

DELTA COUNTY PLANNING COMMISSION

**Delta County Board of County Commissioner's Room
560 Dodge St., Delta, CO 81416
Wednesday, July 27, 2022 @ 5:30 p.m.**

**Tom Kay, Chair
Tate Locke, Vice-Chair
Carl Holm, Director**

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Instructions for Public Participation via Zoom:

The public can join the meeting remotely by registering in advance of the meeting at:

<https://us02web.zoom.us/meeting/register/tZUpfuiugDgsEtDfRLf9jxoLnISzt9Y4S0lP>

After registering, you will receive a confirmation email containing information about joining the meeting.

REGULAR AGENDA

5:30 P.M. – CALL TO ORDER

ROLL CALL

DISTRICT 1

Cindy Watson

Steve Schrock

Steve Shea

Michelle Roberts, Associate

DISTRICT 2

Layne Brones

Tate Locke, Vice Chair

Hardy Hutto

Vacant, Associate

DISTRICT 3

Jacob Gray

Tom Kay, Chair

Kate Darlington

David Marek, Associate

A. MEETING MINUTES

1. Regular Planning Commission meeting of July 13, 2022

RECOMMENDATION: Approve the action minutes as presented.

B. PUBLIC HEARING ITEMS

Public Hearing Items are noticed and open for public comment.

1. PLN21-080/Delta Paving Gravel Pit

Kilgore Companies, dba Elam Construction, Inc., is requesting to remove a restriction prohibiting use of an asphalt plant at an existing sand & gravel mine (pit) located at 8020 Highway 65, Delta (Parcels 345510202002, 345503400053, 345510100028).

RECOMMENDATION: Staff recommends that the Planning Commission (PC) continue PLN21-080 to August 10, 2022.

CERTIFICATION OF POSTING

On July 20, 2022 at 10:30 AM, Kim Henderson did post the above AGENDA as public notice of the July 27, 2022 meeting. The official notice is placed on the front entrance of the Delta County Courthouse located at 501 Palmer, Delta, Colorado and a courtesy copy is sent to the Delta County website at www.deltacounty.com.

2. PLN22-082/Ehlers

EcoGen Biosciences Production Center LLC requests rezoning the eastern 65.793 acres of Parcel #349517400013 located at 18668 B50 Road (Parcel A) from Rural Industrial/Commercial (RI/C) to Agricultural/35-acre (A-35).

RECOMMENDATION: Staff recommends that the Planning Commission (PC) recommend that the Board of County Commissioners (BoCC):

- a. Find that amending the 2021 Land Use Code, rezoning the subject property from Rural Industrial/Commercial (RI/C) to Agricultural “35” (A-35), meets the criteria of Chapter 8, Section 2.B of the Land Use Code; and
- b. Rezone the east 65.793 acres of a 71.973-acre parcel (Parcel 349517400013/Account R024462) from Rural Industrial/Commercial (RI/C) to Agricultural “35” (A-35) required as a condition for approving a Boundary Line Adjustment (PLN22-082/Ehlers).

C. WORK SESSION

The public can attend and listen to the following Work Session Item, but will not be afforded the opportunity to speak on these items, unless the Commission, through the Chair, opens an item up for comment.

1. Land Use Code Update – Work Session

Work Session to consider redline drafts of various sections/topics of the Delta County Land Use Code.

RECOMMENDATIONS: Staff recommends that the Planning Commission continue a Work Session from June 8th on the LUC Update and consider:

- a. Revised redline edits (PC comments June 8th) to Chapter 2, Section 1.A (Table 2.a) “Zoning Districts”
- b. Consider draft redline edits to Chapter 2: Section 2.A “Land Use by Zoning District”; Section 4.A “Permitted Use Standards”; Section 5.A “Limited Use Standards”; and Section 6 “Conditional Use Standards”
- c. Consider draft redline edits to Chapter 7 “Standard Application Review Process”
- d. Consider draft redline edits to Chapters 8 and 10 “Review Processes”
- e. Provide Direction on topic(s) and date for the next Work Session.

D. DEPARTMENT REPORT

This is time set aside for the Director to report on matters affecting the Department.

E. COMMISSIONER COMMENTS, REQUESTS AND REFERRALS

This is time set aside for the Commission to comment, request, or refer a matter that is not on the agenda for future consideration.

ADJOURNMENT

Next Meeting: Wednesday, August 10, 2022 at 5:30 pm in Delta, CO.

CERTIFICATION OF POSTING

On July 20, 2022 at 10:30 AM, Kim Henderson did post the above AGENDA as public notice of the July 27, 2022 meeting. The official notice is placed on the front entrance of the Delta County Courthouse located at 501 Palmer, Delta, Colorado and a courtesy copy is sent to the Delta County website at www.deltacounty.com.



DELTA COUNTY PLANNING COMMISSION MEETING MINUTES
DELTA COUNTY ROUBIDEAU ROOM
320 W. 5th St., Delta, CO 81416
July 13, 2022

Chair Tom Kay called the meeting to order at 5:30 p.m. in the Delta County Roubideau Room.

ROLL CALL

Planning Commission Members in Attendance:

Tom Kay	Steve Shea
Tate Locke	Hardy Hutto
Steve Schrock	Jacob Gray
Layne Brones	David Marek (Associate)

Absent Members:

Michelle Roberts (Associate)
Kate Darlington
Cindy Watson

With member(s) absent from District 3, David Marek is a voting member.

Staff in Attendance:

Delta County Community Development & Natural Resource Director, Carl Holm
Delta County Community Development Planner I, Kate Kelly
Delta County Community Development Planner I, Angie Kemp
Delta County Community Development Administrative Assistant, Kim Henderson
Delta County Community Development Code Compliance Officer, Everett Neil

Chair Tom Kay revised the order of business to consider Item B.1 first

Item B.1: Meeting Minutes
a. June 22, 2022
RECOMMENDATION: Approve the action minutes as presented.

Steve Shea moved to approve the action minutes as presented. Layne Brones seconded the motion.

Motion carried unanimously

A. PUBLIC HEARING ITEMS

Item A.1: PLN22-084/Garnet Mesa Solar (Guzman Energy)
Consider a Use Permit to install and operate an 80MW ground mounted solar photovoltaic energy generating facility. The project involves two sites generally located; 1) west of 2200 Road and 2) southwest corner of G Road and 2100 Road with a total combined area of 472+ acres, approximately 2.2 miles east of Delta (Parcels: 3455-231-00-001, 3455-232-00-009, 3455-133-00-020).
RECOMMENDATION: Staff recommends that the Planning Commission (PC) recommend the following action(s) to the Board of County Commissioners (BoCC):
a. Find that PLN22-084 complies with the Master Plan and Land Use Code; and
b. Approve PLN22-084, a Use Permit for an 80MW ground mounted solar photovoltaic energy generating facility developed over three (3) parcels totaling 472.85 acres generally located between 2200 Road on the east and 2050 Road on the west, north and south of G Road, Delta (Parcel: 3455-231-00-001, 3455-232-00-009, 3455-133-00-020), subject to conditions.

Jacob Gray recused himself from participating as a Planning Commissioner for this item noting his position on the DMEA Board. He stepped down from the table so she could participate as a member of the public.



Planning Director, Carl Holm presented the project, and answered Commissioner questions.

Commission Member Michelle Roberts arrived at 5:49pm.

With member(s) absent from District 1, Michelle Roberts is a voting member.

Mindy Yajko with Guzman Energy, Matt Kosakowski with Citra Power, Tim Vigil with DMEA and Alyssa Clemens Roberts with DMEA provided additional information about the project, and answered Commissioner questions. Matt K noted that Mr. Fernando Morales with Morales Engineering was also in attendance.

There was public comment from twelve neighbors who attended the hearing in person and one member of the public spoke via Zoom. Public comments were presented in support and opposition of the project. Issues raised and addressed through the public hearing included: transmission pole height, views, irrigation plan/operations and health concerns.

Commissioners asked questions of the project team, including DMEA, Fernando Morales and Joe Sperry, regarding the agricultural management plan (design and operation), transmission lines (design and undergrounding), decommissioning (recycling), "heat island", and benefits (jobs, rates, revenue).

Following deliberation by the Commissioners:

Hardy Hutto moved to approve PLN22-084/Garnet Mesa Solar with staff recommended findings and conditions. David Marek seconded the motion.

Motion carried unanimously. The PC sympathized with immediate neighbors to the project, but found that the project complies with the LUC and the applicant has mitigated impacts as best they can.

B. PUBLIC MEETING ITEMS

Item B.2

Land Use Code Update – Work Session

Work Session to consider redline drafts of various sections of the Land Use Code.

RECOMMENDATIONS: Staff recommends that the Planning Commission set a date for a Special Meeting to consider redline drafts of the Land Use Code.

The Planning Commission did not consider this item.

C. DEPARTMENT REPORT

None

D. COMMISSIONER COMMENTS, REQUESTS AND REFERRALS

None

ADJOURNMENT

The next meeting will be held on July 27, 2022 at 5:30pm in Delta, CO.

Meeting adjourned at 8:42 p.m.

Respectfully submitted by:

Administrative Assistant, Kim Henderson



STAFF REPORT

Delta County Planning Commission

**Delta County Administrative Building
560 Dodge Street, Delta, CO 81416**

Wednesday, July 27, 2022 @ 5:30 p.m.

PLN21-080/Delta Paving Gravel Pit

Kilgore Companies, dba Elam Construction, Inc., is requesting to remove a restriction prohibiting use of an asphalt plant at an existing sand & gravel mine (pit) located at 8020 Highway 65, Delta (Parcels 345510202002, 345503400053, 345510100028)

PROJECT INFORMATION:

Property Owner(s): Grand Junction Concrete Pipe Co.

Richard M. Frazier and Betsey A. Frazier

Applicant: Jim Doody (Representative of Elam Construction)

Address: 8020 State Highway 65, Delta

Location: Northeast of State Highway 92 with access off of State Highway 65 (east side), immediately south of the Gunnison River and Orchard City town limits

Parcel(s): 345510202002/R017429 (41.62-Acres, GJ Pipe Co),
345503400053/R017430 (39.13-Acres, GJ Pipe Co),
345510100028/R025020 (92.02-Acres, Frazier)

Zoning: A-20

Report Prepared by: Kate Kelly, Planner I

RECOMMENDATION:

Staff recommends that the Planning Commission CONTINUE PLN21-080 to August 10, 2022.

SUMMARY/DISCUSSION:



Staff noticed this as the date and time for a public hearing. Unfortunately, due to staffing issues, the report has not been completed. Therefore, staff requests that the Planning Commission continue this item/hearing to August 10th. Staff will return at that time with a complete staff report on this item.

OTHER AGENCIES INVOLVED:

Planning Staff sent a summary to the Review Agencies for comment on July 5, 2022. Comments received to date include: CDOT, UVWUA, City of Delta, and US Army Corp of Engineers. Western Slope Conservation Center has contacted staff for additional information. Staff has received comments from some neighbors so we recommended that the applicants hold a neighborhood meeting prior to the PC hearing.

Attachment(s): None



STAFF REPORT

Delta County Planning Commission

**Delta County Administrative Building
560 Dodge Street, Delta, CO 81416**

Wednesday, July 27, 2022 @ 5:30 p.m.

PLN22-082/Ehlers

Consider rezoning the east 65+ acres of Parcel A (Parcel #349517400013, 18668 B50 Road) from Rural Industrial/Commercial (RI/C) to Agricultural/35-acre (A-35). The project is located along the east side of Highway 50 and the south side of B50 Road, Delta.

PROJECT INFORMATION:

Property Owner: EcoGen Biosciences Production Center LLC
Applicant: Keith Ehlers
Site Address: 18668 B50 Rd, Delta
Location: Sections 16, 17, 20 & 21, Township 10W, Range 51N, NMPM
Parcel ID/Acct: 349517400013/R024462 & 349517400014/R024463
Parcel Size: 71.973 Acres (Parcel A) & 103.957 Acres (Parcel B)
Zoning: RI/C/A-35

Report Prepared by: Carl Holm, Director

RECOMMENDATION:

Staff recommends that the Planning Commission (PC) recommend that the Board of County Commissioners (BoCC):

- a. Find that amending the 2021 Land Use Code, rezoning the subject property from Rural Industrial/Commercial (RI/C) to Agricultural "35" (A-35), meets the criteria of Chapter 8, Section 2.B of the Land Use Code; and



- b. Rezone the east 65.793 acres of a 71.973-acre parcel (Parcel 349517400013/Account R024462) from Rural Industrial/Commercial (RI/C) to Agricultural "35" (A-35) required as a condition for approving a Boundary Line Adjustment (PLN22-082/Ehlers).

SUMMARY

A Boundary Line Adjustment (Administrative Review) affecting the subject property results in a split-zoning designation for one of the parcels (resulting Parcel B). The Land Use Code (LUC) states that *no lot will contain multiple zones within its boundaries*, so a condition was attached that requires a zone change. Below are aerial maps reflecting existing and proposed conditions where the RI/C (red) and A-35 (green) designations are revised to follow the revised property lines.



Parcel A (6.18 acres, after adjustment) will be zoned RI/C reflecting that this parcel has been developed for commercial use. Parcel B (169.829 acres, after adjustment) will be zoned A-35 reflecting that this parcel consists of irrigated agricultural lands.

Rezoning a parcel is subject to Public Hearings with the Planning Commission (PC) and Board of County Commissioners (BoCC). Chapter 8, Section 2.B.c of the Land Use Code (LUC) establishes Rezoning Approval Standards. Staff finds that a rezone for this property would be consistent with these standards and the established use of the property. The PC recommendation on this rezoning will be presented to the BoCC at a noticed public hearing. Staff supports rezoning the east 65.793-acres of Parcel A (Parcel #349517400013) (PLN22-082) based on the existing conditions.

DISCUSSION:

EcoGen Biosciences Production Center LLC owns a 71.973-acre parcel (Parcel A) with frontage along B50 Road (County Road, County Maintained) and State Highway 50 (Public Road, maintained by Colorado Department of Transportation



(CDOT)) located about 2.94 miles south of the City of Delta. The site consists of multiple existing commercial structures (18668 B50 Rd) with a majority of the property being irrigated Ag land. EcoGen also owns an abutting parcel (Parcel B) to the south of Parcel A that is entirely used for agricultural purposes (no structures exist on the parcel) with multiple Ag accesses from State Highway 50. The surrounding area consists of larger agricultural properties with a small residential area directly east.

On May 25, 2022, Keith Ehlers (representing EcoGen) submitted an application (PLN22-082/Ehlers) to adjust the existing property line between Parcel A (Parcel #349517400013) and Parcel B (Parcel #349517400014) so that the commercial structures are separate from the agricultural land. A Pre-application Conference was waived by the Director. Based on information in the project file, staff determined that the properties would be required to rezone due to the proposed adjustment creating a split zoning on what would be the newly created Parcel B (RI/C & A-35).

On June 13, 2022, a letter was sent to the applicant/owner summarizing the Site Plan Review of the Boundary Line Adjustment. In this letter Staff also addressed the need for a Rezone, explaining that the Boundary Line Adjustment creates a split zoning for Parcel B. Chapter 8, Section 2.B.c of the Land Use Code (LUC) Rezoning Approval Standards states that: *no lot, tract, or unplatted land will contain multiple zones within its boundaries as a result of zoning.*

Rezoning Approval Standards

Generally, spot-zoning occurs when a piece of property or groups of property have special zoning laws applied to them that differ from the zoning laws surrounding them. As such, the Land Use Code (LUC) establishes three (3) standards for rezoning.

1. Rezoning this property would not create or facilitate the creation of development rights or entitlements that would either:
 - a) Reduce the level of protection for significant natural resources that exist on the subject property; or
 - b) Expose additional people or personal property to unmitigated natural hazards that are present on the subject property (*e.g.*, fire, flood, or geological hazards).

This policy may be waived upon a finding by the Board of County Commissioners that:

- Alternative means have been implemented to achieve a comparable or better level of resource protection (*e.g.*, conservation easements, development agreements, or other comparable mechanisms for resource protection); or
- The policy is outweighed by a community interest that is served by approval of the rezoning.



2. The proposed zoning district, as applied to the subject property, is consistent with its land use designation in the Master Plan or an amendment to the Master Plan prior to (or concurrently with) the approval of the rezoning application.
3. Adequate public facilities are available to serve development in the proposed zoning district; or the proposed zoning district would limit demands upon public facilities more than the existing zoning district; or reasonable assurances are provided that adequate public facilities will be made available to serve new development by the time the new development places demands on the facilities.

In addition, an application for rezoning may be approved upon a determination that at least one of the following three (3) criteria has been met.

1. *Alternative #1: Plan Implementation.* The proposed zoning district is more appropriate than the existing zone to implement an adopted or approved current County plan that was developed with public input.
2. *Alternative #2: Change in Character of the Area.* The proposed zoning district is more appropriate than the existing zoning district because:
 - 1) There has been a change in character or capacity of public facilities in the area (*e.g.*, installation of public facilities, other rezonings, new growth trends, deterioration, development transitions, etc.); and
 - 2) The proposed zone allows for the reasonable development or redevelopment of the subject property in a manner that will be compatible with its existing or planned context.
3. *Alternative #3: Need for Zoning District to Increase Land Inventory.* The proposed zoning district is more appropriate than the existing zoning district because:
 - 1) There is greater need in the County for land in the proposed zoning district than the existing zoning district based on market conditions; and
 - 2) The proposed zoning district will promote a balance of land uses in the County that will improve economic opportunity or community mobility.

Parcel A (18668 B50 Rd, Parcel #349517400013) is currently zoned RI/C under the 2021 Land Use Code, while Parcel B (Parcel #349517400014) is zoned A-35 (see Zoning Map – next page).

Parcel A (6.18 acres, after adjustment) will be zoned RI/C reflecting that this parcel has been developed for commercial use. Parcel B (169.829 acres, after adjustment) will be zoned from RI/C / A-35 to A-35 reflecting that this parcel consists of irrigated agricultural lands.



Staff finds that the entire parcel was zoned RI/C due to the operation at the corner, which is being separated off. The proposed zoning change to A35 fits with the existing site conditions and is consistent with the surrounding zoning, which also helps protect the agricultural resource. The corner parcel will remain RI/C, which is consistent with how the LUC was adopted. This Boundary Line adjustment could be referred to as a change in character of this area.

OTHER AGENCIES INVOLVED:

Adjoining Property Owners (within a 200-foot radius from Parcels #349517400013 & #349517400014) were sent a Public Notice for this application, including the applicant. Planning has not received any feedback from any adjoining property owners.

Attachment(s):

- BoCC DRAFT Resolution
- Boundary Line Adjustment (plat)

**RESOLUTION
OF THE
BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DELTA,
STATE OF COLORADO**

RESOLUTION NO. 2022-R-_____

**APPROVING PLN22-082/EHLERS TO AMEND THE DELTA COUNTY LAND
USE CODE REZONING THE EAST 65.793-ACRES (PARCEL #349517400013)
FROM RURAL INDUSTRIAL/COMMERCIAL (RI/C) TO AGRICULTURAL/35-
ACRE (A-35).**

RECITALS

WHEREAS, EcoGen Biosciences Production Center, LLC, a Delaware limited liability company is the property owner of record of the real property consisting of 71.973 acres located at 18668 B50 Road, Delta (Parcel 349517400013, Account: R024462); and

WHEREAS, EcoGen Biosciences Production Center, LLC, a Delaware limited liability company is the property owner of record of the real property consisting of 103.957 acres located on the east side of State Highway 50, Delta (Parcel 349517400014, Account: R024463); and

WHEREAS, on January 5, 2021, Delta County Board of County Commissioners adopted the Delta County Land Use Code (LUC). Resolution No 2021-R-001 repealed regulations regarding land use and subdivision and adopted a new land use code (including zoning maps); and

WHEREAS, Parcel 349517400013 (subject property, 71.973-acres) is zoned Rural Industrial/Commercial (RI/C), which requires a minimum of 2.00 acres per parcel; and

WHEREAS, Parcel 349517400014 (adjacent property, 103.957-acres) is zoned Agricultural/35-Acres ("A-35"), which requires a minimum of 35.00 acres per parcel; and

WHEREAS, on May 25, 2022, Mr. Keith Ehlers (representing EcoGen) submitted a Development Application with a Site Plan requesting to adjust the existing property line between Parcel A (Parcel #349517400013) and Parcel B (Parcel #349517400014) so that the existing commercial structures are separate from the agricultural land; and

WHEREAS, the Director of Community Development and Natural Resources waived requirement for a pre-application conference; and

WHEREAS, on June 13, 2022, a letter was sent to the owner summarizing the Site Plan Review of the Boundary Line Adjustment. This letter addressed the need for a rezone, explaining that the Boundary Line Adjustment creates a split zoning for Parcel B; and

WHEREAS, on July 6, 2022, the Project Surveyor (Wilmore & Company) submitted a Boundary Line Adjustment Plat. The application package was determined to be complete by the Planning Department on this same day; and

WHEREAS, the application (PLN22-082) includes a rezone for the east 65.793-acres of the property from RI/C to A-35, which requires a minimum of 35.0 acres per parcel; and

WHEREAS, the subject property fronts State Highway 50 on the east and B50 Road on the south; and

WHEREAS, requests to amend the Land Use Code, including amending the Zoning map, are legislative action subject to consideration by the Planning Commission to make a recommendation to the Board of County Commissioners; and

WHEREAS, on July 12, 2022, a Public Notice was sent to Adjoining Property Owners (200-foot radius) and notice was posted on the property informing the public that on July 27, 2022 the Delta County Planning Commission would consider this matter; and

WHEREAS, on July 27, 2022, the Planning Commission held a duly noticed public hearing to consider the application to Rezone the east 65.793-acres of Parcel #349517400013 from Rural Industrial/Commercial (RI/C) to Agricultural "35" (A-35) (A-5) (PLN21-049/S. Rasmussen) and continued the matter to a date certain; and

WHEREAS, on January 26, 2022, the Planning Commission held a duly noticed public hearing and voted 9-0 to recommend the Board of County Commissioners Rezone the western 10-acres (Parcel #31933510032) from Agricultural "35" (A-35) (PLN22-082/Ehlers); and

WHEREAS, on _____, 2022, notice was sent to adjacent property owners and posted on the property informing the public of the dates, times and place for the Board of County Commissioners would consider this matter; and

WHEREAS, on _____, 2022, the Board of County Commissioners held a duly noticed public hearing to consider PLN22-082/Ehlers Rezone.

DECISION

NOW, THEREFORE, BE IT RESOLVED, having considered all the written and documentary evidence, the administrative record, and other evidence presented, the Delta County Planning Commission does hereby:

- A. FIND that amending the 2021 Land Use Code (LUC), rezoning the subject property as Agricultural "35" (A-35), meets criteria of Chapter 8, Section 2.B.2 of the LUC ("Resource Protection Policy ") and Chapter 8, Section 2.B.3 of the LUC ("Plan Consistency and Public Facilities"):

1. Rezoning the subject 65+-acre portion of parcel 3495-174-00-013 (Parcel B) from RI/C to A35 protects lands that are currently irrigated Agricultural lands.
 2. The proposed zoning is consistent with the land use pattern consistent with the adopted LUC.
 3. The 2018 Delta County Master Plan designates this area as Agriculture with Residential Interface.
- B. FIND that amending the 2021 Land Use Code (LUC), rezoning the subject property as Agricultural “35” (A-35), meets one or more of the alternatives set out in Chapter 8, Section 2.B.42 of the LUC:
1. The entire parcel was zoned RI/C due to the operation at the corner, which is being separated off (Parcel A). This parcel will remain RI/C, which is consistent with how the LUC was adopted.
 2. The proposed zoning change to A35 (Parcel B) fits with the existing site conditions and is consistent with the surrounding zoning, which also helps protect the agricultural resource. The Boundary Line adjustment is considered to be a change in character of this area.
- C. FIND that no lot, tract or unplatted land will contain multiple zones within its boundaries as a result of the rezoning:
1. A Boundary Line Adjustment (Administrative Review) affecting the subject property results in a split-zoning designation for one of the parcels (resulting Parcel B).
 2. The Land Use Code (LUC) states that *no lot will contain multiple zones within its boundaries*, so a condition was attached that requires a zone change.
- D. AMEND the Delta County Land Use Code rezoning the east 65.793-acres (Parcel #349517400013) from Rural Industrial/Commercial (RI/C) to Agricultural/35-acre (A-35). The Director shall cause an update of the Zoning Map to reflect this change.

ADOPTED AS SET FORTH ABOVE on this ____ day of ____, 2022.

BOARD OF COUNTY COMMISSIONERS
COUNTY OF DELTA
STATE OF COLORADO

ATTEST:

Don Suppes, Chair

Wendell Koontz, Vice Chair

Teri Stephenson
Delta County Clerk & Recorder

Mike Lane, Commissioner

DRAFT

ECOGEN BIOSCIENCES BOUNDARY LINE ADJUSTMENT PLN22-082
WITHIN SECTIONS 16, 17, 20 & 21, T.51N., R.10W., N.M.P.M.
DELTA COUNTY, COLORADO

18/17
1/4
BASIS OF BEARINGS
N 89°18'59" W
S 298.31'

FOUND 1-1/2" ALUMINUM
CAP LS11530 PER
MONUMENT RECORD

FOUND 2" ALUMINUM
CAP PLS24944 AS
HIGHWAY R.O.W. MARKER

AGREEMENT:

I/We, being the Owner(s) of the land as shown hereon do hereby agree to the boundary lines as shown hereon and that no new parcels were created by this boundary line agreement.

In witness whereof Ecogen Biosciences Production Center, LLC have subscribed their name(s) this _____ day of _____, A.D. 20____.

By: _____
Ecogen Biosciences Production Center, LLC

NOTARIAL:

State of Colorado)
County of Delta) ss.

The foregoing instrument was acknowledged before me this _____ day of _____, A.D. 20____, by Ecogen Biosciences Production Center, LLC

My commission expires: _____

My address is _____

Witness my hand and official seal.

DELTA COUNTY PLANNING DEPARTMENT APPROVAL

The within plat of the above boundary line adjustment has been checked for compliance in accordance with Case No. PLN22-082.

Dated this _____ day of _____, A.D. 20____

Planning Director _____

CERTIFICATE OF TAXES PAID

I, the undersigned, do hereby certify that the entire amount of taxes and assessments due and payable as of _____ upon all parcels of real estate described on this plat (Account No. R024462, R024463) are paid in full.

Dated this _____ day of _____, A.D. 20____

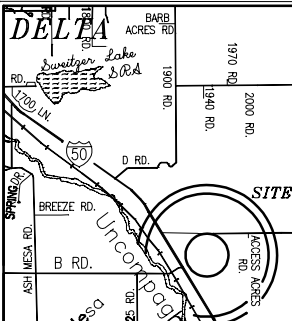
Treasurer of Delta County, Colorado _____

PARCEL A

A parcel of land located within the NE1/4 of the SE1/4 of Section 17, Township 51 North, Range 10 West of the N.M.P.M., having a description based upon a bearing of N.89°18'59"W. from the 1/4 Corner common to Sections 16 and 17 (monumented by a witness corner bearing S.00°28'44"E. 30.00 feet from true corner position and being a 2-1/2" aluminum cap PLS24944) to the 1/4 Corner common to Sections 17 and 18 (monumented by a 1-1/2" aluminum cap LS11530), with all other bearings relative thereto and being more particularly described as follows:
Beginning at a point on the southerly right of way line of B-50 Road from whence said 1/4 Corner common to Sections 17 and 16 bears S.89°18'59"E. 1472.76 feet and N.00°28'44"W. 30.00 feet (monumented by a 2" aluminum cap PLS38255); thence leaving said southerly right of way line S.28°55'47"E. 505.18 feet (monumented by a 2" aluminum cap PLS38255); thence S.61°07'50"W. 426.27 feet to the northeasterly right of way line of Colorado State Highway #50 (monumented by a 2" aluminum cap PLS38255); thence along said northeasterly right of way line the following two (2) courses: (1) N.28°55'21"W. 691.56 feet (monumented by a 2" aluminum cap PLS38255); (2) thence N.22°00'29"E. 51.72 feet to the southerly right of way line of B-50 Road (monumented by a 2" aluminum cap PLS38255); thence along said southerly right of way line S.89°18'59"E. 444.03 feet to the Point of Beginning, containing 6.101 acres, more or less.

County of Delta, State of Colorado

AREA LOCATOR



TYPICAL LEGEND

- Set Mag Nail in Asphalt
- Found or Set 5/8" rebar 30" long with 2" aluminum cap PLS38255
- Found 5/8" rebar with 2" aluminum cap as Witness corner or Inset PLS38255
- Found 3/4" rebar 30" long with 3-1/4" aluminum cap PLS38255
- Found 5/8" rebar with 2" aluminum cap PLS24944 as noted
- Found 5/8" rebar with 1 1/2" aluminum cap LS14621 as noted

- ① Telephone pedestal
- ② Water meter
- ⊕ Electric Transformer
- Fencelines
- E— Electric (overhead) (Subject to Easement)
- UE— Electric (underground)
- W— Water line
- — Easement
- Previous Parcel Boundary
- Irrigation Ditch (Subject to Right of Way)

BASIS OF BEARINGS:

N.89°18'59"W. FROM THE 1/4 COR. COMMON TO SEC. 16 & 17 TO THE 1/4 COR. COMMON TO SEC. 17 & 18
GEODETTIC NORTH
GPS OBSERVATION
SCALE 1"=200 U.S. SURVEY FEET

TRANSFERRING PARCEL
2868986.2 Sq. Feet
65.872 Acres

PARCEL B
7397751.7 Sq. Feet
169.829 Acres

PARCEL A
265743.0 Sq. Feet
6.101 Acres

PARCEL B

A parcel of land located within Sections 16 and 17, Township 51 North, Range 10 West of the N.M.P.M., having a description based upon a bearing of N.89°18'59"W. from the 1/4 Corner common to Sections 16 and 17 (monumented by a witness corner bearing S.00°28'44"E. 30.00 feet from true corner position and being a 2-1/2" aluminum cap PLS24944) to the 1/4 Corner common to Sections 17 and 18 (monumented by a 1-1/2" aluminum cap LS11530), with all other bearings relative thereto and being more particularly described as follows:
Beginning at said 1/4 Corner common to Sections 16 and 17 and running thence along the east-west center subdivision line of said Section 16 S.89°18'59"E. 500.55 feet to a witness corner bearing S.29°11'19"E. 34.47 feet from true corner position and being a 2" aluminum cap PLS38255); thence leaving said center subdivision line S.29°11'19"E. 796.51 feet to the centerline of the Garnet Ditch (monumented by a 3-1/4" aluminum cap PLS38255); thence along the east line of said SW1/4 of the SW1/4 of Section 16 S.00°03'21"E. 1319.33 feet to the SE corner of said SW1/4 of the SW1/4, also being the NW1/4 of Section 21 S.00°16'43"W. 82.50 feet (monumented by a 2" aluminum cap PLS38255); thence leaving said east line and running parallel with the section line common to said Sections 16 and 21 N.89°25'50"W. 151.04 feet to the centerline of the Garnet Ditch (monumented by a witness corner bearing S.89°25'50"E. 20.00 feet from true corner position and being a 2" aluminum cap PLS38255); thence along said centerline the following three (3) courses: (1) S.04°42'42"W. 595.07 feet; (2) thence S.26°05'42"W. 402.00 feet; (3) thence S.33°43'42"W. 121.83 feet (monumented by a witness corner bearing S.69°53'39"W. 50.00 feet from true corner position and being a 2" aluminum cap PLS38255); thence leaving said centerline S.69°53'39"W. 387.13 feet (monumented by a witness corner bearing S.26°06'18"E. 32.18 feet from true corner position and being a 1-1/2" aluminum cap PLS24944); thence N.26°06'18"W. 38.03 feet (monumented by a 1-1/2" aluminum cap LS14621); thence N.83°01'03"W. 50.52 feet (monumented by a 1-1/2" aluminum cap LS14621); thence S.79°02'55"W. 83.02 feet (monumented by a 1-1/2" aluminum cap LS14621); thence S.61°06'20"W. 184.16 feet to the northeasterly right of way line of Colorado State Highway #50 (monumented by a 1-1/2" aluminum cap LS14621); thence along said northeasterly right of way line N.28°55'21"W. 3792.13 feet (monumented by a 2" aluminum cap PLS38255); thence leaving said northeasterly right of way line N.61°07'50"E. 426.27 feet (monumented by a 2" aluminum cap PLS38255); thence N.28°55'47"W. 505.18 feet to the southerly right of way line of B-50 Road (monumented by a 2" aluminum cap PLS38255); thence along said southerly right of way line S.89°18'59"E. 1472.76 feet to the section line common to said Sections 16 and 17 (monumented by a 2-1/2" aluminum cap PLS24944); thence along said section line N.00°28'44"W. 30.00 feet to the Point of Beginning, containing 169.829 acres, more or less.

County of Delta, State of Colorado

TRANSFERRING PARCEL

A parcel of land located within Sections 16 and 17, Township 51 North, Range 10 West of the N.M.P.M., having a description based upon a bearing of N.89°18'59"W. from the 1/4 Corner common to Sections 16 and 17 (monumented by a witness corner bearing S.00°28'44"E. 30.00 feet from true corner position and being a 2-1/2" aluminum cap PLS24944) to the 1/4 Corner common to Sections 17 and 18 (monumented by a 1-1/2" aluminum cap LS11530), with all other bearings relative thereto and being more particularly described as follows:
Beginning at said 1/4 Corner common to Sections 16 and 17 and running thence along the east-west center subdivision line of said Section 16 S.89°18'59"E. 500.55 feet to a witness corner bearing S.29°11'19"E. 34.47 feet from true corner position and being a 2" aluminum cap PLS38255); thence leaving said center subdivision line S.29°11'19"E. 796.51 feet to the centerline of the Garnet Ditch (monumented by a 3-1/4" aluminum cap PLS38255); thence along said centerline the following four (4) courses: (1) S.07°33'31"E. 325.29 feet; (2) thence S.13°30'19"E. 108.96 feet; (3) thence S.17°16'21"E. 148.62 feet; (4) thence S.26°07'57"E. 61.81 feet to the north line of the SW1/4 of the SW1/4 of said Section 16 (monumented by a witness corner bearing S.89°34'07"E. 20.00 feet from true corner position and being a 2" aluminum cap PLS38255); thence along said north line and the extension of said north line N.89°34'07"W. 2272.83 feet to the northeasterly right of way line of Colorado State Highway #50; thence along said northeasterly right of way line N.28°55'21"W. 738.46 feet (monumented by a 2" aluminum cap PLS24944); thence leaving said northeasterly right of way line N.61°07'50"E. 426.27 feet (monumented by a 2" aluminum cap PLS38255); thence along said southerly right of way line S.89°18'59"E. 1472.76 feet to the section line common to said Sections 16 and 17; thence along said section line N.00°28'44"W. 30.00 feet to the Point of Beginning, containing 65.872 acres, more or less.

County of Delta, State of Colorado

LINE	BEARING	DISTANCE
L1	S 13°30'19" E	108.96'
L2	S 17°16'21" E	148.62'
L3	S 26°07'57" E	61.81'
L4	N 89°25'50" W	151.04'
L5	S 33°43'42" W	121.83'
L6	N 61°06'20" E	184.16'
L7	N 79°02'55" E	83.02'
L8	S 83°01'03" E	50.52'
L9	S 26°06'18" E	32.18'
L9A	S 26°06'18" E	38.03'
L9B	S 26°06'18" E	235.66'
L10	N 22°00'29" E	51.72'
L11	N 00°28'44" W	30.00'

ACREAGE SUMMARY:

PARCEL A (BEFORE ADJUSTMENT) = 71.973 ACRES/3135129.2 SQ. FT.
PARCEL B (BEFORE ADJUSTMENT) = 103.957 ACRES/4528365.5 SQ. FT.
PARCEL A (AFTER ADJUSTMENT) = 6.101 ACRES/265743.0 SQ. FT.
PARCEL B (AFTER ADJUSTMENT) = 169.829 ACRES/7397751.7 SQ. FT.

NOTE: According to Colorado law any legal action based upon a defect in this survey must be commenced within three years after such defect is discovered. In no event may any action based upon any defect in this survey be commenced more than ten years from the date shown on the certification hereon.



WILMORE & COMPANY
PROFESSIONAL LAND SURVEYING, INC.

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FIELD CREW:

KC

DRAFTER:

KC

CHECKED BY:

RAW

ECOGEN BIOSCIENCES BOUNDARY LINE ADJUSTMENT PLN22-082
WITHIN SECTIONS 16, 17, 20 & 21, T.51N., R.10W., N.M.P.M.
DELTA COUNTY, COLORADO

J22153

6 JULY 2022

ECOGEN BIOSCIENCES BOUNDARY LINE ADJUSTMENT PLN22-082
 WITHIN SECTIONS 16, 17, 20 & 21, T.51N., R.10W., N.M.P.M.
 DELTA COUNTY, COLORADO



NOTE: According to Colorado law any legal action based upon a defect in this survey must be commenced within three years after such defect is discovered. In no event may any action based upon any defect in this survey be commenced

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FIELD CREW

100

RC

DRAFT

KC

CHECKED BY

ECOGEN BIOSCIENCES BOUNDARY LINE ADJUSTMENT PLN22-082

WITHIN SECTIONS 16, 17, 20 & 21, T.51N., R.10W., N.M.P.M.

DELT A COUNTY, COLORADO

100156

6 JULY 2008



STAFF REPORT

Delta County Planning Commission

**Delta County Administrative Building
560 Dodge Street, Delta, CO 81416**

Wednesday, July 27, 2022 @ 5:30 p.m.

Land Use Code Update

**Continued Work Session to consider redline drafts of
Chapters 2, 7, 8, 10 of the Delta County Land Use Code.**

RECOMMENDATION:

Staff recommends that the Planning Commission continue a Work Session from June 8th on the LUC Update and consider:

- a. Revised redline edits (PC comments June 8th) to Chapter 2, Section 1.A (Table 2.a) "Zoning Districts"
- b. Consider draft redline edits to Chapter 2: Section 2.A "Land Use by Zoning District"; Section 4 "Permitted Use Standards"; Section 5 "Limited Use Standards"; and Section 6 "Conditional Use Standards"
- c. Consider draft redline edits to Chapter 7 "Standard Application Review Process"
- d. Consider draft redline edits to Chapters 8 and 10 "Review Processes"
- e. Consider draft redline edits to Chapters 9 "Approvals and Denials"
- f. Provide Direction on topic(s) and date for the next Work Session.

SUMMARY/DISCUSSION:

On June 8th, the Planning Commission considered redlines of Chapter 1, Section 5.B "Exemptions" and started discussion on Chapter 2, Section 1.A (Table 2.a) "Zoning Districts". Staff made a few adjustments to Table 2.a for the PC to consider (**Attached**).

The remaining changes are related to the review process. Since the other Sections of Chapter 2 were first handed out, staff made changes that are reflected in Chapters 7, 8, 9 and 10. These changes are directed toward trying to streamline the review process and consolidate how the process is explained in the LUC.



The following is an overview of MINOR, Clean-Up changes being recommended to add clarity to the process(es) for the public as well as staff:

- Clean up Chapter 7 to reflect the current application process, including steps related to the Development Application Ordinance
 - o Includes changes to public noticing (e.g., neighborhood meetings)
- Amend Chapter 8 “Review Processes” to reflect the process for different types of permits, including required standards (findings):
 - o Chapter 2 Sections 4-6, included language relative to the process for Permitted Uses, Limited Uses and Conditional Uses.
 - Subsection 5.B includes “use specific standards” that will remain in Chapter 2, but is being amended to incorporate telecommunication regulations that were drafted in a separate resolution, and establishing use specific standards for solar (to be presented at a subsequent work session)
 - o Chapter 10 included language relative to processes for Admin Modifications and Variances.
 - o Processes related to subdivision are being moved to a new Chapter 12 “Subdivision Regulations” (to be presented at a subsequent work session)
- Move appeal language from Chapter 12 to Chapter 9 “Approvals and Denials”, include the ability to appeal from BoA to BoCC (not previously part of the LUC)

The following is an overview of MAJOR changes being recommended that could streamline the process, and reduce the staff time on projects:

- Reduce the number of steps in the process by deferring Administrative Review when another action is required:
 - o Minor Plats with dedication currently are handled Administratively, but then go to BoCC for accepting right-of-way dedications. Recommend deferring action on the Minor (Final) Plat to BoCC for approval where dedication is required. Dedication must be accepted by the BoCC, so deferring the Administrative Review of the Minor Plat in these cases eliminates one step.
 - o Minor Plats with a variance currently go to the BoA first and then Director handles the Administrative Review. Recommend deferring action on the Minor Plat to the BoA in these cases to eliminate one step.
 - o A couple discretionary actions (Conditional Uses, Preliminary Plats) currently require two hearings (PC and BoCC). Recommend the PC becoming a decision-making body in these cases, versus recommending, BoCC would be an appeal body if there is an aggrieved party to the PC action. This affords an avenue to BoCC if needed, but otherwise eliminates one step. Legislative actions (e.g., rezoning) require PC to recommend action to the BoCC, so that would not change.

Attached material: list, in order as attached/referenced

1. Redlined Chapter 2, Section 1.A (Table 2.a) “Zoning Districts” (revised)



DELTA COUNTY

PLANNING & COMMUNITY DEVELOPMENT

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-
2. Redlined Chapter 2, Sections 4-6
 3. Redlined Chapters 7-10

CHAPTER 2, SECTION 1.A

Section 1. Establishment of Zoning Districts

A. Purpose and Establishment of Zoning Districts

1. Purpose.

- a. *Relationship to Master Plan.* This Code ~~is designed to bring Delta County's establishes~~ land use regulations ~~into that are~~ consistent~~ey~~ with the ~~2019~~ Delta County Master Plan. ~~The Master Plan identified a need to create a simple, clear, fair, and predictable set of regulations. The Master Plan also~~ This Code is meant identified ~~a need~~ to provide clarity and ~~assurances fairness~~ for residents and property owners, and more predictability for commercial activities in the County.
- b. *Land Use in General.* This Code is designed to clarify where commercial, industrial, agricultural, and residential uses are most appropriately located around the County.
- c. *Commercial Land Uses.* This Code identifies the range of commercial uses that are anticipated in the County, and further identifies zoning districts in which each type of commercial use is appropriate or may be appropriate if certain conditions are met. Generally, commercial uses are most appropriately located in the RI/~~RC zoning district~~ and UGA ~~zoning district~~ overlay. However, most of the other zoning districts allow for multiple land uses and sufficient flexibility such that a wide range of commercial land uses may be located almost anywhere where adequate services can be provided, and standards of this Code can be met.

2. **Zoning Districts Established.** In order to carry out the provisions of this Code, the County is divided into the following zoning districts:

TABLE 2.a ZONING DISTRICTS		
Abbreviation	Zoning District Name	Purposes
A-35	Agriculture (35-acre)	This zoning district is intended ~~for to reflect lands with significant natural resources, including prime agricultural lands, and rural residential uses. The intent is to retain irrigated lands~~ on larger parcels (generally, 35 acres or more). It allows for the broadest range of agricultural and supporting uses.
A-20	Agriculture (20-acre)	This zoning district is intended for ~~small-scale~~ agricultural rural residential uses on parcels of land that are generally 20 acres or more. It allows for a broad range of agricultural and supporting uses ~~as well as large-lot residential uses.~~
A-5	Agriculture (5-acre)	This zoning district is intended for ~~small-scale agricultural and large-lot residential uses.~~

Commented [CH1]: Remove specific date so don't have to amend LUC if amend MP.

Commented [CH2]: This section is to identify how LUC relates to MP, not what is in the MP (which could change). The last sentence is revised to state the intent once (reduce repetitiveness).

Formatted: Font color: Background 1

Commented [CH3]: If the intent is to protect prime ag lands and natural resources, then it should be reflected through zoning.

Commented [CH4]: Retain as A-5. Borders between Ag and Residential, depending largely on water.

CHAPTER 2, SECTION 1.A

RES-2.5	Residential (2.5-acre)	This zoning district is intended for rural residential uses in areas that will not impact irrigated lands and there is an adequate water supply and access available.
RES-1	Residential (1-acre)	This zoning district is intended for residential uses in areas suitable for such density, including potential access to infrastructure and services (e.g., public water, sewer, fire hydrants, etc.).
RI/C	Rural Industrial / Commercial	This zoning district is intended to provide for rural industries that support farming and resource-based industries, or that otherwise benefit from locating outside of municipal boundaries (e.g., minerals processing, oil and gas services, etc.). In addition, the designation as well as can be used for a range of commercial uses in areas near municipalities where there are sufficient services and infrastructure to accommodate them.
UGA	Urban Growth Area Overlay	This zoning district overlay applies to areas near incorporated municipalities, and provides a way for where urban services (e.g., public water and sewer) are available, and have been identified as areas of potential growth by the municipality through an Intergovernmental Agreement (IGA) between the County and each City/Town. This overlay highlights areas where the County to will work with the municipalities to achieve ordered urban and suburban growth (e.g., higher residential densities and commercial/service uses). Areas around municipalities that are intended for new or continuing agricultural uses, or rural commercial/industrial development include active agricultural operations should not be in the zoned UGA overlay.
P/QP	Public/Quasi-Public	This zoning designation reflects public lands (e.g., Forest, BLM, Park), public safety facilities (fire, medical, law), public schools, and utilities (water, wastewater, electricity, etc.).

Commented [CH5]: Change from R-2.5 and R-1 to RES-2.5 and RES-1, to distinguish Residential vs Rural
Deleted "suitable for such density" and added criteria that defines what is "suitable"
"Suitable" is defined in RES-1 as access to infrastructure and services...

Commented [CH6]: Separate Rural Industry (Ag Support) and Commercial?

Commented [CH7]: Concern expressed UGA can be interpreted as implying part of a municipality or confusing with Urban Growth Boundary (called Growth Management Area in IGAs).
Ouray County uses UGMA (Urban Growth Management Area)
DOLA Model uses UGA Overlay
Another option could be something like "Urban Reserve"

Commented [CH8]: Replace UGA zoning with RES-1 because UGA allowed 7500 sf lots, but held to 1 acre if no sewer so LDR is most similar.

Commented [CH9]: Revised to remove "intended"
Changed from "farming" to Ag
"Active" would include new or continuing, but allow someone to fallow land and then apply to develop (rezone).
As an overly, the underlying zone could be RI/C – consistent with 1c above.

Commented [CH10]: Added clarification. While State and Federal agencies will do what they want with their land, Subsection C.5 LUC states that all lands are zoned. This designation can also apply to County or City/Town lands (e.g. fairgrounds, wastewater treatment facility, airport, etc.).

CHAPTER 2, Section 4.A

Section 4. Permitted Uses Approval Standards & Process Requirements

Commented [CH1]: Move to CH 8

A. Applicability of Permitted Use Development Standards

1. ~~Generally.~~ An application for a permitted use requires issuance of a zoning permit and review of a sketch plan to certify compliance with this Code. The zoning permit and sketch plan shall be approved if the application demonstrates compliance with:

- a. ~~Chapter 3, Lots, Buildings, and Structures~~
- b. ~~Chapter 4, Site Design and Environmental Stewardship~~
- c. ~~Chapter 5, Public Facilities, Infrastructure, and Services~~

2. ~~Application & Process:~~

- i. ~~Applications for permitted use zoning permit and sketch plan approval shall submit an application in compliance with Chapter 7 *Standardized Application Review Process*.~~
- a. ~~All applications will be reviewed administratively in accordance with Chapter 8 *Standardized Application Review Process*.~~
- b. ~~Conditions of Approval. The Director shall issue a zoning permit once verified that the proposed permitted use will be in compliance with the requirements of this Code.~~

CHAPTER 2, Section 5.A

Section 5. Limited Use ~~Approval Standards~~

Commented [CH1]: Move the Ch 8

A. Applicability of Limited Use Development Standards

1. ~~Generally.~~ An application for a limited use requires approval of a zoning permit and sketch plan. The Director may require submission of a site plan if it is determined that additional information or detail is necessary to review compliance with the requirements of this Code. The zoning permit and sketch or site plan may be approved if the application demonstrates compliance with:

- a. ~~Chapter 2, Section 5, *Limited Use Approval Standards*, if applicable.~~
- b. ~~Chapter 3, Lots, Buildings, and Structures~~
- c. ~~Chapter 4, Site Design and Environmental Stewardship~~
- d. ~~Chapter 5, Public Facilities, Infrastructure, and Services~~

2. ~~Application & Process.~~

- a. ~~Applications for limited use zoning permit and sketch plan approval shall submit an application in compliance with Chapter 7 *Standardized Application Review Process*.~~
- b. ~~All applications will be reviewed administratively in accordance with Chapter 8 *Standardized Application Review Process*.~~
- c. ~~Conditions of Approval. The Director may approve a limited use with conditions to mitigate its impacts in order to ensure continuing compliance with the review applicable standards of this Code.~~

3. ~~Conversion to a Conditional Use.~~

- a. In the event that a use-specific standard for a Limited Use Permit cannot be met, the use may be processed (at the applicant's option or upon referral by the Director, subject to the exceptions of subsection (B), below) as a Conditional Use. Upon such election, the proposed use shall be processed in accordance with the Conditional Use standards in Chapter 2, Section 6, *Conditional Use Approval Standards*, and Chapter 8 *Standardized Application Review Process*. The applicable use-specific standards from this chapter shall be met to the extent practicable, and the Conditional Use Standards in Chapter 2, Section 6, shall be applied to offset the impacts that may result from the inability to fully comply with applicable use-specific standards. Flexibility in reducing setbacks and other standards with conditions of approval is limited for certain uses by subsection (B), below.

CHAPTER 2, Section 6

Section 6. Conditional Use Approval Standards

A. Applicable Standards.

1. **Generally.** An application for conditional use requires approval of a conditional use permit and a site plan. The conditional use permit and site plan may be approved if the application demonstrates compliance with:
 - a. ~~Chapter 2, Section 5(B) Use Specific Standards;~~
 - b. ~~Chapter 3, Lots, Buildings, and Structures;~~
 - c. ~~Chapter 4, Site Design and Environmental Stewardship;~~
 - d. ~~Chapter 5, Public Facilities, Infrastructure, and Services;~~
 - e. ~~That the proposed conditional use in its proposed location will not tend to frustrate the implementation of:~~
 - 1) ~~The Master Plan;~~
 - 2) ~~Any special area plans adopted by the County; or~~
 - 3) ~~If the subject property is located within the UGA zoning district, the master plan or any special area plan adopted by the impacted municipality;~~
 - f. ~~The location, size, design and operating characteristics of the proposed conditional use are such that the use will not create significant impacts on irrigation facilities, sensitive lands, or nearby agricultural operations;~~
 - g. ~~The design, operation, location, and buffering of the use appropriately mitigates its impacts with regard to:~~
 - 1) ~~Risks associated with the use and storage of hazardous materials; or~~
 - 2) ~~Potentially hazardous conditions, such as projectiles leaving the subject property; and~~
 - 3) ~~Odors, dust, lighting, vibration, and noise.~~

Commented [CH1]: Moved to CH 8

B. Application & Process

1. **Applications.** ~~A site plan and development agreement plan approval shall submit an application in compliance with Chapter 7 Standardized Application Review Process. All applications will be reviewed in accordance with Chapter 8 Review Processes.~~
 - a. ~~An application for a conditional use permit may be approved if it demonstrates compliance with the standards of this Code.~~
 - b. **a. Conditions of approval.** The BOCC may approve a conditional use with conditions to mitigate its impacts, and/or in order to ensure continuing compliance with the review standards identified in subdivision (A), above.

CHAPTER 7

Chapter 7. Standardized Application Review Process

Section 1. Application Submittal Requirements

A. Development Application

1. **Generally.** Any development occurring on a parcel of land in the unincorporated area of Delta County will require the completion of a Development Application, which outlines the type, and order, of individual permits/approvals that must be obtained.
2. **Concept Plan.** Concept plans can be submitted with the Development Application.
3. **Informal Consultation.** Individuals may schedule an informal meeting to discuss potential plans prior to submitting an application, at the discretion of the Director.

AB. Pre-Application Meeting

- 1. Generally.**
 - a. A pre-application meeting is an opportunity for the potential applicant to meet with County staff before filing an application, in order to:
 - 1) Identify the applicable review procedures and likely timelines;
 - 2) Review preliminary materials and identify potential issues and related information requirements; and
 - 3) Identify what fees will be due, including whether an escrow payment will be required for professional consultant review.
 - b. Suggestions and comments by County Staff at a pre-application meeting are advisory in nature and shall not bind the County with respect to decision-making on the subsequent application.
 - ~~b.c. The pre-application meeting is not open to the general public.~~
- 2. When Required.**
 - a. A pre-application meeting is required for all application types except:
 - 1) A zoning certificate for a permitted use; or
 - 2) When waived by the Director.
 - ~~b. Informal meetings may be scheduled prior to a pre-application meeting, at the discretion of the Director.~~
- 3. Meeting Logistics.** Pre-application meetings may be conducted in person, by telephone, or by internet-based communication tools, as may be agreed between the potential applicant and the Director. When a project is located within a Growth Management Area of a municipality, as determined in the Intergovernmental Agreement, the Town/City shall be

CHAPTER 7

invited to the pre-application meeting. Other non-County agencies may be invited where the Director determines there would be interest and value to include such agency (BLM, CDOT, etc.)

4. **Meeting Materials.** The potential applicant shall bring to (or submit prior to) the pre-application meeting sufficient supporting materials to explain, as applicable to the type of application to be submitted.
5. **Summary.** Upon request by the potential applicant, within ~~24~~**10** business days of the pre-application meeting, the Director shall deliver to the applicant:
 - a. A checklist of submittal materials that will be necessary for the type(s) of application(s) sought; and
 - b. A copy of the County's application fee schedule.
6. **Courtesy Presentations.** At the pre-application meeting, a potential applicant may request an opportunity to make a courtesy presentation of a proposed development concept or conceptual subdivision map in a design charrette process. Attendees may include appropriate staff, referral agencies, design professionals, and other persons identified by the Director or the potential applicant.

B. Application

1. **Generally.** Every application for approval that is required by this Code shall be submitted on a form approved by the Director, along with the corresponding application fee (~~fees are established by resolution of the County Commission~~See Section 1.C. below).

Unless waived by the Director, all applications shall include electronic versions of all attachments in a format approved by the Director.

1.2. **Forms.**

- a. The Director shall promulgate and periodically revise forms for each type of application required by this Code.
- b. Application forms shall include the specific information that is required to process each type of application. The specific information requirements shall be established and periodically revised by the Director, and have the purpose of facilitating:
 - 1) The evaluation of applications for compliance with the standards of this Code; and
 - 2) The administration of this Code.
- c. The Director is authorized to establish a standardized format for each type of required submittal, and to allow deviations from the format in instances where the Director finds that an alternative format would provide for more efficient review.

- 2.3. **Waiver or Expansion of Requirements.** Application requirements may be waived or expanded by the Director if the nature of the application is such that the requirements would serve no useful purpose, or such that additional information is needed to evaluate

CHAPTER 7

compliance with the requirements of this Code. The Director may not waive application fees.

3.4. Schedule. The Director is authorized, but not required, to establish regular intake days or times for any or all classifications of applications for development approval, except administrative appeals.

C. Application Fees and Escrows

1. Generally. Fees shall be charged to offset the cost of application processing (including any application for amendments of existing approvals), reviews, public notices, hearings, and recordkeeping.

Application fees to be charged by the County shall be established, from time to time, by resolution adopted by the Board of County Commissioners.

1.2. Recording Fees. Recording fees of the Delta County Clerk and Recorder's Office shall be paid to the County by the Applicant at the time of any required recording.

2.3. Referral Agency Fees. The Applicant may be required to pay any fees assessed by referral agencies in advance of their review and comment. Failure to obtain comments from referral agencies due to failure to pay review fees may result in delay or denial of an application.

3.4. Escrow for Consultant Review.

a. Consultant Review Authorized.

- 1) The Director is authorized to retain professional consultants at the applicant's expense to assist in the review of applications or petitions submitted pursuant to this Code.
- 2) The Director may make an initial determination as to the use of consultants at the time of the pre-application meeting, and may revise the determination at the time of application if new or changed information in the application materials justifies the revision.

b. Initial Escrow Payment.

- 1) If the Director determines that an application will require review by professional consultants, then the Director shall execute an escrow agreement in a form approved by the County Attorney, and make an initial escrow payment in an amount sufficient to cover the estimated review costs.
- 2) A schedule of minimum required escrows for different application types may be attached to the fee resolution described in subsection (1), above.
- 3) The Director shall provide the applicant with a preliminary estimate of professional consultant review fees at a time established during the pre-application meeting by agreement with the Applicant. Alternatively, the Director may advise the applicant regarding the amount of a fixed-fee that has been established in advance for the type of application presented.

CHAPTER 7

- c. *Use of Escrow Payment.* The County may draw upon the escrow, at the County's discretion, to pay the fees and expenses of professional consultants retained by the County to review the application.
- d. *Additional Escrow Funds.*
 - 1) The Director may require additional escrow funds to be paid for additional services related to the application, should they become necessary. Failure of the applicant to timely provide additional escrow funds may result in delays in application processing.
 - 2) If a balance is due at the time an application is approved, it shall be paid by the applicant as a condition of approval.
 - 3) If a balance is due at the time an application is denied, it shall be paid by the applicant within 30 days after delivery of an invoice to the applicant.
- e. *Return of Escrow Funds.* Escrow funds shall be returned to the applicant as follows:
 - 1) If the Director decides not to use consultants, then escrow funds shall be returned to the applicant within 30 days of said decision.
 - 2) If the applicant withdraws the application, then the Director shall notify the consultants to stop work within one business day after the withdrawal. Promptly after receipt of a final invoice from the consultants, the Director shall return the escrow to the applicant, less the amount required to pay the consultants for work actually performed.
 - 3) When the application is decided, any positive escrow balance shall be returned to the applicant within 60 days.
- f. *Account Reports.* Applicants shall be provided with a monthly accounting of the use of escrow funds.
- g. *Delinquent Payments.*
 - 1) If the applicant does not pay additional escrow funds required by subsection (4) (d), above, within 10 days after written notice from the Director, then, in addition to the other remedies the County may have, the County shall be entitled to a lien on the subject property, or the County may elect to certify the assessed costs and expenses to the office of the County Treasurer for collection in the same manner as general property taxes are collected. Such lien shall be perfected and may be foreclosed upon in accordance with applicable state laws.
 - 2) Nothing herein shall authorize the County to charge the applicant for costs and expenses the County incurs as a result of litigating a matter against the applicant or against a third party, unless such charges are otherwise authorized by law.
- h. *Fixed-Fee Consultant Review.* The Director is authorized to establish:

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- 1) A roster of consultants that are pre-qualified to conduct reviews of various types; and
- 2) For routine application types with predictable review fees, a schedule of fixed-fees for consultant review.

Section 2. Initial Application Review Process

A. Completeness Review

~~1. **Generally.** The Director shall review all submitted applications for completeness. A complete application includes all of the materials required on the application forms, materials requested at the pre-application conference, any required professional certifications, and all fees and escrows that are required for application processing.~~

~~2.1. **Schedule.** Generally, all applications shall be reviewed for completeness within seven (7) business days after an application is submitted.~~

~~3.2. **Incomplete Applications.**~~

~~a. Incomplete applications shall be returned to the applicant, along with any fee included with the application, with a written explanation that describes in general terms the materials that must be submitted in order to complete the application.~~

~~a. An application that does not include all of the materials required on the application forms, materials requested at the pre-application conference, any required professional certifications, and all fees and escrows that are required for application processing, the applicable processing fee shall not be considered complete.~~

~~b. The applicant shall be provided a written explanation that describes in general terms the materials that must be submitted in order to complete the application.~~

~~c. Incomplete applications are not considered filed.~~

~~e.d. An application that remains incomplete for more than 60 days may be returned to the applicant, along with any fee included with the application, at the discretion of the Director.~~

~~4.3. **Complete Applications.** Upon a determination of completeness, the Director shall promptly provide notice to the applicant in the manner requested on the application (e.g., email or U.S.P.S.) regarding the status of the application. Complete applications shall be processed according to the applicable procedures of this Article. (Also see Chapters 8 and 12).~~

B. Sufficiency Review

~~1. **Generally.** All applications shall be technically sufficient for review, meaning that:~~

~~a.—The application materials are internally consistent, and presented as required by this Code and the applicable application forms.~~

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Ch 12 Subdivisions

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- b. ~~Materials are prepared by qualified professionals (where such qualifications are required), and signatures and certifications are present, if required.~~
- c. ~~The application materials are technically sufficient to demonstrate compliance with applicable standards of this Code.~~

2. ~~Insufficient Applications.~~

- a. ~~An application is insufficient if it does not meet the standards of subsection (1), above.~~
- b. ~~If an application is determined to be insufficient, the Director shall notify the applicant and provide a written explanation regarding the materials that must be submitted, or revisions that must be made, in order to continue processing the application.~~

3. ~~Sufficient Applications.~~ ~~Technically sufficient applications shall be processed according to the applicable standards and procedures of this Chapter.~~

CB. Technical and Sufficiency Review

1. **Generally.** Upon determination that an application is complete ~~and sufficient~~, the Director shall cause the application to be reviewed for sufficiency and technical compliance with all applicable requirements of this Code, ~~as follows: Said review shall be completed within 30 days from the date the application is deemed complete.~~
 - a. ~~Appropriate County staff or consultants shall review the application; and~~
2. ~~If required or determined appropriate by the Director, the application shall be promptly referred to applicable referral agencies and adjacent property owners for review and comment pursuant to Chapter 7, Section 3, Referral to Agencies, Consultants, and Adjacent Property Owners, and Chapter 7, Section 4, Public Notice.~~ **Technical Review.**
 - a. Appropriate County staff or consultants shall review the application; and
 - b. If required or determined appropriate by the Director, the application shall be promptly referred to applicable referral agencies and adjacent property owners for review and comment pursuant to Chapter 7, Section 3, Referral to Agencies, Consultants, and Adjacent Property Owners, and Chapter 7, Section 4, Public Notice.
3. **Consultant Review.** Upon notice to the applicant, the Director may refer the application to consultants selected by the County, in order to obtain technical review and recommendations. The cost of such referrals shall be borne by the applicant.
4. **Sufficiency Review.**
 - a. All applications shall be technically sufficient for review, meaning that:
 - i. The application materials are internally consistent, and presented as required by this Code and the applicable application forms.

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ii. Materials are prepared by qualified professionals (where such qualifications are required), and signatures and certifications are present, if required.

iii. The application materials are technically sufficient to demonstrate compliance with

b. If an application is determined to be insufficient, the Director shall notify the applicant and provide a written explanation regarding the materials that must be submitted, or revisions that must be made, in order to continue processing the application.

D. Recommended Revisions

1. **Generally.** Following review of the application, referral agencies, and adjacent property owners, the Director shall:
 - a. Provide comments to the applicant from County staff or consultants (collectively, “STAFF COMMENTS”). The staff comments shall address or include comments by referral agencies and adjacent property owners. The applicant shall revise and resubmit the application with appropriate changes based on staff comments, and with responses to staff comments that did not result in changes to the application.
 - b. Upon receipt of the re-submittal, the Director may refer the application to referral agencies again if the changes substantially affect the interests of the agency in ways not anticipated by the agency’s original comments (or lack thereof), or require the agency’s technical expertise for appropriate review.
 - c. The re-submittal ~~shall not may~~ require an additional application fee ~~unless if~~ both of the following conditions are met:
 - 1) The revisions are inappropriate or incomplete; and
 - 2) Repeated failure to address comments requires more than three rounds of revisions.

E. Stale Applications

1. **Generally.** This is intended to extinguish applications that become “stale” due to prolonged inaction or nonresponsive action by the applicant prior to a decision by the County.
2. **Expiration of Stale Applications.** When an action by the applicant is required for further processing of an application, the applicant shall have six (6) months to meet the Director’s requirements.
application shall become void if the requested action is not taken within 10 business days after additional notice to the applicant, such notice given six months after the date that the action is requested.
3. At least 30 days prior to the end of the period set out in subsection (2), above, the Director shall provide notice to the applicant. The Director shall be authorized to void the

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application at the end of this period if the requested action does not meet the Director's requirements within the specified timeframe.

2.4. **Extension of Time.** The Director may extend the time for expiration of an application pursuant to subsection (2), above, may be extended. by up to six (6) additional months upon written request of the applicant before the end of the period set out in subsection (2), above.

Section 3. Referral to Agencies, ~~Consultants,~~ and Adjacent Property Owners

A. Referrals

- Generally.** Applications shall be referred for ~~additional~~ review ~~by agencies or consultants~~ according to the procedures set out in this Section. ~~Referral agencies are identified in Table 7.a, Referral Agency Review.~~
- Referral Required.** Referral is required for the following types of applications:
 - a. ~~Minor Plats~~
 - ~~a.b.~~ Preliminary Plats (*see* C.R.S. § 30-28-136)
 - ~~b.c.~~ Conditional Use Permits
 - ~~c.d.~~ Certificate of Designation
- Discretionary Referrals.** The Director may refer any type of application not enumerated in subsection (2), above, if the Director finds that such referral will provide analysis or facts that are helpful in determining the application's compliance with this Code.
- Inter-Jurisdictional Referrals.**
 - The Director shall maintain a list of referral agencies that may be affected by land use and development within the unincorporated County, or that may provide technical expertise with respect to development review. Except as provided by Colorado law, referral agency comments are advisory in nature.
 - Referral Agency List.* The list of referral agencies, and the application types and topics for which review must be requested, are set out in Table 7.a, *Referral Agency Review*. The table sets out minimum requirements and is not intended to limit the entities to which referrals may be sent, or the scope of review that the referral agencies provide.

TABLE 7.a REFERRAL AGENCY REVIEW		
Agency	Topic	When Required
Delta County School District 50J	Projected impact on Schools; School capacity; ability of School	~~Preliminary Plat Review or Final Plat Review (where Preliminary Plat is not~~

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	District to serve anticipated population	~~required~~)Plat Review <u>All Subdivisions, excluding Boundary Line Adjustments.</u>
Electric Power Provider	Ability and willingness to serve; required facilities and easements	~~Preliminary Plat Review or Final Plat Review (where Preliminary Plat is not required)~~ <u>Plat Review All Subdivisions, excluding Boundary Line Adjustments.</u>
Natural Gas Provider	Ability and willingness to serve; required facilities and easements	~~Preliminary Plat Review or Final Plat Review (where Preliminary Plat is not required)~~ <u>All Subdivisions, excluding Boundary Line Adjustments.</u>
Water Provider	Ability and willingness to serve; Adequacy of water supply; required facilities and easements	~~Preliminary Plat Review or Final Plat Review (where Preliminary Plat is not required)~~ <u>All Subdivisions, excluding Boundary Line Adjustments.</u>
Wastewater Treatment Provider	Ability and willingness to serve; required facilities and easements	~~Preliminary Plat Review or Final Plat Review (where Preliminary Plat is not required)~~ <u>All Subdivisions, excluding Boundary Line Adjustments.</u>
Communications Provider	Ability and willingness to serve; required facilities and easements	~~Preliminary Plat Review or Final Plat Review (where Preliminary Plat is not required)~~ <u>All Subdivisions, excluding Boundary Line Adjustments.</u>
Municipalities and Adjacent Counties	Potential Impacts on the Municipality or County	~~Preliminary Plat Review or Final Plat Review (where Preliminary Plat is not required) (if any part of a proposed All subdivisions is within two miles of a municipal or county boundary, the application shall be referred to that municipality or county) ; and Limited or Conditional Uses, if any part of the subject property is within one mile of a municipal or County boundary.~~
Ditch Companies	Impacts on ditch, canal, pipeline, or reservoir infrastructure or operations	~~Preliminary Plat Review, Final Plat Review, Site Plan Review, and Sketch Plan Review~~ <u>All projects</u> where the ditch company owns, operates, or controls a ditch, canal, pipeline, reservoir, or other property (including easements, whether recorded or not) within 100 ft. of a proposed development, or that may be directly affected by development due to topography or drainage patterns
Local Improvements and Service Districts	Impacts on the services provided by the Local Improvements or Service District	~~Preliminary Plat Review or Final Plat Review (where Preliminary Plat is not required), Site Plan Review, and Sketch Plan Review,~~ <u>All projects</u> where the

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		subject property is located within the District boundary, or when the property is obligated to join the District
Colorado State Forest Service	Evaluation of potentially sensitive lands; wildfire risks and risk mitigation	~~Preliminary Plat Review or Final Plat Review (where Preliminary Plat is not required), Site Plan Review, and Sketch Plan Review, All projects~~ where the subject property is in an area of elevated wildfire risk or includes sensitive lands.
Delta Conservation District	Soil suitability; floodwater problems; wetland evaluation; and watershed protection	~~All Subdivisions, excluding Boundary Line Adjustments, Preliminary Plat Review or Final Plat Review (where Preliminary Plat is not required)~~
Delta County Environmental Health Division or Colorado Department of Public Health and Environment ("CDPHE")	On-site septic systems; adequacy of existing or proposed sewage treatment works to handle the estimated effluent; and water quality of the proposed water supply to serve the development <u>Stormwater regulations; disturbing 1+ acre of land (coordinated through CDPHE) Floodplain Administration</u>	~~Preliminary Plat Review, Final Plat Review (where Preliminary Plat is not required), Site Plan Review, and Sketch Plan Review, All projects~~ where on-site septic systems are proposed, <u>the project is subject to stormwater requirements, and/or the site includes lands within a mapped floodplain.</u>
State Engineer	Potential for material injury to water rights of others; adequacy of water supply (see C.R.S. § 30-28-136(1)(h))	Preliminary Plat Review or Final Plat Review (where Preliminary Plat is not required)
Colorado Geological Survey	An evaluation of those geologic factors that would have a significant impact on the proposed use of the land	Preliminary Plat Review or Final Plat Review (where Preliminary Plat is not required); except that, upon a written request from the Board of County Commissioners or the Board's authorized representative, the Colorado Geological Survey may exempt any preliminary plan from this referral and review requirement.
Colorado Parks and Wildlife ("CPW")	Comments regarding wildlife and habitat values; implementation of State Wildlife Action Plan	~~Preliminary Plat Review, Final Plat Review (where Preliminary Plat is not required), Site Plan Review, and Sketch Plan Review, All projects~~ where the Director determines that CPW review would facilitate processing the application.

- c. *Limitations.* Table 7.a, *Referral Agency Review*, is not intended to restrict the comments provided by referral agencies or prevent the County from referring application materials to other entities, agencies, or individuals. Referral agencies

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may provide any comments that the agency determines will be helpful to the processing of the application.

5. **Referral Process.**

- a. The Director shall refer the application as required by this Section, and may refer the application to any other agency, jurisdiction, ditch company, land management entity, utility, or department that the Director determines is likely to be materially affected by the application, or that has expertise in a subject matter potentially impacted by the application. The Director's determination regarding such additional referrals is not appealable.
- b. The agency referral period is 21 calendar days and shall be coordinated with the technical/sufficiency review period in Section 2, above. The referral period may be extended by up to 30 additional days by mutual consent of the applicant and the Director.
- c. Failure of an agency to respond within the prescribed agency referral period is interpreted as consent by that agency to the contents of the application. However:
 - 1) For a preliminary plat that involves twenty or more dwelling units, the school district shall be required to submit within said time limit specific recommendations with respect to the adequacy of school sites and the adequacy of school structures;
 - 2) An agency that does not timely respond does not waive any authority it may have by virtue of concurrent jurisdiction with the County; and
 - 3) Consent is not implied if the applicant fails to pay the agency's required review fees and the agency reports the same to the County within the agency referral period.

~~6.—**Consultant Review.** Upon notice to the applicant, the Director may refer the application to consultants selected by the County, in order to obtain technical review and recommendations. The cost of such referrals shall be borne by the applicant.~~

Section 4. Public Notice

A. Public Notice

For applications that require public notice, public notice shall be provided according to the standards of this Section.

B. Contents of Public Notice

1. Public notice shall include the following elements:
 - a. The phrase "PUBLIC NOTICE" or "NOTICE OF PUBLIC HEARING" (as appropriate to the notice) at the top of the notice. For posted notice, these letters shall be not less than three inches in height.

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- b. A brief description of the type of application (*e.g.*, ~~application for preliminary plat, conditional use, approval etc.~~).
- c. The date, time, and place of the hearing.
- d. A brief summary of what the applicant is requesting (*e.g.*, ~~approval of a subdivision ## acres into ## lots~~).
- e. The physical ~~address of the subject property, or if an address is not available, a location map of the property, including a map, or a statement that the legal description is on file with the Director (this requirement does not apply to "Countywide" where there is text amendments that are generally applicable~~ *leility* (*e.g.*, text amendments).
- f. A notice that interested persons may obtain more information from the Director.
- g. Contact information for the ~~Director~~ *County's Project Manager*.

C. Types of Public Notice

Table 7.b, *Types of Public Notice*, sets out standardized requirements for publication, posting, and mail notice that are used for different application types and different phases of the application process. The types of notice that are set out in the table are used to establish notice requirements for each type of application in Table 7.b, *Types of Public Notice*.

TABLE 7.b TYPES OF PUBLIC NOTICE			
Type of Notice	When Required	Frequency or Duration	Other Requirements
Publication	At least 14 days before public hearing	1 publication	N/A
Posting	At least 14 days before public hearing	Post until public hearing commences	N/A
Mail 1	At least 14 days before public hearing	1 mailing	Mail to adjacent property owners (includes properties separated only by a right-of-way)
Mail 2	At least 14 days before public hearing	1 mailing	Mail to property owners within a 1,000 ft. of the boundaries of the subject property

D. Type of Public Notice Required by Application Type

Table 7.c, *Required Public Notice by Application Type*, sets out the notices that are required at each state of processing for each type of application for which notice is required.

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Table 7.c REQUIRED PUBLIC NOTICE BY APPLICATION TYPE			
Application Type	Form of Required Public Notice for ...		
	Director Review	BOA or PC Review	BOCC Review
Land Use / Zoning			
~~Zoning certificate for limited Use~~ (~~and associated sketch plan or site plan~~) that is marked with an "n" in Table 2.b, <i>Land Use by Zoning District</i>	~~Posting~~ Mail 1	N/A	N/A
Conditional ~~Use permit~~ (~~and associated sketch plan or site plan~~)	N/A	~~Publication~~ Posting Mail ~~2~~ 1	~~Posting~~ Mail 1
Rezoning	N/A	~~Publication~~ Posting Mail ~~2~~ 1	Publication Posting Mail ~~2~~ 1
Certificate of Designation	N/A	Publication Posting Mail 2	Publication Posting Mail 2
Development Plans and Sub ~~division~~ Plats			
~~Boundary Line Adjustment~~	~~N/A~~	~~N/A~~	~~N/A~~
~~Final Minor~~ Plat, ~~Minor~~ ~~Replat~~	~~Posting~~ Mail 1	N/A	N/A
Preliminary Plat	N/A	~~Publication~~ Posting Mail ~~2~~ 1	~~Publication~~ Posting Mail ~~2~~ 1
~~Final Plat~~	~~N/A~~	~~N/A~~	~~N/A~~
Final Plat ~~and with~~ Improvements Agreements	N/A	N/A	~~Posting~~ Mail ~~2~~ 1
~~Vacation Plat~~	~~N/A~~	~~N/A~~	~~Posting~~ Mail 1
Location and Extent	N/A	Mail 1	Mail 1
Variances and Appeals			
Variance	N/A	Posting Mail 1	N/A
Administrative Appeal to BOA	N/A	~~Posting~~ Mail 1	N/A
~~Administrative~~ Appeal to BOCC	N/A	N/A	~~Posting~~ Mail 1
Text Amendments			
Text Amendments	N/A	Publication	Publication
Vested Rights			
Vested Rights	N/A	As provided in Chapter 8, Section 6 (E), <i>Special Notice Requirements</i>	

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E. Standards for Required Notices

1. *Publication.* Published notice shall be printed in a newspaper of general circulation in Delta County.
2. *Posting.* Posted notice shall be on a sign in a form approved by the Director. Sign(s) shall be posted by the County in a location visible from a public right-of-way.
3. *Mail.* Mailed notice shall be delivered via first class U.S. Mail.

F. Optional Notices

1. *Electronic Mail.* Electronic mail notices may be delivered to an opt-in distribution list that is created for the purpose of notifying people about applications for approvals and permits in the unincorporated Delta County. Electronic mail notices shall include the subject line "PUBLIC NOTICE OF PROPOSED DEVELOPMENT," and the statement in the body of the email that "Electronic mail notice is provided as a courtesy to opt-in subscribers. Failure of an e-mail communication to reach a subscriber does not constitute failure of public notice."
2. *Internet.* Internet notices may be posted on an official web site of the County, on a page or pages that are designated for such notices. However, internet notice is also provided as a courtesy and is not official notice. Therefore, failure of internet notice shall not constitute a failure of public notice.

G. Errors in Notices

The standard for compliance with this shall be "substantial compliance." If the Director determines that there has been substantial compliance with the requirements of this, despite any particular technical error, then the decision or recommendation reached at the noticed hearing shall be final. If the Director determines that there has not been substantial compliance with the requirements of this due to an error, then the decision or recommendation reached at the noticed hearing shall be vacated (or the hearing on the item cancelled), and a new hearing shall be scheduled with proper notice provided.

H. Notice to Mineral Estate Owners

1. Notices to mineral estate owners shall be provided not less than 30 days before the date scheduled for the initial public hearing on an application for development (as the phrase is defined in C.R.S. 24-65.5-102(2)(a)), as required by Article 65.5 of Title 24 C.R.S., *Notification of Surface Development*.
2. *Exceptions.* If notice to mineral estate owners is not required by the statute, the applicant shall state the reason or reasons for the exemption.
3. *Contents of Notice.* The notice shall contain the time and place of the initial public hearing, the nature of the hearing, the location and legal description by section, township, and range of the subject property, and the name of the applicant.

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4. *Proof of Notice.* Proof of notice shall be provided to the County not less than 30 days before the hearing that is the subject of the notice.

Section 5. Neighborhood Meetings

A. Applicability

All applicants are encouraged to meet with neighboring property owners to give the community an opportunity to hear from the applicant and ask questions regarding the proposed project. Projects that required or are referred to the Planning Commission and/or Board of County Commissioners for a public hearing shall be required to hold a neighborhood meeting prior to the public hearing.

B. Neighborhood Meetings

Where a neighborhood meeting is required, the applicant shall:

1. Provide the Director a draft copy of any letter or notice prior to sending out to the public to ensure information is complete and correct;
2. Inform, in writing, all owners of land located adjacent to the property (includes properties separated only by a right-of-way) of the date, time, and location of the meeting. Said notice shall be provided no less than seven (7) but no more than 14 days in advance of the meeting date. A copy of said notice shall be provided to the Director;
3. Conduct the meeting within the County, preferably in/near the applicable neighborhood at a facility with adequate parking and seating. Said meeting shall be open to the public;
4. Provide members of the public the opportunity to review application materials, ask questions of the applicant, and provide feedback; and
5. Provide the Director a summary of any input received from members of the public at the meeting and a copy of the mailing list used for notification in Item 2 above.

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Chapter 8. Review Processes

Section 1. ~~Zoning Permits, Sketch Plan, and Site Plan Approval~~ Administrative Review Process

A. Administrative Review Established

1. **Generally.** Administrative approvals and permits are issued by the Director upon a finding of compliance with the applicable requirements of this Code. Administrative Review includes Allowed Uses (Ministerial), Permitted Uses (Ministerial) and Limited Uses (Discretionary). ~~No public hearing is required.~~
 2. **Allowed and Permitted Use Standards.** Allowed or Permitted uses are subject to a ministerial process that requires review to demonstrate compliance with applicable permits/approvals and this Code:
 - a. Chapter 2, Section ##, Use Specific Standards, if applicable.
 - b. Chapter 3, Lots, Buildings, and Structures
 - c. Chapter 4, Site Design and Environmental Stewardship
 - d. Chapter 5, Public Facilities, Infrastructure, and Services
 3. **Limited Use Standards.** Limited Uses are subject to a discretionary process (administrative) that requires approval of a zoning permit, including a site plan with information necessary to review compliance with the requirements of this Code. The zoning permit and site plan may be approved or conditionally approved if the application demonstrates compliance with:
 - a. Chapter 2, Section ##, Use Specific Standards, if applicable.
 - b. Chapter 3, Lots, Buildings, and Structures
 - c. Chapter 4, Site Design and Environmental Stewardship
 - d. Chapter 5, Public Facilities, Infrastructure, and Services
- 1.3 **Other Approvals and Permits May Be Required.** These approvals and permits are in addition to other reviews, approvals, and permits that may be required for compliance with other laws, statutes, or regulations, which may include but are not necessarily limited to:
- a. State or federal law, including, but not limited to, the Clean Water Act, the Clean Air Act, or the Endangered Species Act;
 - b. Adopted building and safety codes;
 - c. Resolutions that require permits for activities on public land or within public right-of-way; or
 - d. Business licensing resolutions.

Commented [CH1]: Limited Use is administrative and may require a public notice not a public hearing. That distinction is a fine line and is better explained in the process below.

Commented [CH2]: From Ch 2, Section 4.A

Commented [CH3]: From Ch 2, Section 5.A

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B. Administrative Review Process

1. **Generally.** Administrative review includes Allowed Uses (Ministerial), Permitted Uses (Ministerial), and Limited Uses (Discretionary).
2. **Administrative Recommendation, Decision, or Referral.** Promptly after determination that a complete, sufficient application addresses the comments and recommendations provided pursuant to Chapter 7, Section 2 (D), *Recommended Revisions* (or, after finding that no revisions will be required):
 - a. Applications for Administrative Uses require completion of a Development Application that includes:
 - 1) Site Plan Review to demonstrate compliance with this Code; and
 - 2) A checklist to verify compliance with applicable permits/approvals such as site plan review, right-of-way use permits, address assigned, septic permits, and applicable State permits (well, mobile home, electrical, plumbing).
 - b. Allowed Use. The Director shall approve the Site Plan and issue a Development Application checklist once verified that the proposed Allowed Use will be in compliance with applicable Standards (Section 1.A.2 above).
 - c. Permitted Use. The Director shall issue a Zoning Permit for the proposed Permitted Use once verified that the proposed use will be in compliance with applicable Standards (Section 1.A.2 above).
 - d. Limited Use.
 - 1) The Director may approve, conditionally approve or deny a Limited Use application. Conditions may be applied to mitigate impacts and/or ensure continuing compliance with the applicable standards of this Code (see Section 1.A.3 above).
 - 2) The Director shall issue a Development Application checklist once verified that the proposed Limited Use will be in compliance with applicable Codes and conditions.
 - 3) Limited Use may require a public notice of the proposed action (see Table 2.b). If required, notice shall be provided pursuant to Chapter 7, Section 4, Public Notice.
 - 4) In the event that a use-specific standard for a Limited Use Permit cannot be met (Chapter 2, Section #), the use may be processed (at the applicant's option or upon referral by the Director) as a Conditional Use. Upon such election, the proposed use shall be processed in accordance with the Conditional Use standards. The applicable use-specific standards shall be met to the extent practicable, and the Conditional Use Standards shall be applied to offset the impacts that may result from the inability to fully comply with applicable use-specific standards.

Commented [CH4]: From CH 2, Section 4.A

Commented [CH5]: From CH2, Section 5.A

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4.2. Referral. If the application is for an administrative approval or permit, ~~then~~ the Director shall verify public notice has been given, if required (*see Chapter 7, Section 4, Public Notice*), and either may:

a. ~~Approve, approve with conditions, or deny the application, as appropriate, and promptly provide written notice, including the reasons for the decision, to the applicant; or~~

a. ~~Refer the application to the Board of Adjustment to consider the entire action where a variance is required; or~~

b. Refer the application to the Planning Commission for ~~review and recommendation~~ and Board of County Commissioners for decision according to the applicable standards of this Code, upon a determination by the Director, in his or her sole discretion, that the development, as proposed justifies the referral because it:

- i. May have material impacts on neighboring properties or public resources that are unusual in kind or degree due to the unusual context of the subject property; or
- ii. Involves material potential for reasonable disagreement regarding whether the proposed development complies with the standards of this Code, or whether particular standards of this Code apply.

c. If referred to the Planning Commission, the application shall be processed as a Conditional Use ~~permit~~ in accordance with Chapter 8, Section 2, *Conditional Use Permits and Rezoning Public Hearing Process*.

d. If the application is referred for a public hearing approval, then the Director shall make a recommendation regarding the application and forward the recommendation and the application materials and referral comments to the next body that will consider it for further recommendation or approval.

3. **Appeal.** An aggrieved party may appeal the Director's decision to the Board of Adjustment pursuant to Chapter 9 – Approvals, Denials and Appeals

Section 2. Conditional Use Permits ~~and Rezoning Public Hearing Process~~

A. Public Hearing Process

1. **Generally.** Approvals and permits are issued upon a finding of compliance with applicable requirements of this Code following a public hearing with the applicable review body.

2. **Public Hearing Review of Conditional ~~Use or Rezoning Process Permits~~:**

a. Promptly after determination that a complete, sufficient application addresses the comments and recommendations provided pursuant to Chapter 7, Section 2 (D), *Recommended Revisions* (or, after finding that no revisions will be required):

1) Generally, applications shall be heard during the next regular meeting of the hearing body that meets the following two conditions:

Commented [CH6]: Streamline the process. One stop. Minor Plat with variance currently goes to BoA first and then Director handles the Admin portion.

Commented [CH7]: Recommending streamlining the process. PC decision makers versus recommending. Only goes to BoCC if appealed

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- i. ~~There is sufficient time to meet applicable public notice requirements; and~~
 - ii. ~~There is available room on the agenda.~~
- 2) ~~The Director, or a designee, shall notify the Applicant regarding the time and place of the public hearings.~~
- 4)3) The Director shall verify public notice has been given (*see* Chapter 7, Section 4, *Public Notice*)
- 2)4) The Director shall ~~set the application on the agenda and~~ make a recommendation regarding the application and forward the recommendation and the ~~application materials and referral comments to the next decision-making body for that will consider it for further recommendation or approval.~~
- 3) ~~The Director shall set the application on the agenda of the next body that will consider the application.~~
- 4) ~~Generally, the application shall be heard during the next regular meeting of that body that meets the following two conditions:~~
 - i. ~~There is sufficient time to meet applicable public notice requirements; and~~
 - ii. ~~There is available room on the agenda.~~
- 5) ~~The Director shall coordinate with recommending and decision making bodies to fix reasonable times for hearings. Said bodies are authorized to convene special meetings to hear applications as they determine appropriate.~~
- 6) ~~The Director, or a designee, shall notify the Applicant regarding the time and place of the public hearings.~~
- 7)5) ~~When reviewed by the Planning Commission,~~ The Planning Commission shall determine if the application complies with this Code ~~and .The Planning Commission shall recommend approval, approval with conditions, or denial with findings and evidence supporting said action. Conditions may be applied to mitigate impacts and/or ensure continuing compliance with the applicable standards of this Code.~~
- 8)1) ~~When reviewed by the Board of County Commissioners, the Board of County Commissioners shall determine if the application complies with this Code. The Board of County Commissioners shall approve, approve with conditions, or deny the application.~~
- 6) The Director shall promptly provide written notice, including the reasons for the decision, to the applicant following action by the ~~Board of County Commissioners~~ Planning Commission.

Commented [CH8]: Recommend CUP is decided by PC Appeal to BoCC

Commented [CH9]: Authority for calling a special meeting is in statute (and bylaws), doesn't need to be in LUC (regulatory)

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7) ~~When reviewed by the Board of County Commissioners~~An aggrieved party may appeal the Planning Commission decision to, the Board of County Commissioners shall determine if the application complies with this Code. The Board of County Commissioners shall approve, approve with conditions, or deny the application pursuant to Chapter 9 – Approvals, Denials and Appeals.

B. Conditional Use Approval Standards

1. **Findings.** An application for Conditional Use requires approval of a Conditional Use Permit and a Site Plan. The Planning Commission may approve an application for a Conditional Use Permit if it finds that if the application demonstrates compliance with:

- a. Chapter 2, Section # *Use Specific Standards*;
- b. Chapter 3, Lots, Buildings, and Structures;
- c. Chapter 4, Site Design and Environmental Stewardship;
- d. Chapter 5, Public Facilities, Infrastructure, and Services;
- e. The location, size, design and operating characteristics of the proposed conditional use are such that the use will not create significant impacts on irrigation facilities, sensitive lands, or nearby agricultural operations;
- f. The design, operation, location, and buffering of the use appropriately mitigates its impacts with regard to:
 - 1) Risks associated with the use and storage of hazardous materials; or
 - 2) Potentially hazardous conditions, such as projectiles leaving the subject property; and
 - 3) Odors, dust, lighting, vibration, and noise.

The Planning Commission shall further find that the proposed conditional use in its proposed location will not tend to frustrate the implementation of:

- 1) The Master Plan;
- 2) Any special area plans adopted by the County; or
- 3) Intergovernmental Agreement, Master/Comprehensive Plan, or any special area plan adopted by the impacted municipality;

Commented [CH10]: Need basis for approving or denying a permit
From CH2, Sect 6

Commented [CH11]: UGA is County zoning, not adopted by municipality...and might change. Revised to reflect what is adopted by municipality only

Section 3. Rezoning Process

A. Public Hearing Process

1. **Generally.** Rezoning may be granted upon a finding of compliance with applicable requirements of this Code following a public hearing with the applicable review bodies.

2. **Public Hearing Review of Rezoning Process:**

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a. Promptly after determination that a complete, sufficient application addresses the comments and recommendations provided pursuant to Chapter 7, Section 2 (D), Recommended Revisions (or, after finding that no revisions will be required):

- 1) Generally, the application shall be heard during the next regular meeting of that body that meets the following two conditions:
 - i. There is sufficient time to meet applicable public notice requirements; and
 - ii. There is available room on the agenda.
- 2) The Director, or a designee, shall notify the Applicant regarding the time and place of the public hearings.
- 3) The Director shall verify public notice has been given (see Chapter 7, Section 4, Public Notice)
- 4) The Director shall set the application on the agenda and make a recommendation regarding the application and forward the recommendation and the application materials and referral comments to the next body that will consider it for further recommendation or approval.
- 5) The Planning Commission shall determine if the application complies with this Code and recommend approval or denial of the rezoning to the Board of County Commissioners.
- 6) The Board of County Commissioners shall consider the Planning Commission recommendation to determine if the application complies with this Code and approve or deny the rezone.
- 7) The Director shall promptly provide written notice, including the reasons for the decision, to the applicant following action by the Board of County Commissioners.

B. Rezoning Approval Standards

4.2. Generally. The Board of County Commissioners may approve an application for rezoning if it finds that:

- a. The criteria of subsections (2) and (3), below, are met; and
- b. One or more of the alternatives set out in subsection (4), below, are met; and
- c. No lot, tract, or unplatted land will contain multiple zones within its boundaries as a result of the rezoning.

2.3. Resource Protection Policy

- a. It is the policy of the County not to rezone property in a manner that would create or facilitate the creation of development rights or entitlements that would either:
 - 1) Reduce the level of protection for significant natural resources that exist on the subject property; or

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- 2) Expose additional people or personal property to unmitigated natural hazards that are present on the subject property (*e.g.*, fire, flood, or geological hazards).
- b. This policy may be waived upon a finding by the Board of County Commissioners that:
 - 1) Alternative means have been implemented to achieve a comparable or better level of resource protection (*e.g.*, conservation easements, development agreements, or other comparable mechanisms for resource protection); or
 - 2) The policy is outweighed by a community interest that is served by approval of the rezoning.

3.4. Plan Consistency and Public Facilities

All applications for rezoning shall meet the following criteria:

- a. The proposed zoning district, as applied to the subject property, is consistent with its land use designation in the Master Plan or an amendment to the Master Plan prior to (or concurrently with) the approval of the rezoning application; and
- b. Adequate public facilities are available to serve development in the proposed zoning district; or the proposed zoning district would limit demands upon public facilities more than the existing zoning district; or reasonable assurances are provided that adequate public facilities will be made available to serve new development by the time the new development places demands on the facilities.

4.5. Additional Findings. The Board of County Commissioners may approve an application for rezoning upon a determination that at least one of the following three criteria has been met.

- a. *Alternative #1: Plan Implementation.* The proposed zoning district is more appropriate than the existing zone to implement an adopted or approved current County plan that was developed with public input.
- b. *Alternative #2: Change in Character of the Area.* The proposed zoning district is more appropriate than the existing zoning district because:
 - 1) There has been a change in character or capacity of public facilities in the area (*e.g.*, installation of public facilities, other rezonings, new growth trends, deterioration, development transitions, etc.); and
 - 2) The proposed zone allows for the reasonable development or redevelopment of the subject property in a manner that will be compatible with its existing or planned context.
- c. *Alternative #3: Need for Zoning District to Increase Land Inventory.* The proposed zoning district is more appropriate than the existing zoning district because:
 - 1) There is greater need in the County for land in the proposed zoning district than the existing zoning district based on market conditions; and

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- 2) The proposed zoning district will promote a balance of land uses in the County that will improve economic opportunity or community mobility.

Section 3. Minor Plats, Replat, & Administrative Review

Commented [CH12]: Moved to CH 12

A. Administrative Review Established

1. ~~Generally~~. Minor Plats for creation of two lots, replats, or lot line adjustments approvals are issued by the Director upon a finding of compliance with the applicable requirements of this Code. No public hearing is required.
2. ~~Other Approvals and Permits May Be Required~~. These approvals and permits are in addition to other reviews, approvals, and permits that may be required for compliance with other laws, statutes, or regulations, which may include but are not necessarily limited to:
 - a. ~~State or federal law, including, but not limited to, the Clean Water Act, the Clean Air Act, or the Endangered Species Act;~~
 - b. ~~Adopted building and safety codes;~~
 - c. ~~Resolutions that require permits for activities on public land or within public right-of-way; or~~
 - d. ~~Business licensing resolutions.~~
 - e. ~~35 Acre Road Resolution~~

B. Administrative Review Process

1. ~~Administrative Recommendation, Decision, or Referral~~. Promptly after determination that a complete, sufficient application addresses the comments and recommendations provided pursuant to Chapter 7, Section 2 (D), *Recommended Revisions* (or, after finding that no revisions will be required):
 - a. ~~If the application is for an administrative approval or permit, then the Director shall verify public notice has been given, if required (see Chapter 7, Section 4, *Public Notice*), and either:~~
 - 1) ~~Approve, approve with conditions, or deny the application, as appropriate, and promptly provide written notice, including the reasons for the decision, to the applicant; or~~
 - 2) ~~Refer the application to the Planning Commission for review and recommendation and Board of County Commissioners for decision according to the applicable standards of this Code, upon a determination by the Director, in his or her sole discretion, that the development, as proposed justifies the referral because it:~~
 - i. ~~May have material impacts on neighboring properties or public resources that are unusual in kind or degree due to the unusual context of the subject property; or~~

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- ~~ii. — Involves material potential for reasonable disagreement regarding whether the proposed development complies with the standards of this Code, or whether particular standards of this Code apply.~~
- ~~b. — If referred, the application shall be processed as a preliminary plat in accordance with Chapter 8, Section 4(B), *Preliminary Plat*.~~
- ~~c. — If the application is referred for a public hearing approval, then the Director shall make a recommendation regarding the application and forward the recommendation and the application materials and referral comments to the next body that will consider it for further recommendation or approval.~~
- 2. — Recordation:** Minor plats may be recorded when all public improvements shown on the plat are installed and the County has granted preliminary acceptance of the improvements pursuant to Chapter 6, Section 1(C), *Acceptance of Public Improvements*.

Section 4. Preliminary and Final Plats Public Hearing Review

A. Application Review Process

~~All applications for subdivision shall be processed in accordance with Chapter 7 *Standardized Application Review Process*.~~

- 1. — Public Notice Requirement.** Public notice shall be made in accordance with Chapter 7, Section 4, *Public Notice*.
- 2. — Public Hearing Requirements.** Except for minor final plats, all subdivision applications are reviewed and considered for approval, approval with conditions, or denial at public hearings.

B. Preliminary Plat

- 1. — Generally.**
 - ~~a. — Approvals are issued upon a finding of compliance with applicable requirements of this code following a public hearing with the applicable review body.~~
 - ~~b. — Except in the case of a minor final plat, preliminary plat approval is required prior to the approval of a final plat. Preliminary plats shall demonstrate compliance with this Code, including Chapters 3, 4, 5 and 6.~~
- 2. — Preliminary Plat Review Process.**
 - ~~a. — Promptly after determination that a complete, sufficient application addresses the comments and recommendations provided pursuant to Chapter 7, Section 2 (D), *Recommended Revisions* (or, after finding that no revisions will be required):~~
 - ~~1) — The Director shall verify public notice has been given (see Chapter 7, Section 4, *Public Notice*).~~

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- 2) ~~The Director shall make a recommendation regarding the application and forward the recommendation and the application materials and referral comments to the next body that will consider it for further recommendation or approval.~~
- 3) ~~The Director shall set the application on the agenda of the next body that will consider the application.~~
- 4) ~~Generally, the application shall be heard during the next regular meeting of that body that meets the following two conditions:~~
 - i. ~~There is sufficient time to meet applicable public notice requirements; and~~
 - ii. ~~There is available room on the agenda.~~
- 5) ~~The Director shall coordinate with recommending and decision-making bodies to fix reasonable times for hearings. Said bodies are authorized to convene special meetings to hear applications as they determine appropriate.~~
- 6) ~~The Director, or a designee, shall notify the applicant regarding the time and place of the public hearings.~~
- 7) ~~When reviewed by the Planning Commission, The Planning Commission shall determine if the application complies with this Code. The Planning Commission shall recommend approval, approval with conditions, or denial.~~
- 8) ~~When reviewed by the Board of County Commissioners, the Board of County Commissioners shall determine if the application complies with this Code. The Board of County Commissioners shall approve, approve with conditions, or deny the application.~~

C. Final Plat

1. ~~**Generally.** Final plats may be approved by the Board of County Commissioners upon a finding that they are consistent with the preliminary plat and meet all applicable requirements of this Code.~~
2. ~~**Final Plat Review Process.**~~
 - a. ~~Promptly after determination that a complete, sufficient application addresses the comments and recommendations provided pursuant to Chapter 7, Section 2 (D), *Recommended Revisions*, and that the application is consistent with the approved preliminary plat (or, after finding that no revisions will be required):~~
 - 1) ~~The Director shall verify public notice has been given if required (*see Chapter 7, Section 4, *Public Notice**)~~
 - 2) ~~The Director shall make a recommendation regarding the application and forward the recommendation and the application materials and referral~~

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~~comments to the Board of County Commissioners that will consider it for approval.~~

- ~~3) The Director shall set the application on the agenda of the County Commissioners.~~
- ~~4) Generally, the application shall be heard during the next regular meeting of that body that meets the following two conditions:~~
 - ~~i. There is sufficient time to meet applicable public notice requirements; and~~
 - ~~ii. There is available room on the agenda.~~
- ~~5) The Director shall coordinate with recommending and decision-making bodies to fix reasonable times for hearings. Said bodies are authorized to convene special meetings to hear applications as they determine appropriate.~~
- ~~6) The Director, or a designee, shall notify the applicant regarding the time and place of the public hearings.~~
- ~~7) When reviewed by the Board of County Commissioners, the Board of County Commissioners shall determine if the application complies with the approved preliminary plat and conditions of approval.~~

- ~~3. **Recordation.** Final plats may be recorded when all public improvements shown on the plat are installed and the County has granted preliminary acceptance of the improvements pursuant to Chapter 6, Section 1(C), *Acceptance of Public Improvements*.~~

D. Plat Correction

- ~~1. **Generally.** In accordance with C.R.S. § 30-28-133, the Board of County Commissioners may approve a correction plat if:~~
 - ~~a. The sole purpose of such correction plat is to correct one or more technical errors in an approved final plat; and~~
 - ~~b. Such correction plat is consistent with the applicable approved preliminary plat.~~
- ~~2. **Limitations.** If the technical error or errors of an approved plat meet the description of any errors under C.R.S. § 38-51-111(2), a surveyor's affidavit of correction, as defined in C.R.S. § 38-51-102, shall be prepared in lieu of a correction plat.~~

Section 14. Administrative Modifications

Commented [CH13]: Moved from Ch 10

A. Administrative Modifications and Reasonable Accommodations

- 1. Generally.** The purpose of this is to provide a process to allow minor variations to dimensional or numerical standards of this Code in order to:
 - a. Facilitate efficiency in the development review and approval process;

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- b. Facilitate development in accordance with development applications that have received final approval; and
 - c. Allow for reasonable accommodations for disabled persons as required by Federal law.
2. **Authority of Director.** The Director may approve, approve with conditions, or deny administrative modifications or reasonable accommodations for any approvals and permits originally approved administratively, and for legally nonconforming development. This does not apply to situations where different amendment or modification procedures are established in this Code.
3. **Standards for Administrative Modifications.**
- a. *Setbacks.* The Director ~~may shall have authority to Administratively~~ approve ~~administrative~~ modifications to setbacks upon a finding that:
 - 1) The reduction of a setback is not more than 25 percent of the required setback;
 - 2) The reduction of the setback will not reduce the spacing from one use to another where such spacing is required;
 - 3) The reduction of the setback is not used to change setback requirements that are imposed to ensure compliance with Chapter 4 of this Code.
 - ~~b. *Lot Area or Lot Width.* The Director may approve an administrative modification to lot area or lot width, or both, on a minor final plat in accordance with Chapter 3, Section 1, Lot Dimensions by Zoning District.~~
 - ~~c. *Limitations.* No administrative modification may be approved under this subsection (c) if:~~
 - 1) The proposed modification would require an amendment to a previously executed agreement between the applicant and the County, or modify a condition or restriction placed on the subject property by the County (unless the agreement is amended or the condition or restriction removed);
 - 2) The variation would adversely affect reasonable development expectations related to, or the present use and enjoyment of, adjacent land;
 - 3) The variation would create a material negative impact on public health or safety; or
 - 4) The variation would result in an encroachment that is prohibited by an easement, unless the impacted easement holders have submitted a written authorization for the encroachment.
4. **Reasonable Accommodations.** The Director may authorize a reasonable accommodation in order to allow for the administrative modification of standards of this Code in order to afford a disabled person equal opportunity to use and enjoy a dwelling, compared to a person who is not disabled, in accordance with applicable Federal Law.

Commented [CH14]: Established/Clarified in CH 3 Variations to Lot Size (avoid duplication/conflict).

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5. **De Minimus Modifications.** If a proposed improvement is so minor in terms of the overall development as to have no impact on the other elements of the approved development or adjacent property, as determined by the Director, such site improvement shall not require an administrative variation. Upon the property owner's request, the Director shall recognize in writing that a proposed improvement is *de minimus*. The *de minimus* exception shall not be used in a manner such that its cumulative effect is to circumvent the application of this Code.

Section 25. Variances

Commented [CH15]: Moved from Ch 10

A. Variances

1. **Generally.** The Board of Adjustment ("BOA") may authorize variances from the requirements of this Code, subject to terms and conditions fixed by the BOA. A variance from the terms of this Code shall be considered an extraordinary remedy, and the limitations set forth in subsection (2), below are intended to constrain the BOA's power to authorize variances.
2. **Standards and Limitations.**
 - a. **Findings.** No variance shall be authorized unless the BOA finds all of the following:
 - 1) Due to special circumstances applicable to subject property, including the exceptional narrowness, shallowness, or shape of the subject property on the effective date of this Code, or exceptional topographic conditions, or other extraordinary and exceptional situation or condition of the subject property, the strict application of a regulation in this Code would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of the subject property is found to deprive subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification; and
 - 2) A variance from the strict application of the regulation at issue would relieve such difficulties or hardship. That the variance not constitute a grant of special privileges inconsistent with the limitations upon other property in the vicinity and zone in which such property is situated; and
 - 3) The requested variance would not create substantial detriment to the public good or substantially impair the intent and purpose of this Code. A variance shall not be granted for a use or activity that is prohibited by this Code in the zoning district in which the subject property is located.
 - b. In determining whether difficulties to, or hardship upon, the owner of a subject property exist, as used in subsection (2)(a)1, findings above, the adequacy of access to sunlight for solar energy devices installed on or after January 1, 1980, is a permissible consideration.

Commented [CH16]: Moving away from hardship and trying for more tangible findings

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- c. Neither a nonconforming use of neighboring lands or structures in the same zoning district, nor a permitted or nonconforming use of lands or structures in other zoning districts shall be grounds for the issuance of a variance.

~~d. Under no circumstances shall the BOA grant a variance to allow a use that is prohibited by this Code in the zoning district in which the subject property is located.~~

Commented [CH17]: Incorporated into Finding #3 above

3. **Conditions of Approval.** In granting any variance, the BOA may prescribe appropriate conditions and safeguards in conformity with this Code and the Master Plan and particularly the standards set forth in this Section. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Code and punishable as provided in Chapter 13, *Enforcement*.
4. **Variances Run with the Land.** Every variance shall transfer and run with the land.
5. **No Precedent.** The granting of any variance shall not constitute or be construed as a precedent, ground or cause for any other variance.

Section 56. Other Land Use Approvals

A. Location and Extent Certificate

1. **Generally.** The Planning Commission shall approve or disapprove the location and extent of any road; park; or other public way, ground, or space; public building or structure; or public utility, whether publicly or privately owned, as provided in C.R.S. § 30-28-110(1), except where such location and extent is established by final plat.
2. **Time Limitation.** The Planning Commission shall approve or disapprove a location and extent certificate within 30 days after the date the request for such certificate is formally presented. Failure to decide the request within 30 days shall constitute approval of the request, unless a longer period is agreed to by the applicant and the County.

B. Text Amendments

Amendments to the text of this Code shall require the same process as its original adoption, as specified in C.R.S. § 30-28-133, as amended.

C. Planned Unit Development

(Reserved)

D. Areas and Activities of State Interest

(Reserved)

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Section 6. Vested Rights

A. Purpose

It is the purpose of this Section to provide procedures necessary to implement Article 68, Title 24, C.R.S., titled "Vested Property Rights".

B. Eligibility

Vested property rights shall not be created except upon specific application for approval of such rights by a landowner, as hereinafter provided in this Section, and approval by the Board of County Commissioners of a site-specific development plan. Any landowner may, but is not required to, apply for the creation of vested property rights, provided that at least the following conditions exist:

1. The site is located within the unincorporated Delta County.
2. The site is zoned to permit the specific use or uses for which vesting is sought.
3. The landowner has completed and submitted all documents and information required by this Code and this Section, and notice and hearing requirements of this Code have been met.
4. The landowner has obtained all other related development approvals, including but not limited to variances, site plan, zoning changes, subdivision, or conditional uses.

C. Required Certifications

1. **Generally.** The proposed site-specific development plan shall include the certifications set out in this on its cover page.
2. **Acknowledgment.** The acknowledgment of the property owner shall be in the following form (the notary block may be changed as appropriate to the type of entity and the location of the notary):

I, _____, owner, do hereby agree that the above described property will be developed in accordance with the uses, restrictions and conditions contained in this Site Specific Development Plan. I understand that failure to abide by the terms and conditions of this Site-Specific Development Plan shall result in the forfeiture of any development rights which may be vested by virtue of the approval of this proposed Site-Specific Development Plan.

Signature of Owner

State of Colorado

}

} ss:

_____ County of _____

}

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The foregoing instrument was acknowledged before me this ____ day of _____,
20____, by _____ as _____ of _____, a _____.

Witness my hand and notarial seal.

My commission expires _____.

[SEAL]

Notary Public

3. **Vested Rights Notice and County Approval Certification.** The notice of creation of vested rights shall be in the following form:

**APPROVAL OF THIS PLAN MAY CREATE A VESTED PROPERTY
RIGHT PURSUANT TO ARTICLE 68 OF TITLE 24, COLORADO
REVISED STATUTES.**

Approved this ____ day of _____, 20____, by the Board of County
Commissioners of Delta County, Colorado.

Chair

APPROVED AS TO FORM:

County Attorney

Clerk and Recorder

This document was filed for record in the office of the County Clerk
and Recorder of Delta County at ____ .m. on the ____ day of _____
A.D. 20____, in Book _____, Map _____, Reception No. _____.

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Clerk and Recorder

Clerk and Recorder

D. Record of Regulations at Time of Application

1. **Meeting Required.** The Director shall schedule a completeness-check meeting with the applicant to confirm the completeness of the application form and proposed site-specific development plan. The meeting shall take place within the time specified for completeness review in Chapter 7, Section 2 (A), *Completeness Review*, or at such other time as may be agreed to between the Director and the applicant.
2. **Record.** In order to ensure appropriate implementation of C.R.S. § 24-68-102.5, on the next business day following the Director's determination that the application form and proposed site-specific development plan are complete, this Code and any amendatory resolutions in effect on that day shall become part of the County's official file on the matter.

E. Special Notice Requirements

1. **Generally.** The notice requirements of this apply to the hearing on the vested rights application. Notice is required after the hearing (if the application is approved or approved with conditions) in accordance with s (G) below, Effective *Date of Approval; Public Notice*.
2. **Notice Requirements.**
 - a. *Mailing.* At least 10 calendar days prior to the public hearing date, the applicant shall send notice of the time, place, and subject matter of the public hearing by certified mail to the owners of all adjacent properties. The applicant shall obtain the names of said owners from the last preceding real property tax roll of the County Assessor's office.
 - b. *Posting.*
 - 1) Not less than 15 calendar days prior to the Board of County Commissioners public hearing date, the landowner shall cause the site to be posted by means of one or more signs, erected in a conspicuous location, with at least one sign posted along each street frontage of the subject property.
 - 2) Signs shall be at least 3 ft. by 4 ft. in dimension, supported by corner posts, with the bottom of the sign face at least 4 ft. above ground level. Letters shall

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be at least one inch in height, or large enough to be intelligible from the nearest public street.

- 3) Signs shall read as follows:

**NOTICE OF PUBLIC HEARING
TO CREATE VESTED PROPERTY RIGHTS**

NOTICE IS HEREBY GIVEN THAT APPLICATION HAS BEEN MADE TO
CREATE VESTED PROPERTY RIGHTS FOR THIS SITE PURSUANT TO
ARTICLE 68 OF TITLE 24, C.R.S.

A PUBLIC HEARING WILL BE HELD BEFORE THE BOARD OF
COUNTY COMMISSIONERS AT _____, AT ____ .M. ON
THE ____ OF _____, 20__.

ALL THOSE WISHING TO BE HEARD SHOULD BE PRESENT AT THE
TIME AND PLACE STATED ABOVE.

[NAME OF LANDOWNER]

- c. *Publication.* Notice of the public hearing shall be published in the County's legal newspaper at least 15 calendar days prior to the Board of County Commissioners hearing. The notice shall read as follows:

**NOTICE OF PUBLIC HEARING
TO CREATE VESTED PROPERTY RIGHTS**

PURSUANT TO ARTICLE 68 OF TITLE 24, C.R.S., NOTICE IS HEREBY
GIVEN THAT APPLICATION HAS BEEN FILED WITH DELTA COUNTY
TO CREATE VESTED PROPERTY RIGHTS FOR THE PROPERTY
DESCRIBED AS [general legal description or address].

A PUBLIC HEARING WILL BE HELD BEFORE THE BOARD OF
COUNTY COMMISSIONERS AT _____, AT ____ .M.
ON THE ____ DAY OF _____, 20__, AT WHICH TIME ALL
THOSE WISHING TO BE HEARD SHOULD BE PRESENT AT THE TIME
AND PLACE STATED ABOVE.

Dated this ____ day of _____, 20__.

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[NAME OF LANDOWNER]

3. **Certified Statements.** The landowner shall submit to the Director, not less than seven calendar days prior to the scheduled public hearing date, certified statements that the mailing, posting, and publication did occur in compliance with the requirements set out in subsection (2), above. The statement certifying the adequacy of the sign posted on the subject property shall be accompanied by photographs showing the placement of the sign on the subject property, and shall be sufficiently legible to read the text of the notice on the sign. A publisher's affidavit is adequate to certify that the published notice meets the requirements of this Code.

F. Special Provisions for Stale Vested Rights Applications

1. **Generally.** An application form and proposed site-specific development plan shall expire one year after the Director determines completeness pursuant to subsection (D) above, *Record of Regulations at Time of Application* if it is not pursued by the applicant.
2. **Required Revisions.** After the date specified in subsection (1), above, a site-specific development plan may continue to be processed if:
 - a. There have been no changes to this Code since the completeness determination that could affect the decision on the application; or
 - b. There have been changes to this Code since the completeness determination that could affect the decision on the application, but:
 - 1) The Director determines that the application still complies with this Code; or
 - 2) The Applicant agrees to revise the application to comply with this Code, as amended since the completeness determination.

G. Effective Date of Approval; Public Notice

1. **Generally.** For all purposes, including judicial review and referendum, the effective date that a vested property right is deemed to be created shall be the date of publication of a notice advising the general public of the approval of the vested property right.
2. **Notice Requirement.**
 - a. *Contents of Notice.* The landowner shall cause such publication to be made, which shall occur not later than 14 days following Board of County Commissioners approval of the site-specific development plan by resolution. Such notice shall read:

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NOTICE VESTED PROPERTY RIGHTS CREATED

Notice is hereby given that on the ____ day of _____, 20____, the Board of County Commissioners of Delta County approved a Site-Specific Development Plan for the property described as [general legal description or address]. This publication of the approval of such Site-Specific Development Plan may have created vested property rights pursuant to Article 68 of Title 24, C.R.S.

The approved Site-Specific Development Plan, for the property described hereinabove, has been recorded in the County of Delta in Book ____ at Page _____. Such approval is subject to all rights of referendum and judicial review.

[NAME OF LANDOWNER]

- b. *Proof of Notice.* A publisher's affidavit shall be provided to the Director as certification that the required notice pursuant to subsection (2) (a), above, was published.

H. Subsequent Regulation Prohibited

- 1. **Generally.** Any vested property right, once established, shall not be subject to any zoning or land use action by the County which would alter, impair, prevent, diminish or otherwise delay the development or use of the site as set forth in an approved site-specific development plan, with the following exceptions:
 - a. Without payment of compensation by the County, upon the consent of the affected landowner;
 - b. Without payment of compensation by the County, upon the discovery of natural or man-made hazards on or in the immediate vicinity of the site, which hazards could not reasonably have been discovered at the time of site-specific development plan approval or, if reasonably discoverable, are not the result of error or misrepresentation by the applicant or its agents, and which hazards, if uncorrected, would pose a serious threat to the public health, safety and welfare; or
 - c. As long as neither subsection (1)(a) nor (1)(b), above, has occurred, to the extent that the affected landowner receives just compensation for all costs, expenses and liabilities incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning and marketing, legal and other consultant fees incurred after approval of the site specific development plan by the County, together with interest thereon at the legal rate until paid. Just

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compensation shall not include any diminution in the value of the site that is caused by such action.

2. **Limitations.** The establishment of a vested property right pursuant to this Section shall not preclude the application of resolutions or regulations which are general in nature and are applicable to all property within the unincorporated Delta County, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes.

I. Extension and Amendments

1. **Extensions.** No extension of the vesting period shall be granted unless such extension is approved by the Board of County Commissioners in its sole discretion following a public hearing. Such requests for extension shall be filed by the landowner, together with all materials and fees required by this Code to be submitted for original approval.
2. **Amendments.**
 - a. Applications for amendment to an approved site-specific development plan must be submitted and reviewed under the same procedures set forth in this Code as required for original approval.
 - b. Amendments to an approved site-specific development plan shall not automatically extend the approved vesting period. Specific application for the extension of an approved vesting period shall be processed in the same manner as the original approval.

J. Repealer

Nothing in this Section is intended to create any vested property right, but only to implement the provisions of Article 68, Title 24, C.R.S. In the event of the repeal of said article or a judicial determination that said article is invalid or unconstitutional, this Article shall be deemed to be repealed and the provisions hereof shall no longer be in effect.

~~K. Recording of Approvals~~

~~The following permits and approvals shall be recorded in the public records of Delta County at the applicant's expense: Minor Final Plats, Final Plats, Conditional Use Approvals, Development Agreements, Improvements Agreements, and Reimbursement Agreements.~~

~~L. Effect of Approvals~~

1. ~~**Generally.** It is the intent of the Board of County Commissioners that development approved pursuant to this Code be carried out in a timely manner pursuant to the specifications, terms, and conditions of approval, and that the steps within each approval process be carried out with diligence.~~
2. ~~**Effect of Approval or Permit.**~~
 - a. ~~Approval of an application means that the County approves the particular use, plan, or other specific activity for which the approval was granted. Physical development of land may require a sequence of related (and increasingly detailed) approvals.~~

Commented [CH18]: Duplicative of CH 9 Approvals & Denials – not specific to Vested Rights

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- b.—Supplemental materials that are provided in support of an approval become part of the approval unless otherwise noted in the approval itself.
- c.—Approvals and permits may be transferred to a subsequent owner of the property for which the approval or permit was issued, unless the approval or permit is specifically designated as non-transferable by condition of approval. Transferred permits shall continue to be valid for their full original terms, and the transferee may apply for an amendment to the approval or permit in the same manner as the original applicant.

M. Duration of Approvals

- 1.—**Approvals.** Except as provided in subsections (2) and (3), below, administrative approvals and approvals through public hearings shall expire one year from the date of approval if they are not utilized.
- 2.—**Development Agreements.** A development agreement is valid for the term set out in the development agreement.
- 3.—**Approvals That Do Not Lapse.** Rezonings, vacations or abandonments of easements or right-of-way, text amendments, Master Plan amendments, and administrative appeals do not lapse.

N. Extensions of Approvals

- 1.—**Generally.** The term of permits and approvals may be extended by written request according to the standards and procedures of this Section.
- 2.—**Timing of Application for Extension.**
 - a.—Written requests for extensions shall be received not later than 30 days prior to the expiration of the permit or approval.
 - b.—Untimely requests for extensions will not be granted unless it is demonstrated that extraordinary circumstances (*e.g.*, an unusual severe weather event) justify the request. However, expired permits and approvals cannot be extended.
- 3.—**Extensions for Extraordinary Circumstances.** The Board of County Commissioners may, by resolution, extend the term of all permits and approvals County-wide or in designated areas of the County in response to extraordinary circumstances, such as flood, wildfire, tornado, or other natural or man-made disaster which makes it temporarily infeasible to commence or continue with construction. The period of such extensions shall be determined by the Board of County Commissioners.
- 4.—**Administrative Extensions.** Unless otherwise provided in the permit or approval, the Director may grant one extension of any permit or approval for a period not to exceed the 12 months. Such extensions may be granted upon timely written request with good cause shown.
- 5.—**Extensions after Hearing.**

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- a. ~~Unless otherwise provided in the permit or approval, a hearing is required for:~~
 - 1) ~~Extensions for terms that are longer than those which can be granted by the Director pursuant to subsection (4), above; and~~
 - 2) ~~Second (and subsequent) extensions.~~
 - b. ~~Extensions of discretionary permits and approvals pursuant to this subsection shall be heard by the body that granted the original approval. Extensions of administrative permits and approvals pursuant to subsection (5) (a) 2., above, shall be heard by the Planning Commission.~~
 - c. ~~Extensions may be granted after hearing if it is demonstrated that:~~
 - 1) ~~There is good and reasonable cause for the request; and~~
 - 2) ~~The Applicant has provided reasonable assurances that it will perform (or cause to be performed) the work authorized by the permit or approval within the extended term.~~
6. ~~**Extensions Pursuant to Permit or Approval Terms.** If a method of extension is provided within a permit, approval, or related development agreement between the applicant and the County, then such method of extension shall supersede this with respect to said permit, approval, or related agreement.~~
7. ~~**Effect of Appeals, Litigation, or Mediation.**~~
- a. ~~If there is an appeal, litigation, or mediation during the term of an approval granted by the County that limits the applicant's ability to use or develop land pursuant to the permit or approval, then the term shall be tolled for the duration of the appeal, litigation, or mediation, and the date shall be recalculated upon conclusion of the appeal, litigation, or mediation.~~
 - b. ~~The new expiration date shall be established by adding the number of days that the approval would have remained valid before the appeal, litigation, or mediation commenced to the date the appeal, litigation, or mediation was concluded by:~~
 - 1) ~~The expiration of the subsequent appeal period after final judgment or order in the initial appeal or litigation, or, if no appeal is available, after issuance of the final judgment or order; or~~
 - 2) ~~The termination of mediation by resolution of the conflict or impasse.~~
 - c. ~~This subsection does not apply to litigation regarding the enforcement of Delta County resolutions, including this Code.~~

O. Correction of Approvals

- 1. ~~**Generally.** Permits and approvals may be corrected pursuant to this Section.~~
- 2. ~~**Correction of Scrivener's Errors.** Permits and approvals, including plats, may be corrected by the Director or upon application to the Director as follows:~~

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a.—*Generally.* The Director may approve an application to reform a scrivener's error in a development approval, including an error in an application or notice, which error causes the permit or approval to inaccurately reflect the decision-maker's intent, and where it is demonstrated that:

- 1) — The correction does not include a change of judgment, policy, or prior intent of the decision-maker;
- 2) — The reformation of the permit or approval is essential to ensure that the documentation reflects the intent and decision of the decision-maker;
- 3) — The record, including, but not limited to, the staff recommendation, minutes, and motion, evidences the clear intent of the decision-maker;
- 4) — The substance of the decision was clearly evident at the time of the decision, and there was no intent to deceive the public or the decision-maker on the part of the current applicant at any time;
- 5) — Failure to approve the reformation would lead to an unjust result;
- 6) — The error in the development approval did not mislead anyone in a way that would cause them to be prejudiced by the reformation; and
- 7) — Any errors related to public notice did not affect the legal sufficiency of the required notice.

b.—*Correction within 30 Days.* In the alternative, the Director, within 30 days of the decision on an application for development approval, may correct a clerical or scrivener's error in the development approval if:

- 1) — The error is not related to public notice;
- 2) — The error causes the approval, as written, to inaccurately reflect the clear decision of the decision-maker; and
- 3) — The Director promptly notifies the applicant and the decision-maker regarding the corrections.

3.—**Effect on Approval.** A permit or approval that is modified pursuant to this shall relate back to the date of the corrected approval, such that the effective date of the corrected language shall be deemed to be the same as the effective date of the original approval.

P. Denials

The denial of any plat, plan, or agreement shall be based only on a failure to conform to the requirements of this Code. The denial of a plat, plan, or agreement shall be supported by written findings specifying the provisions that the plat, plan, or agreement failed to address or satisfy.

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Chapter 9. Approvals, ~~and Denials~~ and Appeals

Section 1. Approvals and Denials

A. Recording of Approvals

The following permits and approvals shall be recorded in the public records of Delta County at the applicant's expense: Minor Final Plats, Final Plats, Conditional Use Approvals, Development Agreements, Improvements Agreements, and Reimbursement Agreements.

B. Effect of Approvals

1. **Generally.** It is the intent of the Board of County Commissioners that development approved pursuant to this Code be carried out in a timely manner pursuant to the specifications, terms, and conditions of approval; and that the steps within each approval process be carried out with diligence.
2. **Effect of Approval or Permit.**
 - a. Approval of an application means that the County approves the particular use, plan, or other specific activity for which the approval was granted. Physical development of land may require a sequence of related (and increasingly detailed) approvals.
 - b. Supplemental materials that are provided in support of an approval become part of the approval unless otherwise noted in the approval itself.
 - c. Approvals and permits may be transferred to a subsequent owner of the property for which the approval or permit was issued, unless the approval or permit is specifically designated as non-transferable by condition of approval. Transferred permits shall continue to be valid for their full original terms, and the transferee may apply for an amendment to the approval or permit in the same manner as the original applicant.

C. Duration of Approvals

1. **Approvals.** Except as provided in subsections (2) and (3), below, administrative approvals and public hearing approvals shall expire one year from the date of approval if they are not utilized.
2. **Development Agreements.** A development agreement is valid for the term set out in the development agreement.
3. **Approvals That Do Not Lapse.** Rezoning, vacations or abandonments of easements or rights-of-way, text amendments, Master Plan amendments, and administrative appeals do not lapse.

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D. Extensions of Approvals

1. **Generally.** The term of permits and approvals may be extended by written request according to the standards and procedures of this Section.
2. **Timing of Application for Extension.**
 - a. Written requests for extensions shall be received no later than 30 days prior to the expiration of the permit or approval.
 - b. Untimely requests for extensions will not be granted unless it is demonstrated that extraordinary circumstances (*e.g.*, an unusual severe weather event) justify the request. However, expired permits and approvals cannot be extended.
3. **Extensions for Extraordinary Circumstances.** The Board of County Commissioners may, by resolution, extend the term of all permits and approvals County-wide or in designated areas of the County in response to extraordinary circumstances, such as flood, wildfire, tornado, or other natural or man-made disaster which makes it temporarily infeasible to commence or continue with construction. The period of such extensions shall be determined by the Board of County Commissioners.
4. **Administrative Extensions.** Unless otherwise provided in the permit or approval, the Director may grant one extension of any permit or approval for a period not to exceed the 12 months. Such extensions may be granted upon timely written request with good cause shown.
5. **Extensions after Hearing.**
 - a. Unless otherwise provided in the permit or approval, a hearing is required for:
 - 1) Extensions for terms that are longer than those which can be granted by the Director pursuant to subsection (4), above; and
 - 2) Second (and subsequent) extensions.
 - b. Extensions of discretionary permits and approvals pursuant to this subsection shall be heard by the body that granted the original approval. Extensions of administrative permits and approvals pursuant to subsection (5) (a) 2., above, shall be heard by the Planning Commission.
 - c. Extensions may be granted after hearing if it is demonstrated that:
 - 1) There is good and reasonable cause for the request; and
 - 2) The applicant has provided reasonable assurances that it will perform (or cause to be performed) the work authorized by the permit or approval within the extended term.
6. **Extensions Pursuant to Permit or Approval Terms.** If a method of extension is provided within a permit, approval, or related development agreement between the applicant and the County, then such method of extension shall supersede this with respect to said permit, approval, or related agreement.

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7. Effect of Appeals, Litigation, or Mediation.

- a. If there is an appeal, litigation, or mediation during the term of an approval granted by the County that limits the Applicant's ability to use or develop land pursuant to the permit or approval, then the term shall be tolled for the duration of the appeal, litigation, or mediation, and the date shall be recalculated upon conclusion of the appeal, litigation, or mediation.
- b. The new expiration date shall be established by adding the number of days that the approval would have remained valid before the appeal, litigation, or mediation commenced to the date the appeal, litigation, or mediation was concluded by:
 - 1) The expiration of the subsequent appeal period after final judgment or order in the initial appeal or litigation, or, if no appeal is available, after issuance of the final judgment or order; or
 - 2) The termination of mediation by resolution of the conflict or impasse.
- c. This subsection does not apply to litigation regarding the enforcement of Delta County ordinances or resolutions, including this Code.

E. Correction of Approvals

1. **Generally.** Permits and approvals may be corrected pursuant to this Section.
2. **Correction of Scrivener's Errors.** Permits and approvals, including plats, may be corrected by the Director or upon application to the Director as follows:
 - a. *Generally.* The Director may approve an application to reform a scrivener's error in a development approval, including an error in an application or notice, which error causes the permit or approval to inaccurately reflect the decision-maker's intent, and where it is demonstrated that:
 - 1) The correction does not include a change of judgment, policy, or prior intent of the decision-maker;
 - 2) The reformation of the permit or approval is essential to ensure that the documentation reflects the intent and decision of the decision-maker;
 - 3) The record, including, but not limited to, the staff recommendation, minutes, and motion, evidences the clear intent of the decision-maker;
 - 4) The substance of the decision was clearly evident at the time of the decision, and there was no intent to deceive the public or the decision-maker on the part of the current applicant at any time;
 - 5) Failure to approve the reformation would lead to an unjust result;
 - 6) The error in the development approval did not mislead anyone in a way that would cause them to be prejudiced by the reformation; and
 - 7) Any errors related to public notice did not affect the legal sufficiency of the required notice.

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- b. *Correction within 30 Days.* In the alternative, the Director, within 30 days of the decision on an application for development approval, may correct a clerical or scrivener's error in the development approval if:
 - 1) The error is not related to public notice;
 - 2) The error causes the approval, as written, to inaccurately reflect the clear decision of the decision-maker; and
 - 3) The Director promptly notifies the applicant and the decision-maker regarding the corrections.
3. **Effect on Approval.** A permit or approval that is modified pursuant to this shall relate back to the date of the corrected approval, such that the effective date of the corrected language shall be deemed to be the same as the effective date of the original approval.

F. Denials

The denial of any plat, plan, or agreement shall be based only on a failure to conform to the requirements of this Code. The denial of a plat, plan, or agreement shall be supported by written findings specifying the provisions that the plat, plan, or agreement failed to address or satisfy.

Section 2. Continuances and Withdrawal

1. **Continuances.**
 - a. *At Applicant's Request.* Requests for continuance by the applicant of any proceeding called for in this Code may be granted at the discretion of the body holding the public meeting or public hearing. If granted, the applicant shall pay all additional costs associated with the rescheduling of the proceeding.
 - b. *At County's Initiative.* No public hearing shall continue for a period of more than 40 days from the date of commencement without the written consent of the applicant.
2. **Withdrawal.** Any application may be withdrawn, either in writing or on the record, prior to or during the meeting or hearing at which the application is considered, provided that it is withdrawn before official action is taken on the application.

Section 3. Successive Applications

1. **Generally.** It is the policy of the County not to hear successive applications for the same approval or permit after a substantially similar application is denied. The limitations of this prevent the consideration of successive applications.
2. **Time Required Between Substantially Similar Applications.** If an application for a permit or approval is denied, a substantially similar application will not be accepted for:
 - a. Six months from the date of denial in the case of administrative permits; and
 - b. 12 months from the date of denial for all other permits or approvals.

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3. **Exceptions to Successive Application Restrictions.** The Director may allow exceptions to this if there has been a material change of circumstances that justifies consideration of a substantially similar application. By way of example and not limitation:
 - a. If a spacing requirement was the reason for the denial, and the use from which spacing is required moved away; or
 - b. If a subsequent amendment to this Code affects the application in a manner that could allow for its approval or approval with conditions.

Section 41. Appeals ~~Administrative Appeals~~ to Board of Adjustment

1. **Generally.** The Board of Adjustment ("BOA") shall hear and decide appeals where it is alleged that there is an error in any order, requirement, decision or determination made by the Director in the administration of this Code. The hearing before the BOA shall be "De Novo". In order to initiate an appeal, an aggrieved party must submit a complete appeal application and filing fee within the prescribed timeline. Said application shall include, but not be limited to, information about how the appellant is aggrieved.

The BOA may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination as ought to be made; where the BOA finds that the Director acted:

- a. Without clear and convincing evidence to support the order, requirement, decision or determination; or
- b. Beyond the Director's authority.

2. **Timing.** Appeals made to the BOA must be made in writing and filed with the Director within 30 days following the action or decision of the Director from which the appeal is taken. An aggrieved party has 15 days to file a complete appeal application from the date of the Director's decision. If additional time is warranted, the Director may afford additional time (up to 30 days total) to file the appeal.

- 2.3. **Automatic Stay; Exception.** An appeal from an order, requirement, decision or determination made by the Director shall stay all proceedings unless the Director certifies that such stay would cause imminent peril to life or property. The BOA shall consider the appeal within ~~forty-five~~thirty (~~45~~30) days of the filing of the appeal.

Section 5. Appeals to Board of County Commissioners

1. **Generally.** Decisions of the BOA may be appealed to the BOCC by an aggrieved party. The hearing before the BOCC shall be "Of Record". In order to initiate an appeal, an aggrieved party must submit a complete appeal application and filing fee within the prescribed timeline. Said application shall include, but not be limited to, information about how the appellant is aggrieved.

The BOCC may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination as ought to be made; where the BOCC finds that BOA decision is

Commented [CH1]: Moved this section from Chapter 12 and amended as redlined to reflect BoA by-laws.

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without clear and convincing evidence to support the order, requirement, decision or determination.

2. **Timing.** An aggrieved party has up to 10 days to file a complete appeal application from the date of the BOA decision.
3. **Automatic Stay; Exception.** An appeal from an order, requirement, decision or determination made by the BOA shall stay all proceedings unless the BOA certifies that such stay would cause imminent peril to life or property. The BOCC shall consider the appeal within thirty (30) days of the filing of the appeal.

CHAPTER 10

Chapter 10. Administrative Modifications, Variances, Boundary Adjustments

Section 1. Administrative Modifications

Commented [CH1]: Move to Chapter 8 – Review Processes

A. Administrative Modifications and Reasonable Accommodations

- ~~1. **Generally.** The purpose of this is to provide a process to allow minor variations to dimensional or numerical standards of this Code in order to:~~
 - ~~a. Facilitate efficiency in the development review and approval process;~~
 - ~~b. Facilitate development in accordance with development applications that have received final approval; and~~
 - ~~c. Allow for reasonable accommodations for disabled persons as required by Federal law.~~
- ~~2. **Authority of Director.** The Director may approve, approve with conditions, or deny administrative modifications or reasonable accommodations for any approvals and permits originally approved administratively, and for legally nonconforming development. This does not apply to situations where different amendment or modification procedures are established in this Code.~~
- ~~3. **Standards for Administrative Modifications.**~~
 - ~~a. **Setbacks.** The Director may approve administrative modifications to setbacks upon a finding that:~~
 - ~~1) The reduction of a setback is not more than 25 percent of the required setback;~~
 - ~~2) The reduction of the setback will not reduce the spacing from one use to another where such spacing is required;~~
 - ~~3) The reduction of the setback is not used to change setback requirements that are imposed to ensure compliance with Chapter 4 of this Code.~~
 - ~~b. **Lot Area or Lot Width.** The Director may approve an administrative modification to lot area or lot width, or both, on a minor final plat in accordance with Chapter 3, Section 1, *Lot Dimensions by Zoning District*.~~
 - ~~c. **Limitations.** No administrative modification may be approved under this subsection (c) if:~~
 - ~~1) The proposed modification would require an amendment to a previously executed agreement between the applicant and the County, or modify a condition or restriction placed on the subject property by the County (unless the agreement is amended or the condition or restriction removed);~~

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- ~~2) — The variation would adversely affect reasonable development expectations related to, or the present use and enjoyment of, adjacent land;~~
- ~~3) — The variation would create a material negative impact on public health or safety; or~~
- ~~4) — The variation would result in an encroachment that is prohibited by an easement, unless the impacted easement holders have submitted a written authorization for the encroachment.~~
4. **Reasonable Accommodations.** The Director may authorize a reasonable accommodation in order to allow for the administrative modification of standards of this Code in order to afford a disabled person equal opportunity to use and enjoy a dwelling, compared to a person who is not disabled, in accordance with applicable Federal Law.
5. **De Minimus Modifications.** If a proposed improvement is so minor in terms of the overall development as to have no impact on the other elements of the approved development or adjacent property, as determined by the Director, such site improvement shall not require an administrative variation. Upon the property owner's request, the Director shall recognize in writing that a proposed improvement is *de minimus*. The *de minimus* exception shall not be used in a manner such that its cumulative effect is to circumvent the application of this Code.

Section 2. Variances

A. Variances

1. **Generally.** The Board of Adjustment ("BOA") may authorize variances from the requirements of this Code, subject to terms and conditions fixed by the BOA. A variance from the terms of this Code shall be considered an extraordinary remedy, and the limitations set forth in subsection (2), below are intended to constrain the BOA's power to authorize variances.
2. **Standards and Limitations.**
 - a. ~~No variance shall be authorized unless the BOA finds all of the following:~~
 - 1) ~~Due to the exceptional narrowness, shallowness, or shape of the subject property on the effective date of this Code, or exceptional topographic conditions, or other extraordinary and exceptional situation or condition of the subject property, the strict application of a regulation in this Code would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of the subject property;~~
 - 2) ~~A variance from the strict application of the regulation at issue would relieve such difficulties or hardship; and~~
 - 3) ~~The requested variance would not create substantial detriment to the public good or substantially impair the intent and purpose of this Code.~~

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- b.—In determining whether difficulties to, or hardship upon, the owner of a subject property exist, as used in subsection (2)(a)1., above, the adequacy of access to sunlight for solar energy devices installed on or after January 1, 1980, is a permissible consideration.
 - c.—Neither a nonconforming use of neighboring lands or structures in the same zoning district, nor a permitted or nonconforming use of lands or structures in other zoning districts shall be grounds for the issuance of a variance.
 - d.—Under no circumstances shall the BOA grant a variance to allow a use that is prohibited by this Code in the zoning district in which the subject property is located.
- 3.—**Conditions of Approval.** In granting any variance, the BOA may prescribe appropriate conditions and safeguards in conformity with this Code and the Master Plan and particularly the standards set forth in this Section. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Code and punishable as provided in Chapter 13, *Enforcement*.
- 4.—**Variances Run with the Land.** Every variance shall transfer and run with the land.
- 5.1.—**No Precedent.** The granting of any variance shall not constitute or be construed as a precedent, ground or cause for any other variance.

Section 3. Boundary Adjustments

Commented [CH2]: Move to Chapter 12

A. Boundary Adjustment:

- 1.—**Generally.** Intended for adjustments or revisions of established, undisputed, existing boundary lines between parcels not previously subdivided, and where such adjustment does not result in the creation of an additional lot less than 35 acres.
- 2.—**Standards and Limitations.**
 - a.—For the transfer of ownership from one owner to another, all parties must acknowledge their agreement to permanently adjust a boundary line(s) by their signature on the final plat for the boundary line adjustment. All signatures must be notarized.
 - b.—The surveyor shall certify that no new lots less than 35 acres are being created as a result of the boundary adjustment.

B. Process & Authority.

- 1.—Parties interested in a boundary adjustment shall:
 - a.—Complete an application provided by the Planning Department
 - b.—Provide a draft plat from the applicant's surveyor showing the existing boundary and the proposed boundary adjustment of all affected parcels.
- 2.—The Director shall review the proposed boundary adjustment to verify that no new lots are being created, and that no violations of this code are being created.
- 3.—The Director shall forward the draft plat to the County Surveyor who shall review the plat for accuracy.
- 4.—Once approved by the County Surveyor, the plat shall be recorded with the notarized

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~~signatures of all property owners, their surveyor, the mortgage company if applicable and the County Surveyor.~~

~~5. New deeds describing all affected lots shall be recorded with the approved plat.~~