided outside of the district boundaries or approved service area which reduces service capabilities within the district.
- Any modification that is contrary to a condition imposed by the BoCC in the final service plan or which is identified as a material modification within the final service plan.

9.3.3. Change of District Boundaries

A material modification may be found to exist if an approved special district changes its boundaries to include territory in the unincorporated County when the district previously included no territory in the unincorporated County. If the special district changes its boundaries in this fashion, it shall notify the BoCC, who may review the inclusion of territory. If the BoCC determine based on this review that the inclusion constitutes a material modification to the special district's final service plan, the Board of Directors of the special district shall file a petition for approval of a material modification of the final service plan.

9.3.4. Excluded Modifications

Approval for modifications of a final service plan shall not be required for changes necessary only for the execution of the final service plan, or for changes in the boundaries of the special district other than to include territory in the unincorporated County when the special district previously included no territory in the unincorporated County.

9.3.5. Processing Fee

The processing fee for review of a petition for approval of a material modification is identified in the fee schedule and shall be submitted prior to consideration of the application.

9.3.6. Judicial Enforcement Against Material Departures or Modifications to Approved Service Plans

The BoCC may seek an injunction in the district court which approved the petition for the organization of the special district for any material departure from the final service plan, or, if the plan has been modified, from the final service plan as modified, which constitutes a material modification of the final service plan.

9.3.7. Initiating Action Against Material Departure or Modification

No action may be brought to enjoin the construction of any facility, the issuance of bonds or other financial obligations, the levy of taxes, the imposition of rates, fees, tolls and charges, or any other proposed activity of the special district unless the action is commenced within 45 days after the special district has published notice of its intention to undertake the activity.

The notice shall describe the activity proposed to be undertaken by the special district and provide that any action to enjoin the activity as a material departure from the final service plan must be brought within 45 days from publication of the notice.

The notice shall be published one time in a newspaper of general circulation in the special district, and shall be provided to the district court, as well as mailed to the BoCC on or before the date of publication of the notice.

9.4. ANNUAL REPORTING REQUIREMENTS

9.4.1. Request for Required Reports from Any Special District

(A) Require Annual Report to be Filed

Any special district located wholly or partly within the unincorporated County shall file, not more than once a year, a special district annual report (C.R.S. §32-1-104(2) and §32-1-207(3)(C)-(D)). The detailed requirements of the annual report and disclosure form are stipulated in BoCC Resolution 06-472, as may be amended. The annual report shall be filed with the BoCC, the Colorado Division of Local Government, and the State Auditor, and shall be placed on file with the Clerk and Recorder for public inspection. A copy of the report shall also be made available by the special district to any interested party.

(B) Contents of Annual Report

The annual report shall include but shall not be limited to information on the progress of the special district in the implementation of its final service plan.

(C) Review of Annual Reports

The BoCC may review the annual reports in a regularly scheduled public meeting, and such review shall be included as an agenda item in the public notice for such meeting. In addition, the State Auditor will review the annual report and report to the Colorado Division of Local Government any apparent decrease in the financial ability of the district to discharge its existing or proposed indebtedness in accordance with the final service plan. In such event, the Colorado Division of Local Government shall confer with the BoCC of the special district and with the BoCC regarding such condition.

(D) Recording of Annual Reports

The Annual Report and Disclosure Form is recorded in conjunction with the recording of a final plat located within the special district.

9.4.2. Special District to Provide Contact Information Annually

On or before January 15 of each year, each special district located in the unincorporated County shall notify the BoCC, the County Assessor, the County Treasurer, and the County Clerk and Recorder (in addition to the other entities specified in C.R.S. §32-1-104(2)), of the name of the chair of the Board of Directors, the contact person, the telephone number, and the business address of the special district. If the persons and address are not located within the special district, the special district shall notify the County Clerk and Recorder of the name, address, and telephone number of a contact person located within the special district, if such person is available.

9.4.3. Failure to Provide Information or Annual Report

If a special district fails to file an annual report or provide any information required to be submitted within 9 months of the date of the request for the annual report or information, the BoCC, after notice to the special district, may notify any County treasurer holding moneys of the special district to prohibit release of any moneys until the special district complies with the applicable requirement.

9.5. SERVICE PLAN PROCESSING FEES

The fees for processing any Service Plan are established by State Statute and implemented by resolution and the fee schedule. The processing fee shall be used to reimburse the County for the reasonable direct costs related to processing the service plan and conducting the public hearings on the plan, including but not limited to the costs of notice, publication, and recording of testimony.

If it is determined that more in-depth review of a particular service plan is required, an additional service fee as provided in C.R.S. §32-1-202(3) and identified in the fee schedule may be imposed at submittal, to reimburse the County for the reasonable direct costs related to the in-depth review.