

DELTA COUNTY PLANNING COMMISSION

**Delta County Board of County Commissioner's Room
560 Dodge St., Delta, CO 81416
Wednesday, November 9, 2022 @ 5:30 p.m.**

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

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

REGULAR AGENDA (REVISED 11/4/22)

5:30 P.M. – CALL TO ORDER

ROLL CALL

DISTRICT 1

Cindy Watson
Steve Schrock
Steve Shea
Vacant, 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:

a. October 26, 2022

RECOMMENDATION: Approve the action minutes as presented.

B. PUBLIC HEARING ITEMS

Public Hearing Items are noticed and open for public comment.

1. 2022 Land Use Code Update

Continued from October 26, 2022. Public Hearing to consider Public Draft 2022 Land Use Code Update.

RECOMMENDATIONS: Staff recommends that the Planning Commission:

- a. Continue the Public Hearing on the 2022 LUC Update to November 16, 2022; and
- b. Provide direction to Staff for finalizing the draft LUC.

CERTIFICATION OF POSTING

On November 4, 2022 at 3:00 PM, Kim Henderson did post the above REVISED AGENDA as public notice of the November 9, 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.

Edits will be incorporated into a Final Draft that will be considered for certification on November 16, 2022. [NOTE: All redline edits, comment boxes, and highlights will be removed for the Final Draft to be presented 11/16/22.]

C. DEPARTMENT REPORT

1. December Planning Commission Schedule
2. Planning Commissioner Terms ending 1/31/2023

D. 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, November 16, 2022 at 5:30 pm in Delta, CO.

CERTIFICATION OF POSTING

On November 4, 2022 at 3:00 PM, Kim Henderson did post the above REVISED AGENDA as public notice of the November 9, 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 BOARD OF COUNTY COMMISSIONER'S ROOM
560 Dodge Street., Delta, CO 81416
October 26, 2022**

Chair Tom Kay called the meeting to order at 5:30 p.m. in the Delta County Board of County Commissioner's Room.

ROLL CALL

Planning Commission Members in Attendance:

Tom Kay
Steve Schrock
Jacob Gray
David Marek (Associate)

Hardy Hutto
Tate Locke
Layne Brones

Absent Members:

Kate Darlington
Steve Shea
Cindy Watson

With one member(s) absent from District 3, David Marek (Associate) 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 Administrative Assistant, Kim Henderson
Delta County Code Compliance Officer, Everett Neil

A. MEETING MINUTES

1. Regular Planning Commission meeting of:

a. October 12, 2022

RECOMMENDATION: Approve the action minutes as presented.

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

Motion carried unanimously.

B. PUBLIC HEARING ITEMS

1. Land Use Code Update

Public Hearing to consider the Public Draft of the Delta County Land Use Code Update (Released 9/21/2022).
RECOMMENDATIONS: Staff recommends that the Planning Commission take public testimony on proposed changes and provide direction to staff.

The Planning Commission heard from members of the public.

Eli Wolcott submitted comments the day of the meeting. Planning Chair Tom Kay informed Mr. Wolcott that the comments would be addressed at the November 9, 2022 meeting once they have been reviewed.

Kris Crawford with Wilmore & Company and Ken Schaaf were present to address comments regarding surveyor related items, including: Boundary Line Adjustments, Replats, Variances/Admin Modifications, Pre-Application meetings, Subdivision Design, Clustered Subdivisions, Fee Title Split and Definitions.

Director Carl Holm presented a summary overview status report:

1. Public comments received to date.
2. Remaining items to be addressed.
3. Future Consideration items.
4. Related Items.
5. Remaining process.

Planning Director, Carl Holm reviewed remaining items in the Land Use Code:



- a. Chapter 1, Section 5.B: Exemptions from Approval Requirement. Staff added language to reflect Allowed “by right” per PC discussion regarding Allowed vs Permitted Uses.
- b. Chapter 1, Section 6.C: Board of Adjustments, Powers and Duties. Listed BOA functions to include administrative appeals and special exceptions (variances). Included road standards based on recent event to provide an avenue for someone that questions/challenges a determination based on these standards, since no other avenue to appeal. Recommended language includes that there shall be no lot size variances (staff recommendation, also in Chapter 3).
- c. Chapter 1, Section 6.D: Planning Commission, Powers and Duties. Listed PC functions for clarity.
- d. Chapter 2, Section 1.C: Updates to Zoning Maps. Highlighted as a future consideration to update the zoning maps.
- e. Chapter 2, Section 2.A.2: Legend. Added example of non-habitable structures for clarity what is exempt as an Allowed Use, following PC discussion on 10/12. Also defined in Chapter 14.
- f. Table 2.b, Land Use by Zoning District (matrix). Identified CHC comment relative to renewable energy facilities (commercial scale). Recommend no change.
- g. Chapter 2, Section 3.B: Use of Recreational Vehicle... Highlighted recommended changes from 90 days to 12 months and relation to active permits per PC discussion 10/12.
- h. Chapter 2, Section 4.B.5: Accessory Dwelling Unit (ADU). Added standards for an ADU. Moved the size limit from the definition and added restriction for further subdivision as well as use of an ADU. Described differences between retaining affordable housing versus commercial use of the unit.
- i. Chapter 2, Section 4.C.1: Farmworker Housing. Added restriction that units shall not be sold or otherwise conveyed separate from the primary Ag property.
- j. Chapter 2, Section 4.C: Renewable Energy Facilities. Referenced applicable sections highlighted in the CHC letter. Explained staff interpretation of State statute, which is different from how CHC interprets. Staff finds no conflict with the CHC referenced statute, so not obligated to make changes.
 1. Introductory paragraph. Recommend deleting the last sentence as not critical to the operation of this section.
 2. Subsection c, subparagraph 1): Protection of Ag Lands. Recommend alternative language combining and replacing the first two sentences. Also, replaced “shall” with “should”.
 3. Subsection d: Standards and Limitations. Recommend no change to delete “or agricultural lands”
- k. Chapter 3, Section 1.A.3: Variation to Lot Size. Staff recommends removing the Variance to Lot Size all together. Partially in response to surveyor comments. The new zoning designations will allow options for rezoning where appropriate rather than case-by-case, lot-by-lot. Effectively, this has a similar incremental impact of lot size density averaging. Highlighted PC recommendation to add Legacy Lot standards for larger land holdings.
- l. Chapter 3, Section 1.B: Setbacks – Language added regarding non-habitable structures have 5 feet instead of 15 feet. In response to surveyor comments.
- m. Chapter 4, Section 1.A.1.c: Stewardship Areas. Remove “Stewardship areas shall be designated as tracts”. Response to surveyor comments.
- n. Chapter 6, Section 2: Impact Fees. Highlighted this as a future consideration. Language is there, but requires BoCC funding a nexus study to adopt fees by resolution.
- o. Chapter 7, Section 1.A.6: Informal Consultation. Insert “and/or pre-application” for clarity in response to surveyor comments.
- p. Chapter 7, Section 2.A.2: Incomplete Applications – Clarified that a checklist will be sent “after a pre-application”. Not after an informal consultation. Response to surveyor comments.
- q. Chapter 12, Subdivision Regulations. Responses to surveyor comments.
 1. Section 2.A.3 Boundary Line Adjustments. Highlighted language that was included to clarify the difference between Minor Plats and Boundary Line Adjustments (BLA). Recognizes BLA is not a subdivision, but is subject to Land Use regulations (in the Land Use Code).
 2. Section 2.A.1.C: Street Plans. Language has been taken out of the 1997 Resolution and added to the LUC. Intent is to incorporate this standard in the LUC and vacate the 1997 Resolution.
 3. Section 3.B.3: Lots (Access). Revised to clarify that standard this applies to collector and arterial roads only, not local roads.
 4. Section 3.C.2: Design Objectives (Clustered Subdivision). Highlighted this is for future consideration relative to Stewardship Areas.
 5. Section 3.C.3: Lots (Dimensions and Geometry)). Highlighted this is for future consideration relative to Stewardship Areas.



6. Section 3.C.5: Long Term Maintenance. Highlighted this is for future consideration relative to Stewardship Areas.
 7. Section 3.D: Use of Stewardship Areas. Highlighted this is for future consideration relative to Stewardship Areas.
 8. Section 5.B: Dedication. Dedication language offers option to include acreage and/or legal description.
 9. Section 5.G: Certificate of Taxes Paid. Revised per surveyors' suggestion.
 10. Section 5.I.8. Standard Note. Revised to be shorter per request by surveyors. Revised Plat Note "NOTICE TO LOT OWNERS: The lots identified on this plat are located in an agricultural area and are subject to the Nuisance Liability of Agricultural Operations Law as well as the Delta County Right to Farm and Ranch Policy".
 11. Section 5.I.11. Standard Note. Delete (related to Plat Note 8).
- r. Chapter 14, Definitions
1. Boundary Line Adjustment. Remove; "less than 35 acres" at end of sentence.
 2. Habitable Structure. Add; "Habitable Structure means a building that contains one or more dwelling units or that can be occupied for residential use. Such structures provide independent living facilities for one or more persons, including provisions for living, sleeping, eating, cooking and sanitation".
 3. Non-Habitable Structure. Add; "Non-habitable Structure means any structure not identified as habitable as defined in this Code and would include but is not limited to garages, sheds, barns, and swimming pools.
 4. Replat. Revise; "All lands must be part of a previously recorded Subdivision" and Remove "All lands must be part of a previously approved plat".
 5. Subdivision. Revised to reflect the amended Chapter titles.

The Planning Commission had a discussion with a couple surveyors in attendance regarding topics that had been presented in the Wilmore letter: zoning designations, lot size variances, pre-application and application processes.

- a. Boundary Line Adjustment (BLA) versus Boundary Agreement (BA). Surveyors contend they should be able to just record a plat if all parties agree, regardless how the changed line could impact setbacks. It was discussed that surveying is different from land use. A BA applies to *disputed* boundaries. Since a BA corrects poor/missing records, statute exempts that from review. BLA is different where parties want to change a line, requires an agreement, which could be to fix a problem created by placement of a structure without regard to the property line or just because an owner wants to change their configuration. It was determined that a BLA should comply with the land use standards.
- b. Parcel Size, Zoning Designation. An example that was used, is if a parcel is 10-acres and the property owner wants to subdivide into two 5-acre parcels and are zoned A-20, they would not be able to subdivide their property without having to go through the variance process. The Surveyors do not want to go through a variance process to subdivide. There was discussion about parcels that already lack the minimum acreage as defined by their zoning designation. It was noted by all parties that zoning designations need to be revised to better reflect conditions and encourage development where it is appropriate. Current zoning maps do not accomplish this.
- c. Boundary Line Adjustments (BLA). The Surveyors do not feel that BLAs should be included in the Subdivision Regulations Chapter of the Code because they do not follow the same process/requirements of Subdivisions; they also feel that they should not be subject to County setbacks. Boundary Adjustments and Lot Line Adjustments were included in the previous Subdivision Regulations. Regulations pertaining to lot/parcel configuration have been consolidated into the Subdivision Chapter for clarity where it is all in one place. Minor Plats and BLA are both subject to administrative review so they are placed in the same section procedurally...rather than repeating the same thing over-and-over. Boundary Line Adjustments need to be reviewed relative to land use standards to ensure no *new* non-conforming conditions are created through the process. A BLA needs to comply with the land use standards, regardless what part of the Land Use Code it is located in.
- d. Survey Requirements. The surveyors asked if an entire several hundred-acre parcel needed to be surveyed, as they feel this is unnecessary to survey when only a small portion of the property is involved in the adjustment. Staff clarified that Planning has not required the entire parcel to be surveyed where a parcel with several hundred acres was involved. However, the plat does need to include adequate information to assess



impact of the line being adjusted, which may require survey work in the area where it is pertinent to the adjustment.

The Planning Commission (PC) discussed ADU standards. It was determined that ADU's should not be subdivided from the main residence. It was noted that a section for additional units requires designing to accommodate future subdivision. Staff acknowledged that should be amended to not force a subdivision. The PC also discussed use of an ADU as a Short-Term Rental (less than 30 days) versus accommodating affordable housing. It was decided to remove the STR/30-day restriction but clarify that an ADU is not for commercial purposes.

The Planning Commission discussed lot size variances. There was discussion about removing this variance section, but concern was expressed about leaving a void until the Legacy Lot standards are established.

The PC acknowledged comments received from Eli Wolcott, but preferred to defer this discussion until there has been more time to review them. It was requested that staff review the comments and bring back recommendations. The PC will follow a similar format to discuss these comments with Mr. Wolcott, as was done with the surveyors.

C. DEPARTMENT REPORT

None

D. COMMISSIONER COMMENTS, REQUESTS AND REFERRALS

Chair Kay stated that the Planning Commission will have the regular Planning Commission Meeting on November 9, 2022 to address the Wolcott comments and hold a Special Meeting on November 16, 2022 to consider a final draft LUC.

ADJOURNMENT

The next Meeting will be held on November 9, 2022 at 5:30pm in Delta, CO.

Meeting adjourned at 8:09 p.m.

Respectfully submitted by:
Administrative Assistant, Kim Henderson



MEMORANDUM

TO: Delta County Planning Commission

From: Carl P. Holm, AICP, Director

Date: November 4, 2022

Re: Revised Agenda

Following release of the Planning Commission agenda for November 9, 2023, the draft minutes for October 26th were completed. These minutes are attached for your consideration.

In addition, staff added a couple items under the Department Report:

1. December Planning Commission schedule. There are no items scheduled at this time but want to plan ahead in case the BoCC returns the LUC for PC consideration. Per statute, the PC would have 30 days to respond, which is limited with the holidays. The regular PC meeting date would be December 14th.
2. PC terms. Planning ahead, there are three (3) Commissioner terms ending 1/31/2023: Steve Shea (District 1), Layne Brones (District 2), Jacob Gray (District 3). There are also two vacant Associate positions: District 1 and District 2.

Since sending out the revised draft, a couple thoughts on the LUC have come up:

1. Lot Size Variance (Chapter 3, Section 1.A.1, page 80). If the PC decides to keep the lot size variance, until Legacy Lot standards are established, I thought of an alternative to the restriction to subsequent subdivision. I have drafted language that restricts further variances (vs subdivision), unless the property is rezoned. That said, staff still recommends deleting the lot size variance all together at this point. It has effectively returned to the incremental creep of lot density averaging. Deleting it now would create a defacto moratorium until the Legacy Lot standards are established. Given the number of lot size variances, that would not be a bad thing in staff's opinion. I have provided some draft language to consider (**Attached**)
2. Traffic Impact Study (Chapter 5, Section 1.B.1, page 117). We got comment from an engineer about amending language to identify the Institute of Transportation Engineers Trip Generation document as the standard for calculating traffic, and clarifying that the matrix is not absolute...depends on the type/level of development and surrounding conditions. I have provided some draft language to consider (**Attached**)
3. Conditional Use (Chapter 8, Section 2.B.2, page 157). I recommend that the PC be a decision-making body (versus recommending) for Conditional Uses. BoCC would be the appeal authority. I presented this to the BoCC at a work session. They were not opposed but wanted to wait on this. As an appeal body, the



BoCC would focus on if the PC errored rather than re-hearing everything, which reduces the tension at the BoCC level. I have provided some draft language to consider (**Attached**)

4. Enforcement (Chapter 13). After further review and consultation with the County Attorney, we recommend amending the enforcement Chapter to read as **Attached**.

Chapter 3. LOTS, BUILDINGS, AND STRUCTURES

Section 1. Lot Dimensions by Zoning District

A. Lot Dimensions

1. **Variation to Lot Size.** The Director shall have authority to Administratively approve the creation of one additional lot that does not conform to the requirements of Table 3.a, *Lot Dimensions*, provided that:

- a. The subdivision conforms to all other requirements of this Code, including but not limited to: adequate water supply, access, setbacks of existing structures, and capacity for wastewater treatment systems (as applicable);
- b. The subject parcel is zoned A-35 or A-20;
- c. One parcel in the subdivision shall retain the minimum acreage required for that zoning designation;
- d. The new lot requesting a variance to lot size shall conform to the standards for the RES-2.5 zoning district;
- e. The size and configuration of the new lot avoids, to the greatest extent feasible, disturbance or development of irrigated agricultural portions of a property, and does not interfere with wildlife habitat; and
- f. The Final Plat is annotated such that: "Parcels/Lots created by this subdivision shall not subdivide further for at least 10 years"

The Director shall have authority to approve lot size variances that meet these criteria, following the Minor Plat process in Chapter 12. The Board of Adjustment shall be the authority to consider a lot size variance that does not meet one or more criteria listed above.

Commented [CH1]: Wilmore letter: Variance process creates uncertainty.

Staff: Delete lot size variance completely - Admin & BoA (highlight)

Removes uncertainty. If don't meet minimum acreage, consider cluster subdivision or rezone. Might mean no subdivision (clear and transparent).

Variances to lot size repeat same issue with lot density averaging (unplanned, incremental change)

Future Consideration: Legacy Lot Subdivision. Exception for splitting off a lot from large land holdings to encourage keeping parcel intact. Considerations:

- Zoning where allowed

- Min size of property to begin

- Min lot size created

- Max # of lots/divisions

- Approving Authority

Commented [CH2]: NEW

If keep variance process, suggest change:

No further subdivision for 10 years unless rezoned: "There shall be no variance considered for lot size of Parcels/Lots created by this subdivision for at least 10 years unless the property is rezoned."

OR

No further subdivision for 10 years unless rezoned:

"Parcels/Lots created by this subdivision shall not subdivide further for at least 10 years, unless the property is rezoned."

Chapter 5. PUBLIC FACILITIES, INFRASTRUCTURE, AND SERVICES

Section 1. Traffic Impacts

A. Purpose and Application of Section

1. **Purpose of Section.** The purpose of this Section is to ensure that the traffic impacts of proposed development and subdivision are evaluated and that the impacts of such development on the County transportation system are offset by public improvements.
2. **Application of Section.** The requirements of this Section apply to Site Plans associated with Limited or Conditional Uses, and Preliminary Plats (or Final Plats, where no Preliminary Plat is required prior to Final Plat approval), and also to additional residences, communal living, and seasonal farmworker housing if such accessory residential uses result in five or more dwelling units on a single lot. In addition, a Traffic Impact Study may be required if the Director determines that the location or size of the proposed development would impact traffic conditions in the surrounding area. When a traffic impact study is required, the study shall be completed by a Colorado registered professional engineer.

Allowed Uses are not subject to the requirements of this Section. The Director may waive requirement of a Traffic Impact Study if it is determined that the increase would be de minimis.

3. Scope of Study.

- a. A Level I Traffic Impact Study is required for all application types when a project is determined to impact traffic on a public road.
- b. Where a Level I Traffic Impact Study indicates that a proposed development or subdivision will impact more than 20 percent of a road's capacity, a Level II traffic study shall be required.
- c. Where a Level II Traffic Impact Study indicates that improvements to the existing road network are necessary to address the traffic impacts of a proposed development or subdivision, a Level III Traffic Impact Study shall be required.

B. Traffic Impact Study Contents

1. **Generally.** The contents and extent of a Traffic Impact Study depend on the location and size of the proposed development and the conditions prevailing in the surrounding area. The permit applicant should contact County Planning to determine the appropriate level of traffic evaluation and the specific requirements for each individual application. Traffic Impact Studies shall include, at a minimum, the information required by this Table 5.a, *Traffic Impact Study Scope*, based on the

Commented [CH3]: NEW

Engineer currently preparing a traffic impact study provided recommendations, similar to CDOT, that identify ITE as the standard for calculating traffic, and clarifying that the matrix is not absolute...depends on the type/level of development and surrounding conditions.



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level of study required. Trip Generation Calculations per the Institute of Transportation Engineers Trip Generation document (latest version)

Selected items from Table 5.a (below) may be excluded if the Director determines that it is not applicable to the situation and exclusion is specifically authorized by the issuing authority. The contents and extent of a Traffic Impact Study depend on the location and size of the proposed development and the conditions prevailing in the surrounding area. Larger developments proposed in congested areas obviously require more extensive traffic analysis, whereas smaller sites may only require a minimal analysis of traffic on site and at immediately adjacent intersections.

In determining how large a study area to include, a general guideline is to carry the analysis out at least as far as those areas where newly generated site traffic represents five-percent (5%) or more of roadway's peak hour capacity. Where site generated traffic will be less than 5% of the roadway capacity, the intersections adjacent to the site should, at a minimum, be analyzed. The study area boundaries may also be influenced by impacts other than pure capacity relationships such as neighborhood short cuts, traffic noise and hours of operation.

Chapter 8. Review Processes

Section 2. Conditional Use Permits Process

B. 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 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:
 - a) There is sufficient time to meet applicable public notice requirements; and
 - b) 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, make a recommendation regarding the application, and forward the recommendation and the application materials and referral comments to the decision-making body for consideration.
 - 5) 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.
 - 6) The Director shall promptly provide written notice, including the reasons for the decision, to the applicant following action by the Planning Commission and that their recommendation will be forwarded to the Board of County Commissioners.



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- 7) 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.
- 8) The Director shall promptly provide written notice, including the reasons for the decision, to the applicant following action by the Board of County Commissioners.

Commented [CH4]: Request PC discussion about PC being a decision-making body for CUP, BoCC as appeal authority.
Staff: As appeal authority, BoCC reviews if PC made a mistake based on the record ("Of Record"). Reduces duplicative work and focuses the action before the BoCC.. However, BoCC was not there yet when staff presented this idea at a Work Session. However, OK with Prelim Plats. If PC wants to make this recommendation in the certified copy, delete #6 & 7, amend BoCC to PC as highlighted. Add language for BoCC as appeal authority.

C. Conditional Use Approval Standards

1. An application for Conditional Use requires approval of a Conditional Use Permit and a Site Plan. The Board of County Commissioners may approve an application for a Conditional Use Permit if it finds that if the application demonstrates compliance with:
 - a. Chapter 2, Section 4 Use Specific Standards;
 - b. The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision, and any applicable provisions of this Title and any zoning violation abatement costs have been paid;
 - c. The design, operation, location, and buffering of the use appropriately mitigates its impacts with regard to:
 - 1) Irrigation facilities, sensitive lands, or nearby agricultural operations;
 - 2) Risks associated with the use and storage of hazardous materials or potentially hazardous conditions, such as projectiles leaving the subject property; and
 - 3) Odors, dust, lighting, vibration, and noise.
1. The Board of County Commissioners shall further find that the proposed Conditional Use in its proposed location will not tend to frustrate the implementation of:
 - a. The Master Plan;
 - b. Any special area plans adopted by the County; or
 - c. Intergovernmental Agreement, Master/Comprehensive Plan, or any special area plan adopted by the impacted municipality;

Chapter 13. ENFORCEMENT AND REMEDIES

Section 1. Violations and Remedies

A. Nature of Remedies

1. Generally. The remedies provided in this Code, whether administrative, civil, or criminal, shall be non-exclusive and cumulative, and shall be in addition to any other remedy provided by law.
2. Each Day a Separate Offense. Each day that a violation exists constitutes a separate offense.
3. Provisions of this Code shall be enforced by the Board of County Commissioners and any other authorized personnel utilizing all authority granted under Colorado law or this Code, including but not limited to:
 - a. the authority to enforce the provisions of the Zoning Resolution and this Code, including companion documents, in accordance with this Chapter and the governing statutes (C.R.S. § 30-28-124 and C.R.S. § 30-28-124.5, as amended);
 - b. the authority to enforce the provisions of the Subdivision Regulations and this Code, including companion documents, in accordance with this Chapter and the governing statutes (C.R.S. § 30-28-110, C.R.S. § 30-28-133 and C.R.S. § 30-28-137, as amended).

4. Remedies

- a. Criminal Prosecution. Only the Board of County Commissioners may authorize the initiation of criminal prosecution for violations of the Code.
- b. Injunction. The Board of County Commissioners may refer the matter to the County Attorney for the institution of an injunction, mandamus, abatement, or other appropriate action to prevent, enjoin, abate, or remove a violation or to otherwise restore the premises to the condition that existed before the violation, pursuant to state statute.
- c. County Court Action for Civil Remedies. The Board of County Commissioners may refer the matter to the County Attorney for filing of a County Court action seeking the imposition of civil penalties pursuant to state statute.

- d. Civil Infraction. The County Code Compliance Officer may issue a summons and complaint alleging a violation of a civil infraction to enforce the applicable sections of this Code.
- e. Nothing in this Chapter or any other provision of this Code shall be construed to restrict the ability of the Board of County Commissioners to pursue any available means of enforcement available to it under state law or this Code, none of which shall be considered an exclusive remedy.

5. Non-Liability. No provision of this Code shall be construed to hold Delta County or any of its employees or officials, acting within the scope of their employment in any manner, responsible or liable for any damages to persons or property resulting from any inspection, enforcement or review as required or permitted by this Code, from any failure to enforce or inspect, from the issuance or denial of any permit, or from the institution or failure to institute any court action as authorized or required by these standards and regulations. In enacting this Code, the Board of County Commissioners intends to preserve all rights of the County, its agencies and departments, its elected and appointed officials, and its employees to immunity from liability as set forth in the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et. seq.

B. Administrative Remedies

No permits to do work in the public right-of-way, county road access permits, address permits, septic permits or other approvals or permits will be issued that are applicable to or for the benefit of any property in violation of this Code, any applicable statute, ordinance or regulation until said violation has been cured or terminated, except in instances when road right-of-way or other lands for public purposes are established without the necessity of subdividing adjoining lands. Refusal to issue any such permit shall not be considered an exclusive remedy.

C. Subdivision Violations and Remedies

1. Unlawful Subdivision.

a. No division of land constituting a subdivision under applicable state law shall occur unless it is exempt by terms of C.R.S. § 30-28-101(10), has been approved under the Subdivision Regulations, or has

received approval from the Board of County Commissioners for a subdivision exemption or exemption plat.

b. No lot within a subdivision created prior to the effective date of this document or approved by the Board of County Commissioners under the provisions of this document shall be further divided, rearranged, or reduced in area, nor shall the perimeter boundaries of any subdivision, or any lot within a subdivision, be altered in any manner without the approval of the Board of County Commissioners as provided for in this document.

c. No person shall offer for recording, in the office of the County Clerk and Recorder, a plat, map or other instrument creating a division of land, or interest therein, unless such land been subdivided in compliance with this Code or with previous regulations.

2. Unlawful Conveyance.

a. Any subdivider, or agent of a subdivider, who transfers legal or equitable title or sells any subdivided land before a final plat for such subdivided land has been approved by the Board of County Commissioners and recorded or filed in the office of the county clerk and recorder is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars nor less than five hundred dollars for each parcel of or interest in subdivided land which is sold. All fines collected under this paragraph (a) shall be credited to the general fund of the county. No person shall be prosecuted, tried, or punished under this paragraph (a) unless the indictment, information, complaint, or action for the same is instituted prior to the expiration of eighteen months after the recordation or filing in the office of the county clerk and recorder of the instrument transferring or selling such subdivided land.

(C.R.S. 30-28- 110(4)(a)).

b. No person shall offer for recording, in the office of the County Clerk and Recorder, a deed, contract for deed or installment land contract conveying or agreeing to convey any parcel or lot, or interest therein, unless such parcel or lot has been subdivided in compliance with this Code or with previous regulations.

D. Zoning Violations and Remedies

1. Unlawful Acts

a. It is unlawful to use any building, structure, or land in violation of this Code or with the terms and conditions of any development application approval or development permit, or without first obtaining all development approvals and permits required by this Code.

b. It is unlawful to violate any provision of C.R.S. 30-28-104 in relation to this Code.

E. Manufactured Housing Violations and Remedies

1. Moving Permit Required. Any Owner or Mover involved with placing a Manufactured Housing unit (including Mobile Homes and Pre-HUD Mobile Homes) onto a property and fails to obtain a moving permit through the Delta County Treasurer may be assessed a fine not less than \$500 nor more than \$1000 per violation.

Commented [JB1]: I have concern about inclusion of this prohibition in the LUC. I am unclear what authority exist to prohibit this activity in the LUC. Let's discuss.

Commented [JB2]: Where do these amounts come from?

F. Additional Remedies

A. The remedies provided in this Ordinance shall be cumulative and in addition to any other remedies which may be available to the County and its Board of County Commissioners. Nothing contained herein shall be construed to preclude the Board of County Commissioners from seeking such other remedies in addition to, or in lieu of, the remedies herein granted.

B. In accordance with all applicable Colorado Revised Statutes as amended and this Code, the Delta County Attorney, 7th Judicial District Attorney's Office, the Delta County Sheriff's Office or Delta County Code Compliance Officer shall enforce the Delta County Land Use Code, including companion documents.

Section 2. Condition Compliance

A. Monitoring

Delta County and its agents reserve the right to conduct site inspections for monitoring compliance with applicable project permits and conditions.

B. Failure to Comply with Conditions of Approval

If the County determines that a project fails to comply with any applicable conditions of approval, or constitutes a danger to persons or property, then, upon written notice, the owner shall have 30

days to bring such property/facility into compliance or mitigate the danger.

If the owner fails to bring such property/facility into compliance or mitigate the danger within said 30 days, the County may revoke the permit and/or abate the violation at the owner's expense.

Section 3. Civil Infraction

A. Generally

Pursuant C.R.S. § 30-28-124 any person who violates the provisions of the Zoning Resolution and this Code, including companion documents commits a civil infraction.

B. Penalty Assessment

The penalty assessment procedure provided in C.R.S. § 16-2-201, is authorized. When a person is issued a summons and complaint alleging a violation of the Zoning Resolution and this Code, including companion documents, the issuing officer may give the person a penalty assessment notice pursuant to C.R.S. § 16-2-201.

C. Penalties

The Board of County Commissioners shall adopt or update, by Resolution, a graduated fine schedule, for violations of this Code, including companion documents as applicable. Such graduated fine schedule may provide for increased penalty assessments for repeat offenses by the same property owner(s) or responsible party(s).

E. Fines

All fines and forfeitures for the violation of this Ordinance shall be paid to the Delta County Treasurer within thirty (30) days of receipt and shall be deposited into the general fund of the County.

Section 4. Enforcement Process

A. Complaints

1. Any person may file a complaint that property in Delta County is in violation of this Code, Ordinance, Resolution or Standard referenced in the Land Use Code. Such complaint must be in writing. The County shall not be obligated to investigate anonymous complaints or

Commented [JB3]: I am not entirely convinced the civil infraction/penalty assessment procedure is authorized by the applicable land use statutes. I am OK leaving this in as a placeholder but I will continue looking at this language.

complaints that are not filed in writing. The complaint shall be filed in the appropriate Delta County Office. Delta County officials and employees, including the Code Compliance Officer, are authorized to investigate and pursue violations in the regular course of their duties; that is, without a complaint being filed.

B. Investigation

1. The Code Compliance Officer will respond to the site within 30 days of receiving a complaint and complete a Field Inspection to confirm, or determine there is no merit, to possible violations on the property.
2. If a violation is present, the Code Compliance Officer will contact the property owner(s) or responsible party(s) to notify them of the violation(s). An Advisory Letter will be completed and provided to the property owner(s) or responsible party(s) outlining the violation(s) present and the necessary action to resolve the violation(s). Voluntary compliance is the preferred method of enforcement. If the violation(s) are resolved no further action will be taken.

C. Non-Compliance

1. If the violation(s) are not resolved through voluntary compliance efforts a Notice of Violation (NOV) will be issued to the property owner(s) or responsible party(s). The Notice of Violation will indicate the violation(s) present and a specific timeline for the violation(s) to be resolved. Voluntary compliance is the preferred method of enforcement. If the violation(s) are resolved no further action will be taken.
2. If the property remains in Non-Compliance the County, in its sole discretion, may pursue any and all available means of enforcement available to it under state law or this Code.