

DELTA COUNTY BOARD OF ADJUSTMENT

**Administration Building – Board Room
560 Dodge St., Delta, CO 81416
Thursday, August 25, 2022 @ 5:30 p.m.**

**Mike Twamley, Chair
Brett Hilling, Vice-Chair**

Carl Holm, Director

Instructions for Public Participation:

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

https://us02web.zoom.us/meeting/register/tZ0ufu6grDliE9LFgFpKEZBzav8fdG_U3gf

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

You can also obtain a copy of the agenda for this meeting at:

<https://www.deltacounty.com/AgendaCenter/Delta-County-Board-of-Adjustment-8>

REGULAR AGENDA

5:30 P.M. – CALL TO ORDER

ROLL CALL

Mike Twamley, District 1
Brett Hilling, District 2
Mark Roeber, District 3

A. PUBLIC COMMENTS

This is time set aside for the public to comment on matters not on the agenda. The Chair may set a time limit for speakers.

B. AGENDA ADDITIONS, DELETIONS, AND CORRECTIONS

The Board of Adjustment Secretary will announce changes to the agenda that arose after posting of the agenda.

C. MEETING MINUTES

- a. Regular Board of Adjustment meeting of June 23, 2022
RECOMMENDATION: Approve the action minutes as presented.

D. PUBLIC HEARING ITEMS

1. PLN21-044 (Campbell)

Continued from July 28, 2022. Consider a variance reducing required setbacks from 15 feet (adjusted property line) and 25 feet (existing ditch) to 2 feet and 4 feet

CERTIFICATION OF POSTING

On August 18, 2022, at 4:00 PM, Kim Henderson did post the above AGENDA as public notice of the July 28, 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.

for an existing barn and shed, respectively. The property is located at 37224 Campbell Road, Paonia (Parcel #: 324310400034).

RECOMMENDATION: Staff recommends that the Board of Adjustments (BOA):

- a) Consider the variance findings as they apply to PLN21-044/Campbell; and
- b) Provide direction to either Approve, Conditionally Approve, or Deny variance reducing required setbacks between an adjusted interior property line (15-feet) and a ditch (25-feet) to an existing barn (2-feet) and an existing shed (4-feet) located at 37224 Campbell Road (Parcel: 324310400034); and
- c) Authorize the Director to prepare a Resolution reflecting the BOA direction, including evidence relative to the required findings, and conditions (as applicable).

2. PLN22-067 (Nieman)

Continued from July 28, 2022. Consider a variance to reduce the required lot size from 35 acres minimum to approximately 3.25 acres (Lot 2) in the A-35 zoning district. The subject property is a 38.36-acre parcel located at 16454 Grange Road, Paonia (Parcel: 318728101009).

RECOMMENDATION: Staff recommends that the Board of Adjustments (BOA):

- a. Consider required variance criteria and findings as they apply to PLN22-067 (Nieman);
- b. Provide direction to either Approve, Conditionally Approve, or Deny lot size variance(s) for one (1) lot in the A-35 zoning designation located at 16454 Grange Road (Parcel: 318728101009/Nieman); and
- c. Authorize the Director to prepare a resolution reflecting the BOA direction, including evidence relative to the required findings, and conditions (as applicable).

3. PLN22-079 (Hamilton)

Consider a variance to reduce the required lot size from the 20-acre required minimum to approximately 10.88 acres (Lot 2) in the A-20 zoning district. The subject property is a 35.88-acre parcel located at 39772 & 39766 L75 Road (Parcel: 324324100026), Paonia.

RECOMMENDATION: Staff recommends that the Board of Adjustments (BOA):

- a. Consider required variance criteria and findings as they apply to PLN22-079 (Hamilton);
- b. Provide direction to either Approve, Conditionally Approve, or Deny lot size variance(s) for one (1) lot in the A-20 zoning designation located at 39772 & 39766 L75 Road (PLN22-079/Hamilton); and
- c. Authorize the Director to prepare a resolution reflecting the BOA direction, including evidence relative to the required findings, and conditions (as applicable).

E. 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 Board of Adjustments, through the Chair, opens an item up for comment.

1. Land Use Code Update – Work Session

CERTIFICATION OF POSTING

On August 18, 2022, at 4:00 PM, Kim Henderson did post the above AGENDA as public notice of the July 28, 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.

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

RECOMMENDATIONS: Staff recommends that the Board of Adjustment hold a Work Session on the LUC Update and provide direction to staff on:

- a. Chapter 2; Section 1 “Zoning Districts” (including Tables 2.a and 2.b), Section 3.A “Temporary Uses”, and Section 5.B “Use Specific Standards” (including standards for wireless communications and renewable energy)
- b. Chapter 3 “Lot Dimensions” (including subdivision of lots that do not meet the minimum lot size)
- c. Chapter 8; Section 5 “Variances”
- d. Chapters 12 “Subdivision Regulations”

F. BOARD COMMENTS, REQUESTS AND REFERRALS

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

G. DEPARTMENT REPORT

1. September and October meeting schedule

ADJOURNMENT

Adjourn to a Regular Meeting on Thursday, September 22, 2022 at 5:30 pm in Delta.

CERTIFICATION OF POSTING

On August 18, 2022, at 4:00 PM, Kim Henderson did post the above AGENDA as public notice of the July 28, 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.



REGULAR BOARD OF ADJUSTMENTS MEETING MINUTES
DELTA COUNTY
560 DODGE ST, DELTA, CO 81416
June 23, 2022

Chairman Mark Roeber called the meeting to order at 5:30 p.m. in the Administration Building Commissioner's Meeting Room.

ROLL CALL

Board of Adjustments Members in Attendance:

Mike Twamley, District 1
Brett Hilling, District 2
Mark Roeber, District 3

Planning Staff in Attendance:

Delta County Planning & Community Development Planner I, Kate Kelly
Delta County Planning & Community Development Planner I, Angie Kemp
Delta County Planning & Community Development Administrative Assistant, Kim Henderson
Delta County Administrator, Robbie LeValley

A. ANNUAL MEETING

1. Election of Officers

- a. Chair**
- b. Vice-Chair**

Mark Roeber moved to elect Mike Twamley as Chair. Brett Hilling seconded the motion.

Motion carried unanimously.

Mark Roeber moved to elect Brett Hilling as Vice-Chair. Mike Twamley seconded the motion.

Motion carried unanimously.

2. 2022 Meeting Schedule

There was a consensus to keep the meeting schedule the same.

B. PUBLIC COMMENT

None

C. AGENDA ADDITIONS, DELETION, AND CORRECTIONS

None

D. SCHEDULED ITEMS:

Item #1: Meeting Minutes for May 26, 2022.

Mark Roeber moved to approve the meeting minutes as presented. Brett Hilling seconded the motion.

Motion carried unanimously.

Item #2: PLN22-032 (S. Brown)

Consider a variance to reduce the required lot size for one lot in the A-35 zoning district; from 35 acres minimum to approximately 1.5 acres (Lot 2). The subject property is a 40-acre parcel located at 6183, 6177 & 6067 Townsend Road (Parcel: 345715400018), Delta.



RECOMMENDATION: Staff recommends that the Board of Adjustment (BOA):

- a. Consider required variance criteria and findings as they apply to PLN22-032 (S. Brown);
- b. Provide direction to either Approve, Conditionally Approve, or Deny a lot size variance(s) for one (1) lot in the A-35 zoning designation located at 6067, 6177 & 6183 Townsend Road (Parcel: 345715400018/Brown); and
- c. Authorize the Director to prepare a Resolution reflecting the BOA direction, including evidence relative to the required findings, and conditions (as applicable).

Angie Kemp presented the project.

The Board asked questions of staff and the applicant – Steve Brown was in attendance.

Mark Roeber moved to approve PLN22-032 with staff recommended findings and conditions. Brett Hilling seconded the motion.

Motion carried unanimously.

Item #3

PLN22-057 (Kent)

Consider a variance to reduce the required lot size from 35 acres in the A-35 zoning district to 5.001 acres for Lot 1; Lot 2 would retain 36.026 acres. The subject property is located at 13420 County Road 265, Paonia (Parcel: 292303400003).

RECOMMENDATION: Staff recommends that the Board of Adjustment (BOA) Continue PLN22-057/Kent until such time that the following issues are addressed, prior to the BOA considering a variance that will lead into a Minor Plat subject to Administrative Review:

- a. Provide proof of an adequate water supply for all lots being created, which includes 6 units plus out-structures. If the State does not approve a revised well permit and/or Augmentation Plan to serve multiple lots, then the applicants need to provide evidence that a water tap is available for the new lot.
- b. Provide proof that there are permitted septic system(s) that will not be impacted by the new property lines, and that the septic systems meet the minimum setbacks from property lines, well, road, and waterways.
- c. Provide confirmation from the U.S. Forest Service on whether or not the Private Road Easement is adequate for access to the property considering the intensification, or, submit an updated easement to reflect an adequate access to serve multiple lots/parcels with multiple structures.

Kate Kelly presented the project.

The Board asked questions of staff and Steven Kent (Applicant) and Randy Wilmore (Representing Surveyor for Mr. Kent).

Mark Roeber moved to continue PLN22-057 with staff recommendations as follows:

- a. Provide proof of a State approved well permit and/or Augmentation Plan to serve multiple lots/units.
- b. Provide proof of permitted septic system(s) that meet applicable standards (e.g., setbacks).

Brett Hilling seconded the motion.

Brett Hilling also mentioned to the applicant contacting CPW in regards to any wildlife habitat that might be affected in this area.

Motion carried unanimously.

E. BOARD COMMENT, REQUESTS AND REFERRALS

None

F. DEPARTMENT REPORT

None



DELTA COUNTY

PLANNING & COMMUNITY DEVELOPMENT

295 W 6th Street
Delta, Colorado 81416
planning@deltacounty.com
970.874.2110

Meeting adjourned at 6:14 p.m.

The next meeting will be held on Thursday, July 28, 2022 at 5:30 pm in the Delta County Administration Building, Delta, CO.

Respectfully submitted by:
Administrative Assistant, Kim Henderson

DRAFT



STAFF REPORT

**Board of Adjustment
Board Room
560 Dodge Street, Delta, CO 81416**

Thursday, August 25, 2022 @ 5:30 p.m.

PLN21-044/Campbell

Continued from July 28, 2022

Consider a variance reducing required setbacks from 15-feet (adjusted property line) and 25-feet (existing ditch) to 2-feet and 4-feet for an existing barn and shed, respectively. The property is located at 37224 Campbell Road, Paonia (Parcel #: 324310400034).

PROJECT INFORMATION:

Property Owner: Campbell & Sons LLLP
Applicant: Calvin & Tracy Campbell
Site Address(s): 37224 & 37336 Campbell Road, Paonia
Parcel ID/Acct: 324310400034/R007242 & 324310400033/R007241
Parcel Size: 22.70 Ac (R007242) & 12.10 Ac (R007241)
Zoning: A-20

Report Prepared by: Kate Kelly, Planner I

RECOMMENDATION:

Staff recommends that the Board of Adjustments (BOA):

- a) Consider the variance findings as they apply to PLN21-044/Campbell; and
- b) Provide direction to either Approve, Conditionally Approve, or Deny variance reducing required setbacks between an adjusted interior property line (15-feet)



and a ditch (25-feet) to an existing barn (2-feet) and an existing shed (4-feet) located at 37224 Campbell Road (Parcel #: 324310400034); and

- c) Authorize the Director to prepare a Resolution reflecting the BOA direction, including evidence relative to the required findings, and conditions (as applicable).

SUMMARY:

Due to a lack of quorum, the July 28, 2022, Board of Adjustment meeting was cancelled, when this item was originally scheduled for a public hearing. As a result, this item was continued to the next regular meeting.

Mr. and Ms. Campbell (owners/applicant) own two adjacent parcels (Parcel #324310400033 & Parcel #324310400034). There are two existing home sites on Parcel -034 located at the northeast and southwest corners, addressed as 37336 and 37224 Campbell Road, respectively. Parcel -033 consists of irrigated Ag lands with no existing structures. Campbell Road abuts the properties along the north and west boundary.

They submitted an application for a Boundary Line Adjustment between these parcels with the intent to separate the Ag operations from the existing farm/homestead located at 37224 Campbell Road, Paonia. The proposed adjustment would move a property line such that it follows the Sheppard and Wilmont Ditch located on the Campbell property and the south edge of an irrigated field (Parcel A). All of the irrigated pastures would remain with the homestead at 37336 Campbell Road, which helps accommodate a conservation easement on that property.

The Director interprets the Land Use Code (LUC) that no variance is required for lot size when adjusting property boundaries between two existing parcels. However, land use standards such as setbacks for existing structures must be met when creating/moving a property line. In this case the applicable setbacks would be 15-feet from interior property lines (new condition), and 25-feet from edge of ditch for the Sheppard and Wilmont Ditch (existing condition).

Through the review process, it was noted that existing structures appeared to be encroaching on the required setbacks for the homestead at 37224 Campbell Road. A barn and shed were constructed 2-feet and 4-feet (respectively) from the ditch, which creates an existing nonconforming condition. Structures are required to be 15-feet from an interior property line, so relocating a property line to align with the ditch creates a new condition that must be addressed in order to approve the BLA.

The applicants have applied for a variance that would reduce the required setbacks from the property line and the ditch from 15-feet & 25-feet to approximately 2-feet & 4-feet between the barn and the shed and the adjusted property line. Staff determined that the proposed property lines are logical given the existing pattern of development and Ag uses on the property (topography, parcel lines, etc.); and therefore, support findings for a variance to reduce the required setbacks for an existing barn and existing



shed, in this particular case. If the BOA finds that this variance can be approved, then staff recommends a condition requiring a Plat Note on the Boundary Line Adjustment reflecting the variance approving modified setbacks for the barn and the shed on Parcel A, but that future development, including any additions to the barn, shed, or the property, is required to meet setbacks (**Condition**).

Variances are presented at a public hearing to the Board of Adjustments (BOA) for either Approval, Approval with Conditions, or Denial considering the required findings. The LUC requires the concurring vote of three members of a 3-member BOA, meaning actions by the BOA must be unanimous in order to pass. Once a decision has been made by the BOA the process will either precede with the Boundary Line Adjustment application (Administrative) or the applicant has 10 days to appeal the BOA's decision to the Board of County Commissioners (BoCC).

DISCUSSION:

On June 22, 2021, Calvin & Tracy Campbell (owners/applicant) submitted a pre-application form to the Planning Department for a Boundary Line Adjustment. This request is to adjust the parcel boundaries between two existing parcels (Parcel #324310400033 & Parcel #324310400034), where the applicants own both parcels.

They expressed that their intent is to accommodate the Ag operations for the existing farm/homestead located at 37224 Campbell Road, Paonia. The proposed line would follow the Sheppard & Wilmont Ditch located on the Campbell property (Parcel A) where the applicants can transfer land to preserve the Ag operations as the properties have been placed into a Conservation Easement for these purposes.

These subject parcels have been zoned Agriculture (20-acre) or "A-20", which requires a minimum parcel size of 20 acres. Under the Land Use Code, a Boundary Line Adjustment is handled administratively without notice required. The Director interprets the Land Use Code that no variance is required to adjust property boundaries between two existing parcels, provided the adjustment does not create non-conforming setbacks for existing septic and/or structures. However, land use standards such as setbacks for existing structures must be met when moving a property line.

On June 22, 2021, staff sent a letter informing the applicant of the process, including documents that would be needed to process the Boundary Line Adjustment. A Land Use Application was submitted on February 3, 2022. Through the review process, it was discovered that there were multiple existing structures on the property that would/did not meet the required setbacks where the adjusted property line was proposed to be located.

Staff conducted a technical review of the Plat and all supporting documents and sent a redline version to the project surveyor, along with the applicant, with recommended revisions of Staff (Chapter 7, Section 2.D, *Recommended Revisions*). Staff noted that not all existing structures were shown on the plat and setbacks were not labeled for the existing structures.



Staff requested that the Plat illustrate the County required setbacks from the property line and the ditch so that Staff could confirm if the existing structures met the setbacks. The Land Use Code requires minimum setbacks (all structures, including septic) of 25-feet from the edge of right-of-way (ROW) for all roads (public and private) and 15-feet from all interior property lines [Note: setbacks were established prior to the LUC]. In addition, a setback of 25-feet is required from the edge of any ditch, and 50-feet from the top of bank of a river, stream, or creek. Staff is primarily looking at new/adjusted property lines meeting the required setbacks from existing structures.

The existing barn that sits alongside the Sheppard & Wilmont Ditch was constructed in the early 1970s and the existing shed was built in the 1940s. Historically, these buildings were used for orchard equipment storage.

Where a structure and/or septic system would not meet the setback from a proposed lot line, there are three options: 1) Require lot lines to meet setbacks; 2) Remedy the non-conforming condition by relocating/removing the structure; or 3) Consider a variance for creating a condition that does not meet current standards. Generally, staff starts with Options 1 or 2 because granting a variance allows the non-conforming condition to remain and the LUC states an intent to reduce nonconforming conditions over time.

The applicants submitted a letter of explanation (**attached**), including photos of the structures, for requesting the variance on June 16, 2022. Included with the letter was a signed statement (**attached**) from Kevin Parks (Sheppard-Wilmont Ditch Company Secretary) stating that they had no concern with the location of the existing structures in relation to the ditch and that there have been no situations where the structures have interfered with the maintenance or delivery of the water. The project surveyor then confirmed that the existing barn would need a variance to change the setbacks from 15-feet & 25-feet to approximately 2-feet, and the existing shed would need a variance to change the setbacks from 15-feet & 25-feet to approximately 4-feet.

PROCESS

Variances are presented at a public hearing to the Board of Adjustments (BOA) for either Approval, Approval with Conditions, or Denial. Chapter 1, Section 6.C.4 LUC requires the concurring vote of three members of a 3-member BOA, meaning actions by the BOA must be unanimous in order to pass. Once a decision has been made by the BOA the process will either precede with the Boundary Line Adjustment application or the applicant has 10 days to appeal the BOA's decision to the Board of County Commissioners (BoCC).

Under the Land Use Code, a Boundary Line Adjustment is handled administratively without notice required. However, land use standards such as setbacks for existing structures must be met when moving a property line. Through the review process, it was noted that multiple existing structures appeared to be encroaching on the required setbacks. The applicants have applied for a variance that would reduce the required setbacks to accommodate the proposed Boundary Line Adjustment.



The application checklist requested enough detail for the BOA to be able to make a fully informed decision on the variance. The Boundary Line Adjustment, with an illustration, is attached (**Attachment**).

The Land Use Code (LUC) includes three (3) findings that must *all* be met to allow a variance of land use regulation (i.e., setbacks). These findings are listed below with an initial assessment by Staff:

Variation (Findings): Chapter 10, Section 2 of the LUC states that no variance shall be authorized unless the Board of Adjustment (BOA) makes three findings:

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.*

County policy is to try to protect irrigated lands as much as possible. Given the topography of the property (ditch) and location of the existing structures, the developed building sites are in a location that does not impact the irrigated fields.

The stated purpose for this variance is that the property, including the residence at 37224 Campbell Road, was placed into a conservation easement. The intent is to reduce the size of the parcel in which the house and outbuildings sit on to approximately 1-acre as a separate lot. This would allow the applicants to develop on the property without affecting the integrity of the productive agriculture.

Existing structures (barn & shed) have been in place since before 1985 when the Campbells purchased the property. Historically, the buildings were used for orchard equipment storage. The existing barn that sits alongside the Sheppard & Wilmont Ditch was constructed in the early 1970s and the existing shed was built in the 1940s.

2. *A variance from strict application of the regulations at issue would relieve such difficulties or hardship.*

As stated above, the structures have been in existence since before 1985. Aligning the property line with the ditch is logical based on the site conditions. Setbacks from the ditch are existing conditions that pre-dated setback requirements. Moving, or removing, these buildings would cause a financial burden on the applicants.



3. *The requested variance would not create a substantial detriment to the public good or substantially impair the intent and purpose of this Code.*

The variance process affords an avenue to request a variation to setbacks if required findings can be justified (e.g., physical constraint, hardship). The proposed layout would not impact agricultural operations, but rather it preserves them. This site has been developed with multiple structures and a majority of the property is irrigated Ag land.

Staff finds that the exception for a variation to a County required setback is to create a single exception to address a unique situation for this particular application. If the BOA finds that this variance can be approved, then staff recommends establishing a Plat Note on the Final Plat of the Boundary Line Adjustment for Parcel A reflecting the variance approving modified setbacks for the barn and the shed, but that future development, including any additions to the barn, shed, or the property, is required to meet setbacks (**Condition**).

OTHER AGENCY INVOLVEMENT

The variance process itself does not generally involve other agencies. However, a public notice was sent to neighboring property owners (within a 200-foot radius), and posted on the subject property. At the time of writing this report, there has been no public comment on this application.

Attached material: list, in order as attached

- Draft BOA Resolution (with Conditions)
- Boundary Line Adjustment (PLN21-044/Campbell) with illustration
- Letter of Explanation with photos (dated 6/16/22)
- Letter from Sheppard-Wilmont Ditch Company Secretary

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

PLN21-044/CAMPBELL

RESOLUTION APPROVING A VARIANCE TO REDUCE THE REQUIRED SETBACK IN THE A-20 ZONING DISTRICT FROM 15-FEET (PROPERTY LINE) & 25-FEET (DITCH) TO APPROXIMATELY 2-FEET (BARN) AND 4- FEET (SHED) AS PART OF A BOUNDARY LINE ADJUSTMENT. THE SUBJECT PROPERTY IS LOCATED ON THE NORTHEAST CORNER OF CAMPBELL ROAD, PAONIA (PARCELS 324310400033 & 324310400034/CAMPBELL).

RECITALS

WHEREAS, Campbell & Sons, LLLP, a Colorado limited liability limited partnership, is the owner of record of the real property located east of Campbell Road (Account R007241, Parcel 324310400033, Parcel B), which according to Assessor records is 12.10 acres; and

WHEREAS, Campbell & Sons, LLLP, a Colorado limited liability limited partnership, is the owner of record of the real property located at 37224 & 37336 Campbell Road (Account R007242, Parcel 324310400034, Parcel A), which according to Assessor records is 22.70 acres; 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, the subject property is zoned per the Delta County Land Use Code as Agriculture (20-acre) or A-20, which requires a minimum acreage of 20 acres per lot; and

WHEREAS, the Director interprets the Land Use Code that no variance is required to adjust property between the two existing legal parcels/lots, provided the adjustment does not create non-conforming setbacks for existing septic and/or structures; and

WHEREAS, on June 22, 2021, Calvin & Tracy Campbell submitted a Pre-application form for a Boundary Line Adjustment between two legal parcels (Parcel A and Parcel B), approximately 3.27 miles southwesterly of Paonia; and

WHEREAS, on June 22, 2021, a letter was sent to the applicant explaining the process, including documents that would be needed to process the Boundary Line Adjustment; and

WHEREAS, on February 3, 2022, the applicants submitted a Land Use Application for the Boundary Line Adjustment to adjust the interior boundary lines between two existing parcels owned by the Campbells; and

WHEREAS, the adjusted property line does not meet the required setback for the adjusted Parcel A and an existing barn & shed; therefore, a variance is required prior to final approval of the Boundary Line Adjustment; and

WHEREAS, variances to setbacks are subject to three (3) findings in Chapter 10, Section 2 LUC; and

WHEREAS, a variance requires posting and public notice sent to adjacent property owners at least 14 days prior to the public hearing; and

WHEREAS, on July 14, 2022, notice was posted on the property and sent to adjacent property owners informing the public of the date, time and place for the Board of Adjustment hearing this matter; and

WHEREAS, on July 28, 2022, due to a lack of quorum, the BOA meeting was cancelled. As a result, this item was continued to the next regular meeting and notice was re-posted on the property; and

WHEREAS, the application (PLN21-044/Campbell) came on for a hearing before the Delta County Board of Adjustment on August 25, 2022.

DECISION

NOW, THEREFORE, BE IT RESOLVED, having considered all the written and documentary evidence, the administrative record, and other evidence presented, the Delta County Board of Adjustment hereby:

- A. Finds, based on evidence presented in the staff report and this resolution, that the project does meet findings for a variance (Chapter 10, Section 2.A.2 Land Use Code):
 - a. 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.

- b. A variance from strict application of the regulations at issue would relieve such difficulties or hardship.
- c. The requested variance would not create substantial detriment to the public good or substantially impair the intent and purpose of this Code.

FINDINGS:

Parcel A has multiple existing structures (barn & shed) that have been in place since 1985. The existing barn was constructed in the early 1970s and the existing shed was constructed in the 1940s. Historically the structures were used for orchard equipment storage. Given the topography of the property (ditch) and location of the existing structures, the developed building sites are in a location that does not impact the irrigated fields, making this the best location for the structures.

Topography of the land along the eastern portion of Parcel A and the west portion of Parcel B is constrained by the Sheppard & Wilmont Ditch running in a northwesterly direction between the parcels. The proposed Boundary Line Adjustment is designed with to accommodate the irrigated Ag lands as the properties have been placed in a Conservation Easement to protect the Ag lands.

The Boundary Line Adjustment would relocate a property line approximately two (2) feet (barn) and 4-feet (shed) from the Sheppard & Wilmont Ditch and the adjusted interior property line; the minimum setback required for an interior property line is 15-feet and the edge of ditch is 25-feet. The BOA finds that holding to the strict regulations for A-20 zoning would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon, the owner of the subject property.

- B. Approves a variance for PLN21-044/Campbell a Boundary Line Adjustment allowing the setback requirements for an interior property line and edge of ditch to be modified from 15-feet (interior property line) and 25-feet (edge of ditch) to approximately 2-feet (barn) and 4-feet (shed) for Parcel A, in the A-20 zoning designation (Account R007242, Parcel 324310400034 and Account R007241, Parcel 324310400033), Paonia, subject to one (1) condition.

ADOPTED AS SET FORTH ABOVE on this 25th day of August 2022, upon motion of Board member ____, seconded by Board member ____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

COUNTY OF DELTA
STATE OF COLORADO

Carl P. Holm, AICP
Planning Commission Secretary

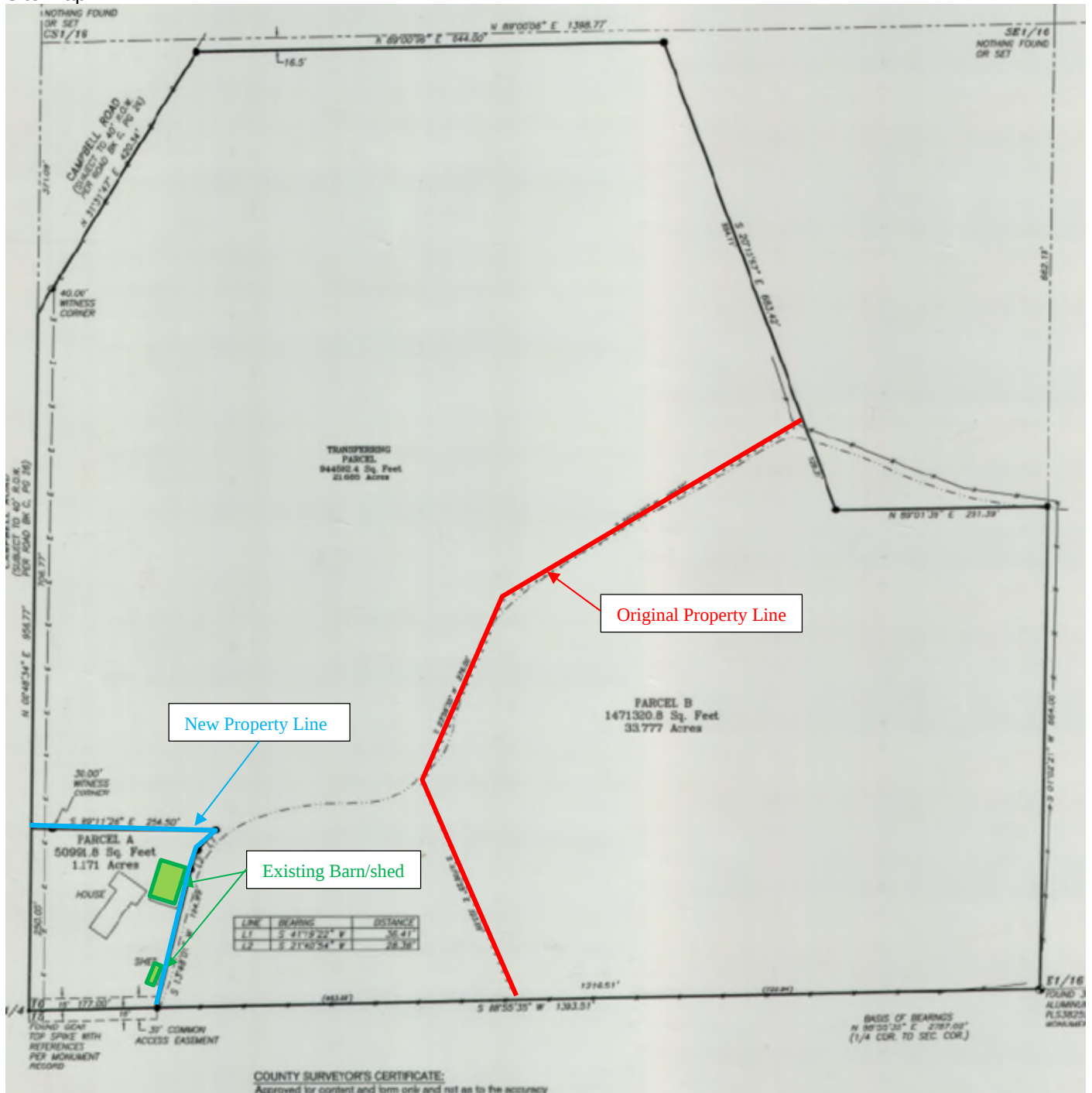
Dated: _____

EXHIBIT A

Conditions of Approval PLN21-044/Campbell August 25, 2022

1. The Final Plat for the Boundary Line Adjustment, for Parcel A, shall include a Plat note stating the following: "STRUCTURES ARE SUBJECT TO COUNTY SETBACK REQUIREMENTS. ON AUGUST 25, 2022, THE DELTA COUNTY BOARD OF ADJUSTMENTS APPROVED A VARIANCE FOR SETBACKS (PLN21-044) FOR THE BARN AND SHED LOCATED ON PARCEL A. ANY FUTURE DEVELOPMENT, INCLUDING ANY ADDITIONS TO THE BARN, SHED, OR THE PROPERTY, IS REQUIRED TO MEET COUNTY SETBACKS."

Site Map



June 16, 2022

To: Delta County Planning & Community Development: Board of Adjustments:

Re: Application PLN21-044/Campbell BLA.

We would like to request a variance in regard to a boundary adjustment for which we have applied on 37224 Campbell Road, Hotchkiss, CO 81419

We recently put our ranch, including the parcel of our residence of 37224 Campbell Road, Hotchkiss, CO into a conservation easement. Our intent with this boundary adjustment is to reduce the size of the parcel which our house and outbuildings sits on to approximately 1 acre as a separate building envelope. This would allow for things such as a new building to be erected or a home business to be established at this location without affecting the integrity of the productive agriculture land surrounding it.

The two outbuildings at this address were both here when the Campbell Family purchased the property in 1985 from the Lund Brothers. Both buildings were used as orchard equipment storage. There was an inhabitable house which sat where we put our modular home in 1990. The large pole barn which sits alongside the Sheppard and Wilmont Ditch was built in the early 1970's; the smaller shed was built in the 1940's. Neither one has ever created a problem with the maintenance or water delivery of the Sheppard - Wilmont Ditch.

Campbell and Sons LLLP Ranch and the Sheppard - Wilmont Ditch Company have signed and included documents stating they have no concern with the buildings being within 25 feet of the ditch and that there is no interference with it. Whether or not we do a boundary adjustment, the buildings exist where they are and the ditch exists where it is. The reason why we chose the boundaries for the boundary adjustment was to eliminate any possible impedance on the ditch right away and to ensure that no future buildings can ever be erected on productive irrigated ground surrounding the building envelope.

Our family, the Campbell Family, owns the property to the East, West, North, and South of the property which the variance is being appealed with Campbell Road on the West side. We, Calvin and Tracy Campbell, are co-owners in the Campbell & Sons LLLP Ranch. In this property adjustment, we have tried to follow natural barriers to the 1 acre adjustment including the ditch and the road. We also did not want to encroach on productive irrigated hay fields to the East, South, and North of the property. We have lived and own our home on this parcel for 32 years and plan on doing so for the remainder of our lives.

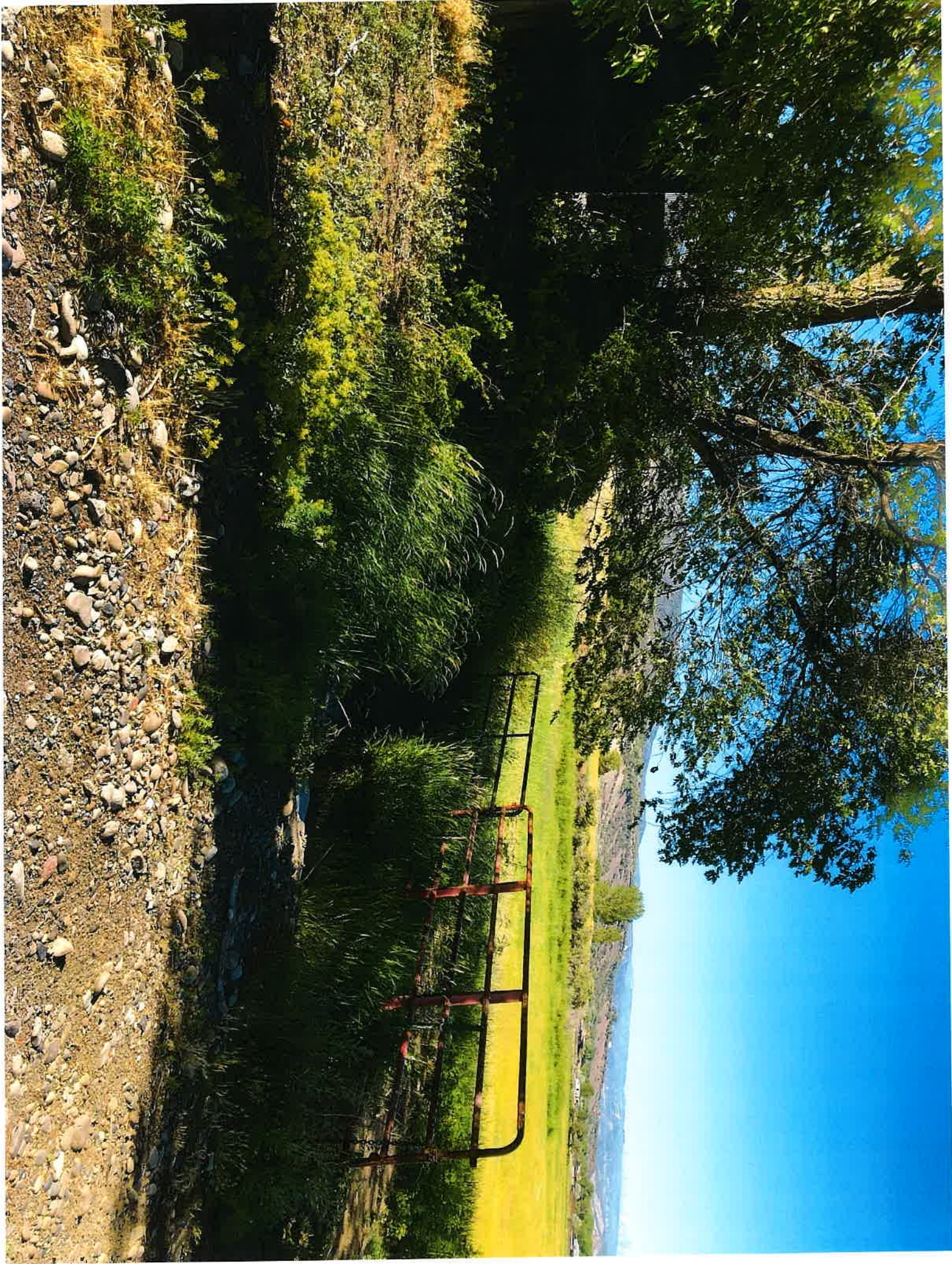
Included are photos of the outbuildings in regards to the Sheppard-Wilmont Ditch, as well as letters from Campbell and Sons LLLP and Sheppard-Wilmont Ditch Company.

Thank you for your time.

Sincerely,

Calvin and Tracy Campbell
37224 Campbell Road
Hotchkiss, CO

Handwritten signatures of Tracy Campbell and Calvin Campbell. Tracy's signature is written above Calvin's. Both are in cursive script.





Tracy Campbell <tracy.campbell@deltaschools.com>
To: kris@wilmorelandsurveying.com

Tue, Jun 21, 2022 at 7:45 AM



Tracy Campbell <tracy.campbell@deltaschools.com>
To: kris@wilmorelandsurveying.com

Tue, Jun 21, 2022 at 7:46 AM



Tracy Campbell <tracy.campbell@deltaschools.com>
To: kris@wilmorelandsurveying.com

Tue, Jun 21, 2022 at 7:46 AM

To: Delta County Planning & Community Development: Board of Adjustments:

Re: Application PLN21-044/Campbell BLA.

From: Sheppard-Wilmont Ditch Company

We have no concern with the property boundary adjustment application filed by Calvin and Tracy Campbell of 37224 Campbell Road, Hotchkiss, CO. The two current outbuildings to the West of the Sheppard-Wilmont Ditch have no interference with the maintenance or delivery of water.

Sincerely,

Sheppard-Wilmont Ditch Company Secretary,

A handwritten signature in dark ink, appearing to read "Kevin Parks". The signature is written in a cursive style with a horizontal line underneath the name.

Kevin Parks

To: Delta County Planning & Community Development: Board of Adjustments:

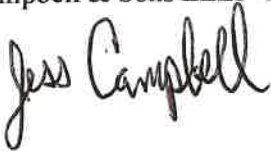
Re: Application PLN21-044/Campbell BLA.

From: Campbell & Sons LLLP

We have no concern with the property boundary adjustment application filed by Calvin and Tracy Campbell of 37224 Campbell Road, Hotchkiss, CO. The two current outbuildings to the West of the Sheppard-Wilmont Ditch have no interference with the maintenance or delivery of water.

Sincerely,

Campbell & Sons LLLP General Partner,

A handwritten signature in black ink that reads "Jess Campbell". The signature is written in a cursive, flowing style.

Jess Campbell



DELTA COUNTY

PLANNING & COMMUNITY DEVELOPMENT

STAFF REPORT

**Board of Adjustment
Board Room
560 Dodge Street, Delta, CO 81416**

Thursday, August 25, 2022 @ 5:30 p.m.

PLN22-067 (Nieman)

Continued from July 28, 2022

Consider a variance to reduce the required lot size from a 35-acre minimum to approximately 3.25 acres (Lot 2) in the A-35 zoning district. The subject property is a 38.36-acre parcel located at 16454 Grange Road (Parcel: 318728101009), Paonia.

PROJECT INFORMATION:

Property Owner: Jeff Nieman
Applicant: Jeff Nieman
Site Address(s): 16454 Grange Road, Paonia CO 81428
Parcel ID/Acct: 318728101009/R024531
Parcel Size: 38.36 Acres
Zoning: A-35

Report Prepared by: Angie Kemp, Planner I

RECOMMENDATION:

Staff recommends that the Board of Adjustments (BOA):

- a) Consider required variance criteria and findings as they apply to PLN22-067 (Nieman);
- b) Provide direction to either Approve, Conditionally Approve, or Deny lot size variance(s) for one (1) lot in the A-35 zoning designation located at 16454 Grange Road (Parcel 318728101009/ Nieman); and

- c) Authorize the Director to prepare a resolution reflecting the BOA direction, including evidence relative to the required findings, and conditions (as applicable).

SUMMARY/DISCUSSION:

Due to a lack of quorum, the July 28, 2022, Board of Adjustment meeting was cancelled, when this item was originally scheduled for a public hearing. As a result, this item was continued to the next regular meeting.

Jeff Nieman, owner, is seeking a 2-lot subdivision (Minor Plat) from an approximately 40-acre parcel with frontage on Grange Road (County Road, County maintained). The site is utilized as residential and agricultural land with some irrigated fields, agricultural outbuildings, and a residence at 16454 Grange Road. The expressed purpose is to split the residence and some pasture irrigated ag land off for family purposes.

The zoning is A-35, so, the minimum acreage for subdividing this parcel is 35 acres per lot. The subdivision has been designed to create two (2) lots:

Lot 1 (3 Acres) – Includes an existing residence (16454 Grange Road) and a section of irrigated agricultural land, plus some agricultural buildings. There is a well on the property which is utilized as a domestic water source. Because Lot 1 does not meet the minimum requirements per the zoning designation, a variance is required to create the 3-acre lot.

Lot 2 (35.36 Acres) – Includes a section of irrigated agricultural land and sloping terrain covered in shrubs that is not irrigated. Lot 2 meets the standards for acreage set forth in the LUC for the A-35 zone with more than 35 acres remaining after the split. This parcel abuts BLM land on the southern and eastern sides, but there is no public access through the property. A telecommunications maintenance road does cross the property to access a site on BLM land, but this has a locked gate and is utilized very rarely.

Development is required to provide proof of an adequate water supply. The applicant is aware that to share a well between properties there will need to be approval from that State which often involves an Augmentation Plan. Until/Unless there is a State-Approved Augmentation Plan, the subdivision cannot be approved. Alternatively, the applicant will need to provide evidence that they can obtain a water tap for Lot 2. Cisterns are not allowed for residential development.

There is existing access from Grange Road that is designed such that Lot 1 will access through Lot 2, which will require an easement and Maintenance Agreement. Both lots have been designed so that there is 30+ feet of road frontage. Staff has suggested that Lot 1 be slightly adjusted so that the property line runs along the shared driveway, where the road becomes a clear dividing line. Pursuant to Ch. 4 Section 2.c.2.c.s. "Access points to individual properties shall not be located closer than 15 ft. to an

interior side lot line, except that a common access to two adjoining properties may be provided at the shared lot line.”

The access is up a hillside, and a shared access is the reasonable option for this proposal. The access will need to meet County shared access standards.

The Land Use Code requires minimum setbacks (all structures, including septic) of 25 feet from the edge of ROW for all roads (public and private) and 15 feet from all interior property lines. In addition, a setback of 25 feet is required from the edge of any ditch, and 50 feet from the top of bank of a river, stream, or creek. The new boundary lines shall not create non-conformities with the existing structures. Existing structures near the Stewart Ditch appear to be non-conforming with the setbacks, which are not affected by the subdivision. Dimensions have not been provided to evaluate setbacks from the new property lines created with Lot 1 in order to make one of the required findings (see Finding 1 below). Staff has requested that the plat display these structures and their uses along with the setbacks to the ditch and property lines so we can assess if the LUC standards are met.

An aerial view with an overlay of the proposed lot configuration illustrates that the proposed design will divide lands that is currently irrigated. About 1-1.5 acres of agricultural land would be included in Lot 1. The existing irrigated land on Lot 2 would be split from the primary access. Staff expressed concern for potentially impacting irrigated ag land as a result of this design.

The applicant stated that irrigation will continue and they plan to expand since they have more irrigation water than the current configuration requires. Their intent is to reconfigure and expand the field on Lot 2, generally in the area south of the homestead. If this occurs, the amount of disturbed ag can be viewed as minimal. The lot is developed and the applicant plans to divide irrigation water between the two properties and add some acreage into production on Lot 2. An irrigation plan will need to be submitted as a subdivision requirement.

Engineering will have an opportunity to assess the subdivision and may request additional Right-of-Way (ROW) along the frontage abutting Grange Road. A Plat is required to illustrate the centerline of the improved road surfaces as well as existing rights-of-way. The County generally requests dedication of right-of-way to the centerline of the roadway, except any land already dedicated and depending on the conditions for that area (e.g., steep slopes). Dedications are to be Fee Simple Title. Any other form (easement, road petition, etc.) requires the underlying land owner to continue paying property taxes even though they are not able to use that land.

PROCESS

Variances are presented at a public hearing to the Board of Adjustments (BOA) for either Approval, Approval with Conditions, or Denial considering the required criteria (4) and findings (3). Staff finds there are no unique physical conditions and the parcel

could be subdivided if the BOA finds that it meets the required criteria and findings. Lot sizes of properties in the surrounding area vary broadly. Therefore, the primary question is if the BOA finds that the hardship criteria/findings are met.

The LUC requires the concurring vote of three members of a 3-member BOA, meaning actions by the BOA must be unanimous in order to pass. Once a decision has been made by the BOA, the process will either proceed with the Subdivision process if approved, or, if denied, the applicant will have 10 (calendar) days to appeal the BOA's decision to the Board of County Commissioners (BoCC). If the BOA finds that variance(s) can be approved, then staff recommends three (3) conditions.

Pursuant the LUC, Minor Plat (2-lot subdivisions) are handled Administratively, which means that the Director of Community Development and Natural Resources makes a final decision. If there is road dedication, however, the application will go before the Board of County Commissioners (BoCC) for acceptance of the dedication and the plat (with dedication shown). The Director nor the BoCC cannot act on the Minor Plat until/unless the Variance is approved. The application checklist requested enough detail, professionally drawn, for the BOA to be able to make a fully informed decision on the variance. The Site Plan is attached. (**Attachment**).

FINDINGS

The Land Use Code (LUC) includes four (4) criteria that must *all* be met for granting a variation of lot size. In addition, there are three (3) findings that must *all* be met to allow a variance of land use regulation. These criteria/findings are listed below with an initial assessment by staff:

Variation to Lot Size (Criteria): Chapter 3, Section 1.A.3 of the LUC states that the County may approve the creation of new lots that do not conform to the size requirements provided they meet four (4) criteria:

1. *The subdivision conforms to all other requirements of the Delta County Land Use Code.*

The Access shall be built to County standards for a shared driveway. It is unclear whether some of the ag buildings conform to setback requirements in the area next to Stewart ditch. Staff will need the plat to display exact location and the types of structures that are in this area in order to make a determination and recommendation.

Where a new structure and/or septic system would not meet the setback from a ditch, there are two options: 1) Remedy the non-conforming condition by relocating/removing the structure; or 2) Consider a variance for creating a condition that does not meet current standards. Generally, staff starts with Options 1 because granting a variance allows the non-conforming condition to remain and the LUC states an intent to reduce nonconforming conditions over

time. This is an existing condition and will not apply to this case, but the area cannot be expanded. A non-conforming building cannot be altered or replaced without compliance with the setback requirements in-place at that time.

2. *The new lots have at least the minimum dimensions set out in the standards for the UGA zoning district (75-foot width, 30-foot frontage).*

Both lots conform to the minimum dimension standards of 30-foot of roadway frontage and 75-foot width, which are the minimum standards for the Urban Growth Area zone. Lot 1 has 30 feet of frontage and the minimum width is over 200-feet. Lot 2 has 50 feet of frontage and the minimum width is over 1000 feet.

3. *The size and configuration of the new lot minimizes disturbance or development of irrigated agricultural portions of a property, and does not interfere with wildlife habitat.*

The Land Use Code calls for minimizing impact to irrigated ag lands. All structures are existing, there is no development proposed, and the majority of irrigated ag fields will be retained with Lot 2. Irrigation will continue on Lot 1.

4. *The Final Plat is annotated such that no further subdivision of each lot created by this subsection is allowed.*

If variance(s) is/are approved, the LUC requires a condition that restricts further subdivision. The BoCC has expressed concern with restriction in perpetuity. Staff recommends a plat note *restricting further subdivision* for 20 years where a variance to lot size is required.

Variance (Findings): Chapter 10, Section 2 of the LUC states that no variance shall be authorized unless the Board of Adjustment (BOA) makes three findings:

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.*

The question is if the BOA finds that holding to the strict regulations for A35 zoning “*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 strict application of the regulations at issue would relieve such difficulties or hardship.*

Pursuant to the Land Use Code, adequacy to sunlight for solar energy devices installed after January 1980 can be a possible consideration in determining difficulty or hardship. Staff finds that there is no solar on the property to be considered in determining difficulty or hardship.

3. *The requested variance would not create a substantial detriment to the public good or substantially impair the intent and purpose of this Code.*

Zoning is applied broadly, but we recognize that it may not fit every situation. Lot sizes are generally 5.5-25.0 acres on Grange Road. Lot sizes vary greatly in this immediate area and most properties have irrigated agricultural land on this road.

The variance process affords an avenue to request a smaller lot if required criteria/findings can be justified (e.g., physical constraint, hardship). Staff interprets that the exception for a variation to lot size is to create a single exception to address a unique situation.

Findings/Hardship

The ability to approve any variance depends largely on defining *unnecessary/undue* hardship. There is no simple formula for determining, what is enough. Hence, the BOA holds a quasi-judicial hearing and renders a decision based on evidence presented.

Hardship should be more than mere inconvenience or a preference for a more lenient standard. An applicant should demonstrate how their situation compares to others subject to the same restriction in the vicinity of their project. For example, 1) does strict compliance with the Code totally prevent improvement of the property in a manner which is reasonable, customary and consistent with other properties in the area; or (2) are there conditions peculiar to the property that cause practical difficulty in strict compliance with the ordinance, due to significant or unjustified expense in light of the scope of the project, destruction or demolition of attractive features of the property, or similar reasons?

An unnecessary hardship should be peculiar to the subject property, not general to the neighborhood or the applicant's personal circumstances. A hardship should not result from actions taken by the applicant or property owner (self-created). For example, the alleged practical difficulty was not created as a result of any action taken by the applicant or predecessors in interest of the property which was unlawful, or which could have been reasonably foreseen to create difficulty in complying with the ordinance for future improvements.

Another way of looking at variances is if granting it would create special privilege to this property that would not be granted to another property with similar conditions (size, shape) in the same zoning designation. Also, that because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings, the strict application of this Code is found to deprive subject

property of privileges enjoyed by other properties in the vicinity and under identical zone classification.

Arguments that tend to be legally successful include the following:

1. That the particular physical surroundings, shape or topographical condition of the specific property involved would bring particular hardship upon the owner (not just a mere inconvenience), if the strict letter of the zoning regulation were to be carried out;
2. That the conditions upon which the petition for variance relates would not be applicable generally to other property within the same zoning district;
3. That the purpose of the variance is not based exclusively upon a desire to make more money out of the property;
4. That the alleged difficulty or particular hardship has not been created by any person presently having an interest in the property or by the applicant;
5. That the granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located;
6. That the proposed variance will not:
 - a. Impair an adequate supply of light and air to adjacent property;
 - b. Substantially increase the hazard from fire or other dangers to said property or adjacent property;
 - c. Otherwise impair the public health, safety, comfort, morals or general welfare of the inhabitants of the Town/City;
 - d. Diminish or impair property values within the neighborhood;
 - e. Unduly increase traffic congestion in the public streets and highways;
 - f. Create a nuisance; or
 - g. Result in an increase in public expenditures.
7. That the variance requested is the minimum variance that will make possible the reasonable use of the land, building or structure.

CONDITIONS

If the BOA finds that the variance can be approved per the required findings, the BOA could apply conditions to address issues as part of the subdivision review. Staff has identified items that will be addressed as part of the subdivision, prior to accepting the Final Plat:

1. The Minor Plat shall illustrate the centerline of the improved road surface. County Engineer shall determine if Right-of-Way (ROW) is to be dedicated for Grange Road. Dedications to Delta County require acceptance by the BoCC in Fee Simple Title.
2. The final plat shall be annotated such that no further subdivision of either lot created by this subsection is allowed for twenty years from the date the plat is recorded. [Pursuant to Chapter 3, Section 1.A.3.d (Variations to Lot Size-Criteria)].

3. Future development shall conform with the setback requirements. Expansion or replacement of structures near Stewart Ditch shall not be permitted, unless any new development meets the requirements for setbacks.

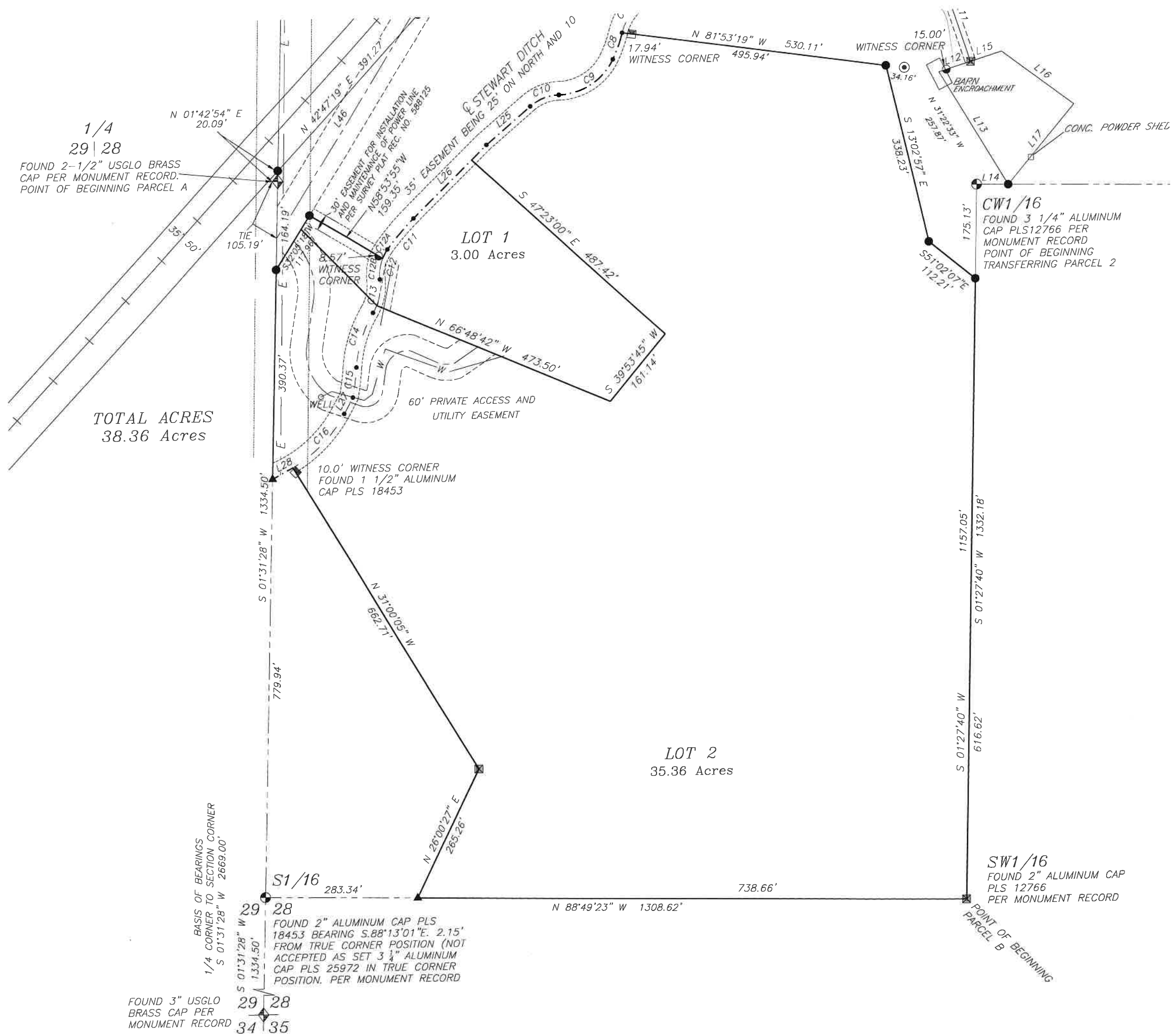
OTHER AGENCY INVOLVEMENT

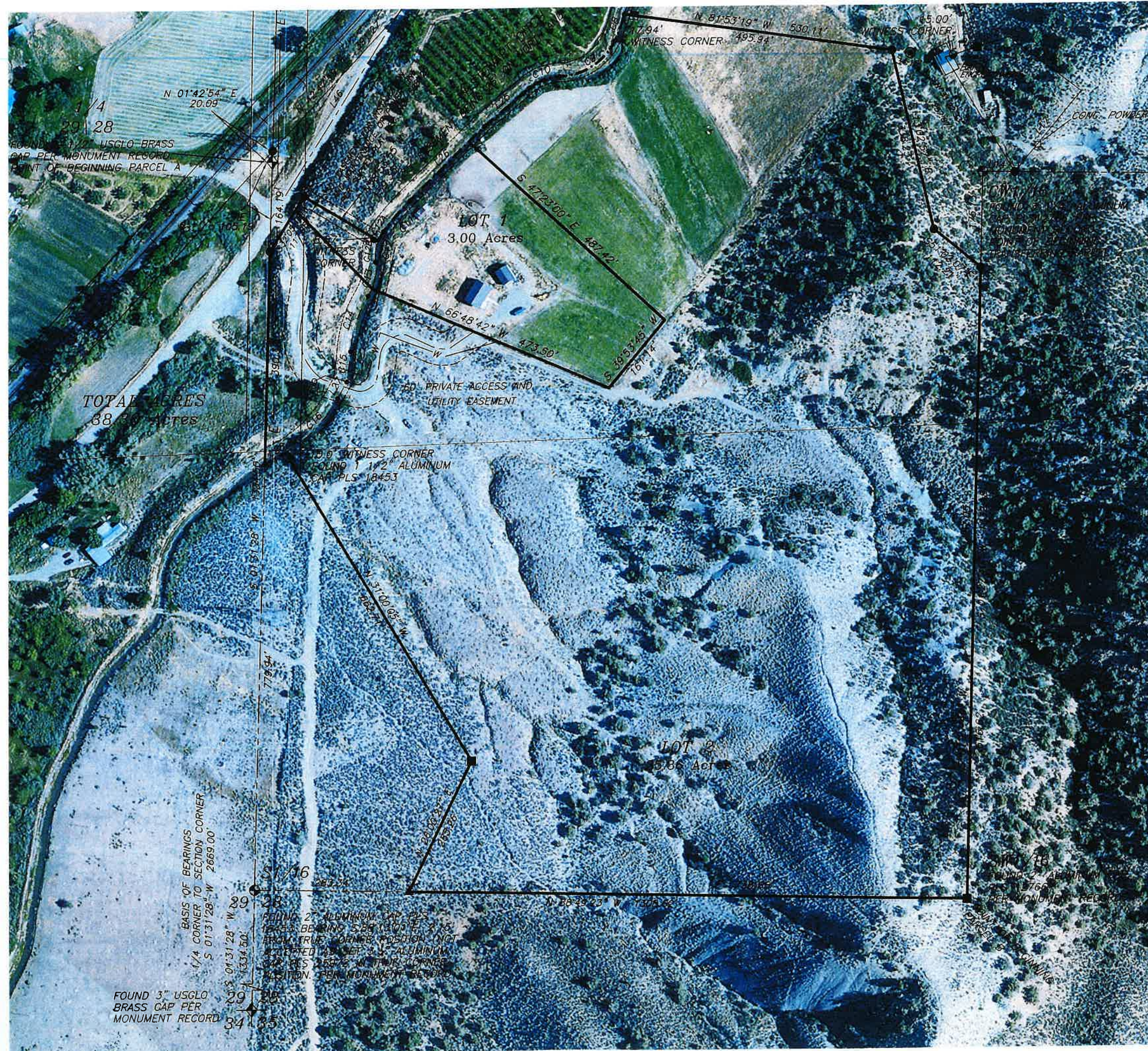
The Development Application form was submitted on May 6, 2022. A letter and checklist, along with supplemental forms from the Development Application were sent to the applicant on May 20, 2022.

The variance process itself does not generally involve other agencies. However, a public notice was sent to neighboring property owners, interested parties, and posted on the subject property. When/If a subdivision is processed, it will be referred to adjacent property owners and agencies for a 21-day comment period which could affect the subdivision.

Attached material: list, in order as attached

- Site Plan
- Site Plan with Aerial







DELTA COUNTY

PLANNING & COMMUNITY DEVELOPMENT

STAFF REPORT

**Board of Adjustment
Board Room
560 Dodge Street, Delta, CO 81416**

Thursday, August 25, 2022 @ 5:30 p.m.

PLN22-079 (Hamilton)

Consider a variance to reduce the required lot size from the 20-acre required minimum to approximately 10.88 acres (Lot 2) in the A-20 zoning district. The subject property is a 35.88-acre parcel located at 39772 & 39766 L75 Road (Parcel: 324324100026), Paonia.

PROJECT INFORMATION:

Property Owner: Loren K. Hamilton
Applicant: Loren "Keith" Hamilton
Site Address(s): 39772 L75 Road, Paonia CO 81428
Parcel ID/Acct: 324324100026/R007595
Parcel Size: 35.88 Acres
Zoning: A-20

Report Prepared by: Angie Kemp, Planner I

RECOMMENDATION:

Staff recommends that the Board of Adjustments (BOA):

- a) Consider required variance criteria and findings as they apply to PLN22-079 (Hamilton);
- b) Provide direction to either Approve, Conditionally Approve, or Deny lot size variance(s) for one (1) lot in the A-20 zoning designation located at 39772 & 39766 L75 Road (PLN22-079/ Hamilton); and

- c) Authorize the Director to prepare a resolution reflecting the BOA direction, including evidence relative to the required findings, and conditions (as applicable).

SUMMARY/DISCUSSION:

Keith Hamilton, owner, is seeking a 2-lot subdivision (Minor Plat) from a 35.88-acre parcel with frontage on L75 Road (County Road, County maintained). The subject property has been identified as Parcel A of the *Mark Downing Exemption*, recorded with the Delta County Clerk and Recorder on Sept. 29, 1983 (Rec. #407103). The site is utilized as residential and agricultural land with some irrigated fields, agricultural outbuildings, and two residences at 39772 and 39766 L75 Road. The expressed purpose is to split one of the residences and some pasture (irrigated ag land) off in order to sell off the original home (39766 L75 Road).

The zoning is A-20, so, the minimum acreage for subdividing this parcel is 20 acres per lot. The subdivision has been designed to create two (2) lots:

Lot 1 (25 Acres) – Includes an existing residence (39766 L75 Road) and a section of irrigated agricultural land, plus some agricultural buildings. Lot 1 meets the standards for acreage set forth in the LUC for the A-20 zone with more than 20 acres remaining after the split. The residence has a permitted septic tank (Septic Permit # 95-003).

Lot 2 (10.88 Acres) – Includes a section of irrigated agricultural land and a residence (39772 L75 Road) served by one of the two water taps from Bone Mesa Domestic Water District. Because Lot 2 does not meet the minimum requirements per the zoning designation, a variance is required to create the 10.88-acre lot. The residence has a permitted septic tank (Permit# 15-075).

There is a well on the property (Well Permit #: 233080), but the domestic water source for each lot are individual taps from Bone Mesa Domestic Water District (Taps #1480 & #1490). Current State regulations do not allow a well to be shared across properties unless the State approves an Augmentation Plan. Any water lines crossing the property lines need to be illustrated on the Minor Plat along with the well, if the variance is approved. The Plat will be referred to DWR for review and comment. Easement(s) may be required depending on the location of water lines and how they are used (**Condition**).

There is an existing access from L75 Road that is designed such that the residences have a shared access. Both lots have been designed so that there is at least 30 feet of road frontage (minimum required for a variance). Staff does not support a shared access for two lots, or an easement where the lots can be designed with individual access (Initial Site Plan, **Attached**). Staff recommends that a separate access be established for Lot 2 and reconfigure the lots so that each property has frontage on L75 Road and has their own access. The applicant submitted a Revised Site Plan

(Attached) that follows this recommendation. Each lot is allowed one access and a horseshoe driveway is not allowed. The County Engineer can approve an exception for an access for temporary/periodic Ag use. The new access for Lot 2 will need to meet County Rural Driveway Standards **(Condition)**.

The Land Use Code requires minimum setbacks (all structures, including septic) of 25 feet from the edge of ROW for all roads (public and private) and 15 feet from all interior property lines. In addition, a setback of 25 feet is required from the edge of any ditch, and 50 feet from the top of bank of a river, stream, or creek, there is a requirement of a 100-foot distance between a well and a septic leach field. The new boundary lines shall not create non-conformities with the existing structures **(Condition)**.

Staff has requested that the plat display all structures, the well, OWTS and their distances from one-another, with the setbacks to the ditches and property lines so we can assess if the LUC standards are met **(Condition)**. Initially, it does not appear that any structures are non-conforming, and the proposed lot design will not create any new setback issues. Per the septic permit with the layout of the property drawn out, it appears that the well is well-over 150 feet from other development on the subject property.

The applicant stated that irrigation will continue, with modification to the waste ditch. Their intent is to reconfigure how Lot 2 is irrigated. Since both lots are developed, staff views the amount of disturbed Ag as minimal. An Irrigation Plan, documenting how the owner is sharing the irrigation water and how they operate the irrigation system, will need to be submitted as part of the subdivision requirement **(Condition)**.

Engineering has had an opportunity to assess the subdivision. A Plat is required to illustrate the centerline of the improved road surfaces as well as existing rights-of-way **(Condition)**. The County generally requests dedication of right-of-way to the centerline of the roadway, except any land already dedicated and depending on the conditions for that area (e.g., steep slopes). Dedications are to be Fee Simple Title. Any other form (easement, road petition, etc.) requires the underlying land owner to continue paying property taxes even though they are not able to use that land. In this case, Engineering is not requesting additional Right-of-Way (ROW) along the frontage abutting L75 Road, since the required amount of Right-of-Way was given as part of the *Mark Downing Exemption Plat* (Rec# 407103).

PROCESS

Variances are presented at a public hearing to the Board of Adjustments (BOA) for either Approval, Approval with Conditions, or Denial considering the required criteria (4) and findings (3). Staff finds there are no unique physical conditions and the parcel could be subdivided if the BOA finds that it meets the required criteria and findings.

The LUC requires the concurring vote of three members of a 3-member BOA, meaning actions by the BOA must be unanimous in order to pass. Once a decision has been

made by the BOA, the process will either proceed with the Subdivision process if approved, or, if denied, the applicant will have 10 (calendar) days to appeal the BOA's decision to the Board of County Commissioners (BoCC). If the BOA finds that the variance can be approved, then staff recommends four (4) conditions.

Pursuant the LUC, Minor Plat (2-lot subdivisions) are handled Administratively, which means that the Director of Community Development and Natural Resources makes a final decision. The Director cannot act on the Minor Plat until/unless the Variance is approved. The application checklist requested enough detail for the BOA to be able to make a fully informed decision on the variance, we have included images of the property in the presentation to the BOA, and the Site Plan is attached to this Staff Report. **(Attachment)**.

FINDINGS

The Land Use Code (LUC) includes four (4) criteria that must *all* be met for granting a variation of lot size. In addition, there are three (3) findings that must *all* be met to allow a variance of land use regulation. These criteria/findings are listed below with an initial assessment by staff:

Variation to Lot Size (Criteria): Chapter 3, Section 1.A.3 of the LUC states that the County may approve the creation of new lots that do not conform to the size requirements provided they meet four (4) criteria:

1. *The subdivision conforms to all other requirements of the Delta County Land Use Code.*

Access shall be built to County standards for the new driveway into Lot 2. The Plat is required to display exact location and the types of structures that are on the property in order to make a determination if the subdivision meets applicable standards.

2. *The new lots have at least the minimum dimensions set out in the standards for the UGA zoning district (75-foot width, 30-foot frontage).*

Based on the revised Site Plan, both lots are designed to conform to the minimum dimension standards of 30-foot of roadway frontage and 75-foot width, which are the minimum standards for the Urban Growth Area zone. Lot 1 has over 300 feet of frontage and the minimum width is over 300-feet. Lot 2 has 300 feet of frontage and the minimum width is over 450 feet.

3. *The size and configuration of the new lot minimizes disturbance or development of irrigated agricultural portions of a property, and does not interfere with wildlife habitat.*

The Land Use Code calls for minimizing impact to irrigated ag lands. All structures are existing and there is no development proposed. The applicant stated that they intend to reconfigure and continue to irrigate Lot 2. Irrigation will continue with modification to the waste ditch, and the majority of irrigated ag fields will be retained with Lot 1.

4. *The Final Plat is annotated such that no further subdivision of each lot created by this subsection is allowed.*

If variance(s) is/are approved, the LUC requires a condition that restricts further subdivision. The BoCC has expressed concern with restriction in perpetuity. Staff recommends a plat note *restricting further subdivision for 20 years* where a variance to lot size requires this condition.

Variance (Findings): Chapter 10, Section 2 of the LUC states that no variance shall be authorized unless the Board of Adjustment (BOA) makes three findings:

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.*

There are no unique features of the subject property in shape or topography. The question is if the BOA finds that holding to the strict regulations for A-20 zoning “*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 strict application of the regulations at issue would relieve such difficulties or hardship.*

Pursuant to the Land Use Code, adequacy to sunlight for solar energy devices installed after January 1980 can be a possible consideration in determining difficulty or hardship. Staff finds that there is no solar on the property to be considered in determining difficulty or hardship.

3. *The requested variance would not create a substantial detriment to the public good or substantially impair the intent and purpose of this Code.*

Zoning is applied broadly, but we recognize that it may not fit every situation. Lot sizes are generally 20+ acres on L75 Road, with the exception of 4 or 5 properties that are about 1-2-acres each in the nearby vicinity and a few 5-10-acre properties nearby. This is a largely agricultural area, with most properties appearing to have irrigated lands.

The variance process affords an avenue to request a smaller lot if required criteria/findings can be justified (e.g., physical constraint, hardship). Staff interprets that the exception for a variation to lot size is to create a single exception to address a unique situation.

Findings/Hardship

The ability to approve any variance depends largely on defining *unnecessary/undue* hardship. There is no simple formula for determining, what is enough. Hence, the BOA holds a quasi-judicial hearing and renders a decision based on evidence presented.

Hardship should be more than mere inconvenience or a preference for a more lenient standard. An applicant should demonstrate how their situation compares to others subject to the same restriction in the vicinity of their project. For example, 1) does strict compliance with the Code totally prevent improvement of the property in a manner which is reasonable, customary and consistent with other properties in the area; or (2) are there conditions peculiar to the property that cause practical difficulty in strict compliance with the ordinance, due to significant or unjustified expense in light of the scope of the project, destruction or demolition of attractive features of the property, or similar reasons?

An unnecessary hardship should be peculiar to the subject property, not general to the neighborhood or the applicant's personal circumstances. A hardship should not result from actions taken by the applicant or property owner (self-created). For example, the alleged practical difficulty was not created as a result of any action taken by the applicant or predecessors in interest of the property which was unlawful, or which could have been reasonably foreseen to create difficulty in complying with the ordinance for future improvements.

Another way of looking at variances is if granting it would create special privilege to this property that would not be granted to another property with similar conditions (size, shape) in the same zoning designation. Also, that because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings, the strict application of this Code is found to deprive subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification.

Arguments that tend to be legally successful include the following:

1. That the particular physical surroundings, shape or topographical condition of the specific property involved would bring particular hardship upon the owner (not just a mere inconvenience), if the strict letter of the zoning regulation were to be carried out;
2. That the conditions upon which the petition for variance relates would not be applicable generally to other property within the same zoning district;

3. That the purpose of the variance is not based exclusively upon a desire to make more money out of the property;
4. That the alleged difficulty or particular hardship has not been created by any person presently having an interest in the property or by the applicant;
5. That the granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located;
6. That the proposed variance will not:
 - a. Impair an adequate supply of light and air to adjacent property;
 - b. Substantially increase the hazard from fire or other dangers to said property or adjacent property;
 - c. Otherwise impair the public health, safety, comfort, morals or general welfare of the inhabitants of the Town/City;
 - d. Diminish or impair property values within the neighborhood;
 - e. Unduly increase traffic congestion in the public streets and highways;
 - f. Create a nuisance; or
 - g. Result in an increase in public expenditures.
7. That the variance requested is the minimum variance that will make possible the reasonable use of the land, building or structure.

CONDITIONS

If the BOA finds that the variance can be approved per the required findings, the BOA could apply conditions to address issues as part of the subdivision review. Staff has identified items that will be addressed as part of the subdivision, prior to accepting the Final Plat:

1. The Minor Plat shall illustrate all structures and easements (existing and proposed) and their proximity to other structures/ property lines, ditches, ROW.
2. The final plat shall be annotated such that no further subdivision of either lot created by this subsection is allowed for twenty years from the date the plat is recorded. [Pursuant to Chapter 3, Section 1.A.3.d (Variations to Lot Size-Criteria)].
3. An irrigation Plan will need to be submitted to Delta County Planning.
4. The proposed driveway shall meet County standards for a rural driveway (Item 16 of the Delta County Roadway Construction and Design Standards)

OTHER AGENCY INVOLVEMENT

The Development Application form was submitted on May 17, 2022. A letter and checklist, along with supplemental forms from the Development Application were sent to

the applicant on June 2, 2022. Several meetings were held with the applicant and staff from Planning and Engineering to determine the most suitable lot layout for all parties, to make use of the land and irrigation water and to meet requirements for access and of the LUC for a variance.

The variance process itself does not generally involve other agencies. However, a public notice was sent to neighboring property owners, interested parties, and posted on the subject property. When/If a subdivision is processed, it will be referred to adjacent property owners and agencies for a 21-day comment period which could affect the subdivision.

Public Comments were received by the posting date in order to be included in this Staff Report (**attached**);

Hayley and Brandon Cowger (eastern abutting property owners) do not approve of the subdivision based on the agricultural character of the area, privacy, and wellbeing of their livestock and horses.

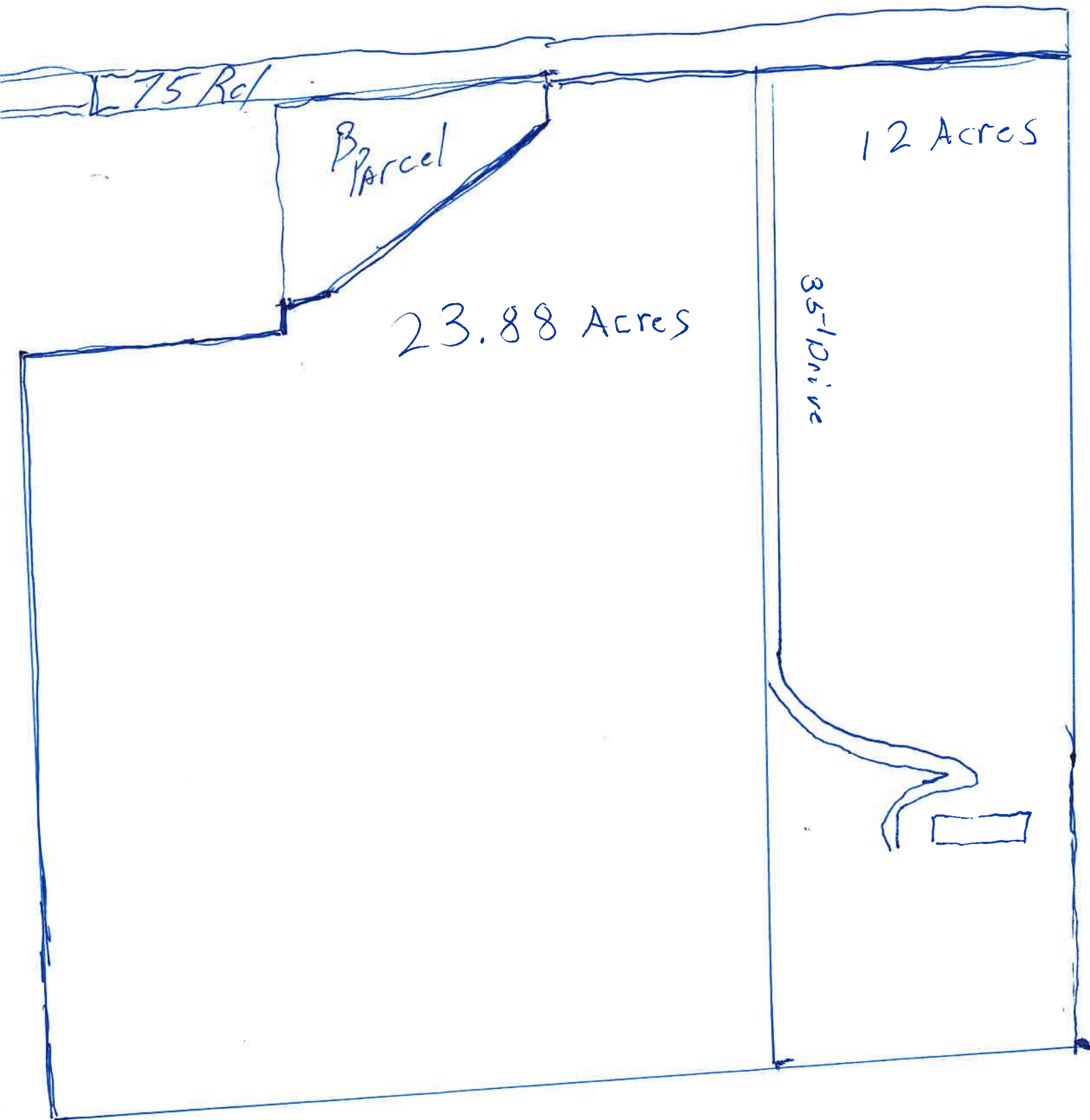
Kim Marshall (western abutting property owner) does not approve of the subdivision based on privacy, increase in traffic and noise, water scarcity, agricultural nature of the area, and impact on views.

Robert and Tracy Smith do not approve of the subdivision based on concerns over privacy, traffic, views, and not wanting the County to set a precedent in the area for allowing subdivisions.

Attached material list, in order;

- Initial Site Plan (dated 5/19/22)
- Revised Site Plan (dated 7/18/22)
- Aerial Images
- Public Comments





Tax Acct: R007589
Tax Acres: 16.84

L75 RD

MARSHALL KIM
Parcel ID: 324324100027
Tax Acct: R007596
Tax Acres: 11.34

39766 L75 RD

39766 L75 RD

HAMILTON LOREN K
Parcel ID: 324324100026
Tax Acct: R007595
Tax Acres: 35.88

COWGER BRANDON L
Parcel ID: 324324100004
Tax Acct: R007590
Tax Acres: 20

39772 L75 RD



39772 L75 RD

39766 L75 RD

39736 L75 RD

39877 L75 RD

Hamilton subdivision

1 message

Hayley Cowger <hayleymarshall2010@hotmail.com>
To: "planning@deltacounty.com" <planning@deltacounty.com>

Sun, Aug 14, 2022 at 4:02 PM

I Hayley and Brandon Cowger do not approve the Hamilton Minor (2-lot) subdivision. We would appreciate this L75 rd to stay and continue to be a Agriculture 20 acre or "A-20" zone. This is a small back country road and we would like to keep it that way, plus this property is right next to ours we share a fence and it would be a huge disappointment to have another neighbor/ driveway on the lower end of our hay field, let alone a home built next to my horses and livestock. We enjoy living a private life and want to continue to do so.

Sent from my iPhone

Hamilton Subdivision

1 message

'Kim Marshall' via Planning <planning@deltacounty.com>

Mon, Aug 15, 2022 at 2:07 PM

Reply-To: Kim Marshall <marleyvuitton@icloud.com>

To: planning@deltacounty.com

Hi Angie, this note is concerning PLN22-079/ Hamilton minor subdivision. I Kim Marshall live on L75 road.

I do not approve the Hamilton (2-lot) subdivision, and would love to see this road stay an Agriculture 20 acre "A-20" zone.

My concerns are: water, which is scarce also businesses as there are already two on this road that has increased traffic/noise. My views are beautiful here and I enjoy seeing the mountain and my daughter Hayley Cowgers property from mine. Any development would take that away and that would be very upsetting. Myself and my family are on each side of the Hamilton's property and we certainly enjoy our privacy and farm life and pray that it remains as it is.

Thanks, Kim Marshall

Sent from my iPhone

Case number pln22-079 Hamilton minor

1 message

Tracy <curlytracy1014@gmail.com>
To: planning@deltacounty.com

Thu, Aug 18, 2022 at 8:55 AM

I have live on L75 road all my life, and I've seen over the years how much its developed, not to mention the traffic on L75. I enjoy my privacy and my view, we feel more houses on this road will create more traffic than already is and we believe its already over developed, especially on this side of the road, south side. Please consider this when making your decision. If you allow this then everyone will want to subdivide under 40 acres. Sincerely Robert and Tracy Smith [39560](#)
[L 75 road](#)



STAFF REPORT

Delta County Board of Adjustment

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

Thursday, August 25, 2022 @ 5:30 p.m.

Land Use Code Update

Work Session to consider redline drafts of the Delta County Land Use Code:

Chapter 3 “Lot Dimensions” (including subdivision of lots that do not meet the minimum lot size)
Chapter 8, Section 4 “Administrative Modification”
Chapter 8, Section 5 “Variances”
Chapter 12 “Subdivision Regulations”
Chapter 14 “Definitions”

RECOMMENDATION:

Staff recommends that the Board of Adjustment hold a Work Session on the LUC Update and provide direction to staff on:

- a. Chapters 3 “Lot Dimensions” (including subdivision of lots that do not meet the minimum lot size)
- b. Chapter 8, Section 4 “Administrative Modification”
- c. Chapter 8, Section 5 “Variances”
- d. Chapter 12 “Subdivision Regulations”
- e. Chapter 14 “Definitions”

SUMMARY:

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:

- Relocate subdivision related regulations to Chapter 12
- Clarify exemptions from subdivisions regulations



- Incorporate standards plat notes and signature blocks (from prior subdivision regulations, amended for current conditions)

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

- Add Residential zoning designations (RES-2.5 and RES-1.0) [TABLE 2.a]
- Amend Variation to Lot Size, Administrative review if meets criteria [CHAPTER 3]
- Amend Variance Findings [CHAPTER 8]
- Add process for phasing a plat and vacating a plat or right-of-way (from prior subdivision regulations). [CHAPTER 12]
- Further define clustered subdivision – Building Envelopes = 1 Ac or 25% of Stewardship Area, whichever is less. [CHAPTER 12]
- Definitions relative to subdivision have been amended, with PC input, taking into account comments from local surveyors. [CHAPTER 14]

Staff is seeking preliminary direction that will be integrated into a comprehensive update of the Land Use Code. Once the Work Sessions are complete, staff will release and notice a redline draft for public review and comment. Public hearings will be scheduled at the Planning Commission and Board of County Commissioners.

In addition, a Work Session is scheduled with the Board of County Commissioners on Monday, August 22 where staff will be presenting ideas for processing projects. For example:

- When a project involves multiple reviewing bodies, the project will be packaged and heard by one entity. For example, a Minor Plat (Administrative) with a lot-size variance (BoA). The BoA would be the decision maker for the variance and Minor Plat rather than the Director considering the plat after the BoA considers the variance.
- PC is a decision-making body with appeal to the BoCC
- Statute is clear that the BoA is required as an appeal body when Land Use is implemented. Staff is exploring if Statute requires a variance to go to the BoA. If not, then the question is if LUC should be amended for PC to hear variances along with the rest of the project.

DISCUSSION:

Chapter 12 has been completely changed. Appeal language was relocated to Chapter 9 and various regulations for subdivisions was moved or added to Chapter 12. Staff is recommended including language for phasing and vacating plats that was in the prior subdivision regulations. In addition, this chapter would include standards plat notes as signature blocks that were included with the prior subdivision regulations, amended to reflect current conditions. This Chapter cleans up terminology following meetings with local surveyors and lays out the process, including what is exempt.

Attached material: list, in order as attached/referenced

- A. Draft redlines of:



DELTA COUNTY

PLANNING & COMMUNITY DEVELOPMENT

295 W 6th Street
Delta, Colorado 81416
planning@deltacounty.com
970.874.2110

1. Chapters 3
2. Chapter 8, Section 4&5
3. Chapter 12
4. Chapter 14

BOA Work Session – LUC Update

August 25, 2022

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. <u>The intent is to retain irrigated lands</u> 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 <u>small-scale</u> 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 <u>as well as large-lot residential uses.</u>
A-5	Agriculture (5-acre)	This zoning district is intended for <u>small-scale</u> agricultural and large-lot residential uses.
<u>RES-2.5</u>	<u>Residential (2.5-acre)</u>	<u>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.</u>
<u>RES-1</u>	<u>Residential (1-acre)</u>	<u>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.).</u>
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.). as well as. <u>In addition, the designation can be used</u> for a range of commercial uses in areas <u>near municipalities</u> where there are sufficient services and infrastructure to accommodate them.
UGA	Urban Growth Area <u>Overlay</u>	This zoning district overlay applies to areas near incorporated municipalities, and provides a way for where <u>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</u>

Commented [CH1]: If the intent is to protect prime ag lands and natural resources, then it should be reflected through zoning.

Commented [CH2]: Borders between Ag and Residential, depending largely on water.

Commented [CH3]: Create Residential designations at different densities depending on site conditions. 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...

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		<u>highlights areas where</u> the County to will work with the municipalities to achieve <u>ordered</u> urban and suburban growth <u>(e.g., higher residential densities and commercial/service uses)</u>. Areas around municipalities that are intended for new or continuing agricultural uses, or rural commercial/industrial development include <u>active agricultural operations</u> should not be <u>in the zoned</u> UGA overlay.
<u>P/QP</u>	<u>Public/Quasi-Public</u>	This zoning designation reflects <u>public</u> lands (e.g., Forest, BLM, Park), <u>public safety facilities</u> (fire, medical, law), <u>public schools, and utilities</u> (water, wastewater, electricity, etc.)

Commented [CH4]: Per IGA, 1 acre minimum and no urban density in GMA.
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. Could be RI/C depending on City's plans (see 1c above), or AG to create edges.

Commented [CH5]: 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.)

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CHAPTER 3

Section 1. Lot Dimensions by Zoning District

A. Lot Dimensions

1. **Generally.** The minimum lot area, lot width, and lot frontage by zoning district is set out in Table 3.a, *Lot Dimensions*.

TABLE 3.a LOT DIMENSIONS						
Standard	Zoning District					
	A35	A20	A5	RI/RC	RES-2.5	UGARES-1.0
Lot Size	35 ac.	20 ac.	5 ac.	2.0 ac.	2.5 ac	7,500 sf; 1.0 ac
Lot Width	600 ft.	450 ft.	200 ft.	150 ft.	150 ft.	75 ft. +
Lot Frontage	75 ft.	75 ft.	75 ft.	75 ft.	75 ft.	30 ft.
TABLE NOTE: +Applies to residential uses. Nonresidential uses shall meet the standards of the RC zoning district.						

2. **Existing Lots.** The standards of this apply to lots created after the effective date of this Code. Lots that were lawfully created prior to the effective date shall be considered “conforming” to the requirements of this Code regardless of their zoning designation or dimensions.
3. **Variations to Lot Size.** The ~~County Director shall have authority to Administratively may~~ approve the creation of ~~one additional new lots 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 lots ~~requesting a variance to lot size have at least the minimum dimensions shall conform to set out in~~ the standards for the UGA RES-2.5 zoning district;

Commented [CH6]: Allow exception for larger Ag parcels, but not an avenue around zoning (planned vs unplanned). Aka “Legacy Subdivision”

Commented [CH7]: This list reflects the key aspects to be considered in all cases

Commented [CH8]: Limit this exception to larger Ag parcels. Not variation to the minimum lot size in A5, RI/C, RES-2.5 or RES-1. Potential to rezone if warranted.

Commented [CH9]: Example (criteria c + d): In A-35, one of the parcels is at least 35 acres. The other is at least 2.5 acres.

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~~c.e.~~ The size and configuration of the new lot ~~minimizes~~ avoids, to the greatest extent feasible, disturbance or development of irrigated agricultural portions of a property, and does not interfere with wildlife habitat; ~~and~~

Commented [CH10]: Avoids sets a higher bar to meet.

~~d.f.~~ The final plat is annotated such that: ~~no further subdivision of either lot created by this subsection is allowed~~ “Parcels/Lots created by this subdivision shall not subdivide further for at least 20 years”.

Commented [CH11]: Remove restriction in perpetuity, but limited frequency.

Said subdivision shall follow the process of a Minor Plat.

4. **Boundary Line Adjustment.** No variance is required to adjust property between existing legal lots/parcels where one or more lots/parcels do not meet the minimum size required, provided:

a. The adjustment does not create non-conforming setbacks for septic and/or structures; and

b. The parcels/lots were created through a subdivision.

4.5. **Cluster Subdivision.** Allows a subdivision with higher density and/or smaller lots designed to protect significant resources pursuant to Chapter 12, Section 4(C) of this Code.

B. Bulk Standards

1. **Generally.** All principal buildings, accessory buildings, and accessory structures shall meet the standards of this Section.

2. **Setbacks.** All buildings and structures shall be setback;

a. 25 ft. from all roadways (public and private), and including shared access where a road name has been assigned; and

b. 15 ft. from all other property boundaries; and

a.c. 25 ft. from waterways, including irrigation ditches.

When creating or changing a property line, the new line must comply with structural setbacks, or a variance is required pursuant to Chapter 8 of this Code.

~~2.3.~~ **Height.** There is no maximum height limitation. However, the height of buildings or structures may be limited as a result of the standards in Chapter 4, Section 5, *Agricultural, Natural, or Cultural Resources*; and Chapter 4, ~~S~~section 5, *Scenic Impacts*.

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Chapter 8. Review Processes

Section 14. Administrative Modifications

Commented [CH12]: 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;
 - 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~~ ~~(e)~~ 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);

Commented [CH13]: Established/Clarified in CH 3 Variations to Lot Size (avoid duplication/conflict).

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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 Minimis 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 minimis*. The *de minimis* 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 [CH14]: 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

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- 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.
 - 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. **No Precedent.** The granting of any variance shall not constitute or be construed as a precedent, ground or cause for any other variance.

Commented [CH15]: Moving away from hardship and trying for more tangible findings

Commented [CH16]: Incorporated into Finding #3 above

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CHAPTER 12

Section 1. Scope of Regulations

A. Purpose and Intent

1. Subdivision Regulations, incorporated within the Land Use Code, shall apply to all new divisions of land into one or more parcels ~~where any of the resulting parcels are less than 35 acres.~~
2. These regulations also apply to divisions of land 35 acres or larger where the statutory exemptions listed in C.R.S. 30-28-101(10)(b), (c) or (d) do not apply. ~~However, C.R.S. 30-28-110(3)(a) applies to subdivisions of all parcels of land, regardless of the size of the parcels within the subdivision (see Section C.4 below).~~

Commented [CH17]: Identify what is NOT subject to regs, and reference 35+ acre exemption statute where there is criteria.

Commented [CH18]: Resolution 2003-R-027 – Street Plans in “35-Acre Plus” Subdivisions

B. Exemptions

Where the Director determines that the parameters are met and that the creation of such divisions or interests are not for the purpose of evading the terms of this regulation, the following actions shall not be subject to the subdivision regulations of this Code:

1. Boundary Survey documenting existing conditions that results in no change from existing conditions.
2. Boundary Line Adjustment where all parcels involved exceed 35 acres, before and after the adjustment.
3. Boundary Agreements between adjacent landowners where a boundary line between parcels is unknown or uncertain. Boundary Agreements shall not create any new parcels and shall be accomplished according to Section 38-44-112 C.R.S. All parties involved in the agreement must enter into a written agreement that the new boundary line(s) shall become certain.

C. Standards and Limitations.

1. The Director shall sign the plat certifying that the creation of such divisions or interests are not for purpose of evading the terms of this regulation.
2. The surveyor shall certify that no new lots less than 35 acres are being created as a result of the Boundary Line Adjustment.
3. Minor Plats, Replats, Boundary Line Adjustments and Preliminary Plats shall demonstrate compliance with the applicable requirements of this Code, including Chapters 3, 4, 5, & 6.
4. Street Plans (35-Acre Plus Subdivisions). All plans of streets or highways for public use, and all plans, plats, plots and replots of land laid out in subdivision or building lots and the streets, highways, alleys or other portions of the same intended to be dedicated to a public use or the use of purchasers or owners of lots fronting thereon or adjacent thereto, shall be

Commented [CH19]: Amplify reference to 35-acre Road resolution.
Development application covers other types of permits, addressed in other sections.

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submitted to the Board of County Commissioners, for review and subsequent approval, conditional approval, or disapproval pursuant to C.R.S. 30-28-110(3)(a). This applies to subdivisions of all parcels of land, regardless of size of the parcels within the subdivision.

5.

~~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. 35-Acre Road Resolution (Appendix)~~

~~—Adopted building and safety codes;~~

~~—Resolutions that require permits for activities on public land or within public right-of-way; or~~

~~—Business licensing resolutions;~~

~~—35-Acre Road Resolution~~

Section 32. Minor Plats, Replats, & ~~Administrative Review~~ Boundary Line Adjustments

Commented [CH20]: From Chapter 8

A. Administrative Review Established

1. Generally. The Director has authority to approve Minor Plats ~~(for creation of two 2-lot subdivision), Replats, or Boundary 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. All parties must acknowledge their agreement to permanently adjust/create boundary lines(s) by their signature on the final plat. All signatures must be notarized.

~~1. 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~~

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~~d.a. Business licensing resolutions.~~

~~e.a. 35-Acre Road Resolution~~

3. Standards and Limitations.

a. Minor Plats, Replats, or Boundary Line Adjustments shall demonstrate compliance with the applicable requirements of this Code, including Chapters 3, 4, 5, & 6.

b. Minor Plats, Replats, or Boundary Line Adjustments shall demonstrate compliance with the applicable County Road and Bridge Standards.

1) Review of Minor Plats shall include the dedication of rights-of-way, easements, and the construction of reasonable offsite and onsite improvements for the parcels being created, including but not limited to access, electrical service and water meter for each parcel/lot. Fulfillment of these requirements shall be required prior to accepting the Final Plat.

2) Review of Boundary Line Adjustments shall include all applicable easements. There shall be no requirement to dedicate rights-of-way or construct offsite and onsite improvements for a Boundary Line Adjustment.

c. The Director shall verify that no violations of this Code are being created.

B. Administrative Review Process

1. **Administrative Recommendation, Decision, or Referral.** All applications for Administrative Review shall be processed in accordance with Chapter 7 - Standardized Application Review Process. 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 Minor Plats, Replats, and Boundary Line Adjustments require completion of a Development Application that includes:

1) Express written consent from all Parties with ownership interest in the subject properties; and

2) A checklist to verify compliance with applicable regulations, including this Code; and

3) A plat from the applicant's surveyor showing the existing boundary and the proposed boundary adjustment of all affected parcels.

- b. 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:

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- 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
- ~~1)2)~~ Refer the Minor Plat or Boundary Line Adjustment to the Board of Adjustment for consideration of the whole project where a variance is required; or
- ~~2)3)~~ Refer the application-Minor Plat or Replat 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 where:
 - a) 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; Dedication of Right-of-Way is required with the Minor Plat; or
 - b) 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; Replat revises a Plat note that specifies Board action to remove the restriction.
- c. If referred, the application-Minor Plat or Replat is referred to the Board, it shall be processed as a preliminary-Final Plat in accordance with Chapter 8, Section 4(B), Preliminary Plat.
- 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 decision-making body that will consider it for further recommendation or approval.
2. The Director shall review the proposed Plat in accordance with the Standards and Limitations listed in subsection "A.3" above.
3. Following action by the decision-making body, the Director shall promptly provide written notice, including the reasons for the decision, to the applicant.
4. An aggrieved party may appeal the decision pursuant to Chapter 9 – Approvals, Denials and Appeals.
5. Recordation: The Director shall determine Minor plats may be recorded when all public improvements shown on the Minor Pplat are installed and the County has granted preliminary acceptance of the improvements pursuant to Chapter 6, Section 1(C), Acceptance of Public Improvements.

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6. The Director shall forward the Plat to the County Surveyor who shall review the Plat for form and content in accordance with State statute.
7. Once approved by the County Surveyor, the Plat shall be recorded with the signatures of all property owners (notarized), their surveyor, the mortgage company (notarized, if applicable), the County Treasurer, the County Surveyor, and Planning Director. See Section 6 of this Chapter for applicable signature blocks.
8. New deeds describing all affected lots shall be recorded with the approved Minor Plat or Boundary Line Adjustment. New deeds shall be recorded with the Replat if there is any change to a parcel/lot. Any encumbrances applicable to the project or conditions (Access Agreements, etc.) shall be recorded with the Plat.

Section 3. Boundary Adjustments

Commented [CH21]: From Chapter 10, integrated into Admin Process

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 lines(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 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.~~

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i. Section ~~43~~. Preliminary ~~and Final~~ Plats ~~Public Hearing~~ ~~Review~~

Commented [CH22]: From Chapter 8

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 Preliminary Plat may be approved upon a finding of compliance with applicable requirements of this Code following a public hearing with the applicable review bodies.
 - ~~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. **Standards and Limitations.**
 - a. Preliminary Plats shall demonstrate compliance with the applicable requirements of this Code, including Chapters 3, 4, 5, & 6.
 - b. Preliminary Plats shall demonstrate compliance with the applicable County Road and Bridge Standards.
 - 1) Review of Preliminary Plats shall include the dedication of rights-of-way, easements, and the construction of reasonable offsite and onsite improvements for the parcels being created, including but not limited to access, electrical service and water meter for each parcel/lot. Fulfillment of these requirements shall be required prior to accepting the Final Plat.
 - c. The Director shall verify that no violations of this Code are being created.

~~€B. Standard Subdivision Design~~ **Standards**

Commented [CH23]: Move to Ch 12

1. **Generally.** Development areas shall be divided into blocks, lots, tracts, and/or roads, as appropriate to the subdivision. The boundaries of development areas shall be clearly indicated on the preliminary and final plat.

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2. **Blocks.** Subdivision block lengths and widths shall be suitable for the uses or lot sizes that are contemplated, and shall be adequate for requirements pertaining to minimum lot areas and setbacks.

3. **Lots.**

a. *Dimensions and Geometry.*

- 1) The lot area, width, depth, shape, and orientation shall be sufficient and appropriate for the type of development and use that is contemplated, and shall facilitate buildings with sufficient access, emergency access, setbacks, open space, on-site parking, privacy, and view.
- 2) Lot area shall meet the minimum requirements of the underlying zoning district. See Chapter 3, Section 1, *Lot Dimensions by Zoning District*.
- 3) A flag lot configuration shall be avoided when possible. The minimum width of a flag lot appendage shall be 30 ft. The access along the “flagpole” shall be graded, 20 ft. wide, clear of all encumbrances, and drained in order to provide adequate emergency access to the property.

b. *Access.* If new residential lots are smaller than five acres, direct access to a county road is not allowed unless there is no feasible alternative access.

c. *Arrangement of Lots.*

- 1) No single lot shall be divided by a municipal or county boundary line.
- 2) No lot shall be divided by a road, alley, driveway, or other lot.
- 3) Corner lots shall accommodate the required building setback for both street frontages.

d. *Tracts.* Stewardship areas, private roads (if present), and commonly-owned recreation or open space areas that are located within the development area shall be located in tracts.

DC. Clustered Subdivision Design Standards

2. **Generally.** Clustered subdivisions can generally allow for a decrease in the size of ~~smaller~~ lots ~~configuration~~ and increase ~~may allow for more~~ in the number of lots from what is otherwise ~~than the minimum~~ allowed by zoning provided the County ~~determines~~ that in exchange for ~~layout of the clustering~~ of lots on a portion of the subject property ~~that are designed to~~ protects a significant agricultural, natural, scenic, or archaeological resources ~~on the subject property~~ and, if possible, to avoid natural hazards (including flood hazards, wildfire hazards, and geologic hazards).

3. **Design Objectives.**

Commented [CH24]: Edits intended to tighten this up, setting a threshold for how much of the property is protected to grant this density bonus.

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- a. Clustered subdivisions shall have a defined stewardship objective or combination of objectives based on either:
 - 1) Protecting a significant amount of identified priority resources (e.g., forest stewardship, water quality preservation and enhancement, wildlife, etc.); or
 - 2) Protecting a significant amount of irrigated agricultural lands with a mechanism that ensures irrigation will continue;
 - 3) Providing a large common open space amenity.
- b. Stewardship areas shall be interconnected within the subject property and to comparable resources on adjacent properties, where such integration is practical and tends to enhance the resource value of the stewardship areas.

4. Lots.

- a. Dimensions and Geometry.
 - 1) The lot area, width, depth, shape, and orientation shall be sufficient and appropriate for the type of development and use that is contemplated, and shall facilitate buildings with sufficient access, emergency access, setbacks, open space, on-site parking, privacy, and view.
 - 2) Lot area may meet the minimum requirements of the underlying zoning district, or may be altered in accordance with Chapter 3, Section 1, *Lot Dimensions by Zoning District*.
 - 3) A flag lot configuration shall be avoided when possible. The minimum width of a flag lot appendage shall be 30 ft. The access along the “flagpole” shall be graded, 20 ft. wide, clear of all encumbrances, and drained in order to provide adequate emergency access to the property.
 - 4) Building envelopes shall not exceed one (1) acre or 25% of the Stewardship Area, whichever is less.

5. Design Approach. The approach to designing a clustered subdivision shall follow a four-step process that emphasizes the protection of irrigated agriculture, natural resources and meaningful open space:

- a. Stewardship areas shall be identified and mapped (see Chapter 4, Section 5, *Agricultural, Natural, and Cultural Resources* and Chapter 4, Section 6, *Geologic and Wildfire Hazards*). Stewardship areas shall be designated as tracts.
- b. All other areas outside of stewardship areas located within designated building envelopes are developable. ~~Development areas~~ Building envelopes shall be located to (in descending order of priority):
 - 1) Avoid flood hazards and geologic hazards;
 - 2) Avoid or reduce wildfire hazards;

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- 3) Avoid irrigated agricultural land;
- 4) Avoid impacts to critical wildlife habitat, calving areas, winter range, and wildlife corridors;
- 5) Minimize the impacts of clearing and grading on riparian areas, steep slopes, wetlands, and woodlands;
- 6) Minimize the visual impact of the cluster subdivision on the landscape;
- 7) Provide contiguity of common open space, stewardship areas, and, if present, agricultural lands (on-site and, where possible, off-site);
- 8) Preserve the open sky backdrop above ridgelines, as viewed from public roads within one-quarter mile of the subject property; and
- 9) Provide open space and scenic views for the principal buildings in the clustered subdivision.

c. The road system shall be designed to allow safe and efficient movement through the subdivision, and to adjacent property as appropriate. The road system shall avoid impacts to the stewardship areas to the maximum feasible extent.

d. Lot lines and lot areas shall be established to provide for the most appropriate conservation of the stewardship areas, and to optimize the design priorities set out in subsection (2), above.

6. **Long-Term Maintenance.** Financial surety or other mechanism for long-term maintenance of Stewardship Areas shall be provided.

E. Use of Stewardship Areas

1. **Generally.** Stewardship Areas may be used for ecological, agricultural, recreational, utility (underground and overhead lines), drainage (e.g., ponds, pipelines, swales, ditches, and related infrastructure), and access purposes (e.g., trails, maintenance access, or general access if no other feasible alternative exists) that are consistent with the stewardship objectives for the area.
2. **Annotations.** Limitations on the use of or development activities within stewardship areas shall be set forth using annotations on the Preliminary Plat, Final Plat, Site Plan, or by cross-reference to recorded covenants, deed restrictions, or conservation easements.

BF. Preliminary Plat

Preliminary Plat Review Process.

1. All applications for Preliminary Plats shall be processed in accordance with Chapter 7 Standardized Application Review Process.

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1.2. 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. Generally, the application shall be heard during the next regular meeting of that body that meets the following two conditions:

- 1) There is sufficient time to meet applicable public notice requirements; and
- 2) There is available room on the agenda.

b. The Director, or a designee, shall notify the Applicant regarding the time and place of the public hearings.

~~a-c.~~ The Director shall verify public notice has been given (*see* Chapter 7, Section 4, *Public Notice*)

~~b-d.~~ 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.

~~e.~~ The Director shall set the application on the agenda of the next body that will consider the application.

~~d.~~ Generally, the application shall be heard during the next regular meeting of that body that meets the following two conditions:

- 1) There is sufficient time to meet applicable public notice requirements; and
- 2) There is available room on the agenda.

~~e.~~ 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.

~~f.~~ The Director, or a designee, shall notify the applicant regarding the time and place of the public hearings.

~~g-e.~~ When reviewed by the Planning Commission, The Planning Commission shall determine if the application complies with this Code. The Planning Commission shall and recommend approval, approval with conditions, or denial of the Preliminary Plat to the Board of County Commissioners.

~~f.~~ When reviewed by the Board of County Commissioners, The Board of County Commissioners shall consider the Planning Commission recommendation to determine if the application complies with this Code and determine if the application complies with this Code. The Board of County Commissioners shall approve, approve with conditions, or deny the application Preliminary Plat.

Commented [CH25]: DELETE if PC decision makers

Commented [CH26]: DELETE if PC decision makers

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~~h.g. 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 [CH27]: AMEND to PC if they are decision makers

Section 4. Final Plats

~~1. C. Final Plat~~

A. Generally.

- ~~1. Final Plats may be approved-accepted by the Board of County Commissioners upon a finding that they are Final Plat is substantially consistent with the approved Preliminary Plat and meet all applicable conditions requirements of this Code have been cleared by the appropriate agency.~~
- ~~2. The Director may approve a final, Minor Plat where no dedication is required. If the Minor Plat includes dedication of right-of -way, the Final Plat shall be considered by the Board of County Commissioners with the right-of-way dedication.~~
- ~~3. No final plat that includes or requires public improvements (on-site or off-site) shall be recorded, and no sketch plan or site plan that requires public improvements (on-site or off-site) or imposes conditions or obligations related to development approval shall be approved until the applicant has been submitted, and the Board of County Commissioners has approved one or a combination of the following:~~
 - ~~a. An Improvements Agreement in which the applicant agrees to construct any required public improvements shown in the final plat documents, together with collateral which is sufficient, in the judgment of the Board of County Commissioners, to make reasonable provision for the completion of said improvements in accordance with design and time specifications (see LUC Chapter 6, Section 5); or~~
 - ~~a.b. Other agreements or contracts, however titled, setting forth the plan, method, and parties responsible for the construction of any required public improvements shown in the final plat documents which, in the judgment of the Board of County Commissioners, will make reasonable provision for completion of said improvements in accordance with design and time specifications; or obligation to satisfy such conditions of approval as may be imposed pursuant to this Code.~~

Commented [CH28]: From Chapter 6, Section 4.1

B. Timelines, Expiration, Extension

- ~~1. A Final Plat shall be submitted within twelve (12) months of Preliminary Plat approval, unless otherwise stated as part of the approval. Failure to submit the Final Plat within twelve (12) months shall result in the application being considered as withdrawn and shall require the applicant to begin the process anew.~~
- ~~2. If a proposed subdivision has multiple lots, a developer may request to complete the subdivision in two (2) or more phases. In order to complete a development in phases, a phasing plan showing which lots will be part of each phase is required to be submitted with~~

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the Preliminary Plat. All requirements for a Final Plat must be met in order to complete any phase of a development. All phases of a subdivision must be completed within three (3) years of completion of the first phase unless otherwise approved through a Subdivision Improvement Agreement.

3. Request for an extension must be received at least thirty (30) days prior to the expiration date and will require proof that progress is being made towards completion of the subdivision. The Director may grant one extension for up to one (1) year if, in the Director's opinion, substantial progress has been made and the developer has demonstrated the ability to complete the project.

B.C. Final Plat Review Process

1. 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) Upon receiving a Final Plat:
 - a. The Director shall forward the Final Plat to commenting agencies to determine compliance with applicable standards and conditions.
 - 1) All public improvements shown on the Plat shall be installed and the County has granted preliminary acceptance of the improvements pursuant to Chapter 6, Section 1(C), *Acceptance of Public Improvements*.
 - 2) Evidence that access has been permitted and installed to all parcels/lots within the subdivision.
 - 3) Evidence that the water supply (tap, meter, well) has been installed to all parcels/lots within the subdivision, and applicable permits numbers are reflected on the Final Plat.
 - 4) Evidence the electrical supply has been installed to all parcels/lots within the subdivision.
 - b. The Director shall forward the Plat to the County Surveyor who shall review the Plat for form and content in accordance with State statute.
 - a. ~~The Director shall verify public notice has been given if required (see Chapter 7, Section 4, *Public Notice*)~~
 - b. ~~The Director shall make a recommendation regarding the application and forward the recommendation and the application materials and referral comments to the Board of County Commissioners that will consider it for approval.~~
 - c. ~~The Director shall set the application on the agenda of the County Commissioners.~~

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~~d. — Generally, the application shall be heard during the next regular meeting of that body that meets the following two conditions:~~

~~1) — There is sufficient time to meet applicable public notice requirements; and~~

~~2) — There is available room on the agenda.~~

~~e. — 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.~~

c. Once the Director determines that all conditions are cleared and the Final Plat is approved by the County Surveyor, 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 Board of County Commissioners that will consider it for acceptance.

d. The Director shall verify public notice has been given if required (see Chapter 7, Section 4, Public Notice)

~~f. — The Director, or a designee, shall notify the applicant regarding the time and place of the public hearings.~~

e. When reviewed by the Board of County Commissioners, the Board of County Commissioners shall determine if the ~~application~~ Final Plat complies with the approved Preliminary Plat and conditions of approval.

f. Final Plats shall be recorded with the signatures of all property owners (notarized), their surveyor, the mortgage company (notarized, if applicable), the County Treasurer, the County Surveyor, the Planning Director, and the Chair of the Board of County Commissioners. See Section 6 of this Chapter for applicable signature blocks.

g. New deeds describing all affected lots and dedications shall be recorded with the Final Plat along with any encumbrances applicable to the project or conditions (Covenants and Restrictions, Access Agreements, Irrigation Plans, etc.).

~~g. —~~

~~C. — **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. ~~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:

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- 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 5. Format for Signature Blocks, Certifications and Plat Notes

A. Generally. Prior to the County recording a Plat, the following signature blocks, certifications and plat notes shall be included as required by the Director.

B. Dedication

A final plat presented for approval shall contain a statement concerning public use of all roadways, the suggested format is:

(I, We), printed name of owner(s), being the owner(s) of the land described as follows: [insert legal description of land being platted and/or subdivided and include area in acres to two decimal places] in Delta County, Colorado, under the name of [complete name of development in capital letters and the number assigned], have laid out, platted and/or subdivided the same as shown on this plat and do hereby dedicate to the public at large the streets, alleys, roads and other public areas as shown hereon and those portions of land labeled as easements for the installation and maintenance of public utilities as shown hereon.

In witness whereof (printed name of the owner) has (have) subscribed (his, her, their) name(s) this _____ day of _____, AD _____.

By: _____
Owner(s)

C. Notarial

Signatures for all responsible property owners shall be notarized in the manner in which they appear on title or in legal documents for trusts or corporations. Documentation may be required to verify the correct manner in which the signatory must sign the plat.

State of Colorado

_____, ss.

Commented [CH29]: From prior Sub Regs, modified for current conditions

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County of Delta)

The foregoing instrument was acknowledged before me this _____ day of _____, AD _____, by (printed name of owner(s): if by natural persons here, insert name; if by person acting in a representative official capacity, insert capacity; if by officers of a corporation, then insert the title of said officers and the name of the corporation).

My Commission expires: _____

My address is _____

Witness my hand and official seal.

Notary Public

(Seal)

D. Mortgagees Approval

Where real property is revised, any lien holder(s) shall sign the plat to acknowledge their acceptance of any change from the conditions in which they issued a loan, for each parcel/lot affected.

In witness whereof Mortgagee has subscribed its name approving the content of this final plat.

Dated this _____ day of _____, AD 20____.

Mortgagee: [Insert Name of Mortgagee]

Authorized Signatory: [Insert Printed Name and Title]

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E. Delta County Surveyor's Approval

All plats required by the Code shall be reviewed by the County Surveyor to ensure proper form and content pursuant to State Statute. The County Surveyor also maintains record of survey monuments.

Approved for content and form only and not as to accuracy of survey, computations or drafting, pursuant to CRS 38-51-106.

County Surveyor _____ *Date*

F. Delta County Planning Department Approval

The Planning Director, or their designee, shall sign plats certifying that the plat meets applicable conditions and regulations or is exempt from review.

This plat of the above subdivision has been checked for compliance by _____ in accordance with Case No. PLN##-###.

Dated this _____ day of _____, AD 20__.

Planning Director

G. Certificate of Taxes Paid

Where real property is revised, the County Treasurer shall certify that taxes and assessments due have been paid.

I, Lisa J. Tafoya, Treasurer and Public Trustee of the County of Delta, State of Colorado, hereby certify that all current, supplemental and delinquent taxes and assessments upon all parcel(s) of real estate described on the subject Plat have been paid in full, and also an estimate of the amount of taxes that are a lien not yet due and payable as of _____.

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Fiscal Year: [Insert Applicable FY]

Parcel ID: [Insert All Applicable Parcel Number(s)]

Account No.: [Insert All Applicable Account Number(s)]

Dated this ____ day of ____, AD 20__.

Treasurer of Delta County, Colorado

H. Board of County Commissioners Acceptance

Where a Preliminary Plat has been approved, the Board of County Commissioners shall accept the Final Plat, certifying that all conditions have been met. Where a Minor Plat requires right-of-way dedication, the Board of County Commissioners shall accept the Final Plat along with the dedication.

The within plat of [insert project number and name of development in capital letters] is accepted by the Delta County Board of County Commissioners. The roads and other public areas are hereby accepted provided; however, that such acceptance shall not in any way be considered as an acceptance for maintenance purposes. Maintenance of, or snow removal from, the subject roads shall be only upon a separate resolution of the Board of County Commissioners passed in accordance with such policies, resolutions or regulations in effect at that time.

Dated this ____ day of ____, AD 20__.

Chair, Delta County Board of County Commissioners

Attest:

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County Clerk of Delta County, Colorado

I. Standards Notes

Unless specifically excluded by the County, the following plat notes are required for all subdivisions:

1. All structures (including onsite wastewater treatment systems) in this subdivision shall meet applicable setbacks requirements (rights-of-way, property lines, ditches, waterways, etc.) in place at the time the development occurs.
2. All new development is subject to a Development Application. Land uses, including subdivisions, must comply with all applicable standards of the Delta County Land Use Code.
3. All lots/parcels are limited to one permitted access pursuant to County Road and Bridge Standards, unless otherwise approved by the County Engineer. There shall be no horseshoe driveways within this subdivision.
4. Unless approved otherwise, all lots within this subdivision have been approved for one single residential use only. Any further subdivision any change of use to other than single family residential or agricultural use requires the lot owner to process the request in accordance with applicable regulations of Delta County.
5. All utilities must be placed underground on all parcels (except transmission lines).
6. Outdoor lighting shall be hooded or shielded (cut-off) so that light is directed downward. Outdoor lighting shall not create glare onto adjacent property or public or private roads, nor shall it contribute to sky glow that dilutes the night sky.
7. Each lot owner shall be personally responsible to control undesirable, noxious weeds within the boundaries of that lot, to prevent the spreading of such weeds to other lands and to comply with the recommendations of the Delta County Weed Coordinator concerning the control of such weeds.
8. NOTICE TO LOT PURCHASERS. As of the date of this final plat, adjacent property is used for agricultural purposes. The land within this plat may be impacted by agricultural activities, including but not limited to noise from tractors and equipment; slow-moving farm vehicles on rural roads; dust from animal pens, field work, harvest and gravel roads; odor from animal confinement, silage, and manure;

Commented [CH30]: From Subdivision Regulations, modified for current conditions...unless otherwise noted.

Commented [CH31]: Revised to remove specific reference/numbers, which can change over time.

Commented [CH32]: New

Commented [CH33]: New (from Engineering)

Commented [CH34]: From LUC CH 4, Sect 7.H

Commented [CH35]: From LUC CH 4, Sect 7.G

Commented [CH36]: From LUC CH 4, Sect 5.B

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smoke from ditch burning; flies and mosquitoes; hunting and trapping activities; shooting sports; legal hazing of nuisance wildlife; and the use of pesticides and fertilizers in the fields, including the use of aerial spraying.

9. Soils in this area may have severe limitations for septic tank systems and for certain types of construction. Septic tank systems may require engineered systems designed by a Professional Engineer registered in the State of Colorado.
10. Access to all shown or un-shown irrigation ditches for cleaning and maintenance purposes is permitted.
11. All development in Delta County is subject to the Delta County Right to Farm and Ranch Policy, adopted as Resolution 99-R-020 by the Board of County Commissioners on September 27, 1999 (as amended).
12. Colorado is an “open range” state. It is not the responsibility of a livestock owner to fence in livestock.

I. Special Notes

The County may require notes to be placed on the final plat as a condition of approval, including but not limited to the following:

1. Certain Covenants and Restrictions on the property in this Subdivision and other documents have been recorded in the office of the Delta County Clerk and Recorder, Reception No(s). [This note is required if there are any CC&Rs, including the applicable reception number(s)]
2. Shares of irrigation water assigned to the subject property shall be assigned as follows:
Lot 1 - ## shares (Applicable Company/ies)
Lot 2 - ## shares (Applicable Company/ies)
Shares of irrigation water conveyed to lots at the time of plat recording are subject to the Irrigation Plan (dated ###) recorded with this subdivision [Reception ###].
3. Emergency and service vehicle access easement(s) or roads, if any, shown hereon shall be constructed and maintained by the property owners and subsequent owners, heirs, successors and assigns. In the event that such construction and maintenance is not performed by said owner, Delta County shall have the right to enter said property and perform necessary work, the cost of which said owners, heirs, successors and assigns agree to pay upon billing.
4. Stormwater drainage easement(s), if any, shown hereon is (are) for the purpose of access, operation, maintenance, repair, and alteration of the stormwater quantity and quality management system/facilities included within the said easement(s). The

Commented [CH37]: From Subdivision Regulations, modified for current conditions...unless otherwise noted.

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operation, maintenance, and repair of such stormwater management system/facilities shall be the responsibility of the property owner and subsequent owners, heirs, successors and assigns.

In the event that the operation, maintenance, and repair of the stormwater management system/facilities is not performed by said owners, Delta County shall have the right to enter such easement(s) and perform the necessary work, the cost of which said owner, successor owner, heirs, successor and assigns agree to pay upon billing. Any claims and resulting judgments for damage to downstream properties caused by the lack of adequate maintenance being performed by the said property owners shall be borne solely by the said property owners. The property owner and successor owner, heirs, successor, and assigns hereby releases Delta County for any and all liability created by the lack of adequate maintenance of said stormwater management system/facilities. No buildings, fills, excavations, structures, fences or other alterations shall be constructed within a stormwater drainage easement(s) without the express written consent of the Board of County Commissioners of Delta County.

5. Construction Covenant. All Final Plats involving a Subdivision Improvements Agreement shall contain a plat note, within the dedicatory language, stating the following:

The undersigned owners, mortgagees and beneficiaries under deeds of trust, hereinafter known as dedicators, for themselves, their heirs, successors and assigns, covenant and agree with Delta County that no development, construction or improvements shall be permitted unless and until all required public improvements, as defined by the subdivision regulations of Delta County, are in place and accepted by Delta County or cash funds or other security satisfactory to the County for the improvements are provided to Delta County. [Reception No: _____]

Date _____

Owner(s) _____

6. The open space, parks, and drainage facilities within this subdivision are owned by the property owners or Homeowners Association and the operation and maintenance of those facilities are the responsibility of said owners or Homeowners Association.

Section 6. Vacations of Roads, Streets, Right-of-Way, Easements, or a Subdivision

A. Purpose

1. The Board of County Commissioners may vacate a portion or all of a recorded subdivision.

Commented [CH38]: From prior Sub Regs

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2. The Board of County Commissioners may vacate a public road, street, right of way, alley, lane, parkway, avenue, trail or other public way, dedicated, conveyed by deed or recorded easement, or acquired by prescriptive use, collectively referred to as "Public Way", whether or not it has ever been used as such.

B. Submittals

1. Subdivision Vacations.

- a. Letter of Intent. An application for a vacation shall be made by submitting a Letter of Intent explaining the reasons for the request and the required fees to the County Planning Department.
- b. Petition. A Vacation of all or a portion of a Final Plat shall be submitted with a petition signed by not less than 50% of the owners of the lots as shown on the final plat and 100% of the owners of the lots to be vacated.

2. Public Road, Street, Rights-of-Way, or Easement Vacations.

- a. Letter of Intent. An application to vacate any portion of a right-of-way or easement shall include, but not be limited to:
- 1) Information stating whether any public moneys have been spent on any portion of the public way;
 - 2) Certification that no property will be left without proper access if the vacation is approved;
 - 3) Explanation of the purpose for the request to vacate, including how the propose vacation will not negatively impact public access; and
 - 4) Names and addresses of all the owners of property which abuts the public way; and
 - 5) Name mailing address and telephone number of the applicants.
- b. Vacation Plat. A plat (minimum 11" X 17") illustrating the following:
- 1) The public way which is proposed to be (all or partially) vacated, including all necessary dimensions including the total right-of-way.
 - 2) Cross-hatch or otherwise illustrate the portion of public way to be vacated.
 - 3) Title the map "A vacation of (name or description)" and include on, or attach to the map, a legal description of the portion of the public way to be vacated.

C. Notification

1. Subdivision Vacations.

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- a. The Planning Department shall, by certified mail, notify all owners of record of property within the subdivision. The notice shall state that a request for vacation has been submitted and shall state the date, time and location for consideration by the Board of County Commissioners.

2. Road, Street, Rights-of-Way, or Easement Vacations.

- a. The Planning Department shall, by certified mail, notify all owners of record of property that abuts the portion of public way that is requested to be vacated. The notice shall state that a request for vacation has been submitted and shall state the date, time and location for consideration by the Board of County Commissioners.

D. Procedure and Process

1. Subdivision Vacations.

- a. Upon determining that the petition for vacation of all or part of a Final Plat is complete, the Planning Department shall schedule and process the request as a Final Plat.

2. Road, Street, Rights-of-Way, or Easement Vacations.

- a. Upon determining that the petition for vacation of all or part of a public way is complete, the Planning Department shall schedule the request for a Public Hearing by the Board of County Commissioners.

E. Action by the Board of County Commissioners

After hearing testimony in the Public Hearing, the Board of County Commissioners shall take one of the following actions:

1. Approve the vacation with or without conditions.
2. Deny the vacation.
3. Table the request to a date certain.

F. Recording the Vacation

If the Board of County Commissioners approves the vacation, the Planning Department shall record the Resolution reflecting the Board of County Commissioners action in the office of the Delta County Clerk and Recorder. Where a public way is vacated, the Planning Department shall record the Vacation Plat in the office of the Delta County Clerk and Recorder, along with applicable deeds including legal descriptions of the: 1) land being transferred; and 2) the property being amended to accept the land.

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CHAPTER 12

Section 2. Definitions

A

~~Accessory Business Use of the Home means the use of a residence (including the land associated with the residence, and including a residence associated with an agricultural use) for a commercial operation, where:~~

- ~~a. The commercial operation is subordinate to the residential use;~~
- ~~b. The character of the residential use is not materially altered; and~~
- ~~c. The commercial operation is conducted by the owner or occupant of the residential use.~~

Accessory Dwelling Unit (ADU) means a smaller, independent residential dwelling unit on the same lot as detached single-family residence (maximum 1,000 square feet).

Accessory Use means a use of land that:

- a. Is clearly subordinate in area, extent, and purpose to the principal use;
- b. Contributes to the comfort, convenience, or necessity of the principal use;
- c. Is operated by the owner of the principal use; and
- d. Is located on the same lot or parcel as the principal use.

Action or To Act on an application means to approve the application or to deny the application in writing.

Adult Entertainment means an exhibition, display, activity, or dance that involves the appearance or exposure to view of specified sexual activities or specified anatomical areas to an audience for consideration.

Aggrieved Party shall mean those property owners defined as neighbors AND those property owners who received Notification as determined by the Director.

Agricultural and Agribusiness Uses, Operations, and Activities means a group of land uses that are related to grazing or raising livestock or land uses which produce products that originate from the land's productivity, such as farming, ranching, forestry, viticulture, floriculture, beekeeping, tree farming, hemp cultivation, animal husbandry, and horticulture including within greenhouses. The phrase "Agricultural and Agribusiness Uses, Operations, and Activities" does not include the phrase "Intensive Agriculture"¹ or any specific land uses within that group, nor does it include the phrase "Marijuana Uses" or any specific land uses within that group.

Commented [CH39]: Changes recommended to attempt more clarity about the intent of existing definition – "being subordinate", and "not materially altering the character". Chapter 2, Section 3.F also has some context - redline recommended as follows: "Accessory business use of the home is allowed as-of-right" as defined in Chapter 14, Section 2 and where not otherwise listed in Table 2.b of this Code.

Commented [CH40]: Listed under Chapter 2, Section 2.F (Temporary Uses). DELETE this (move to Chapter 2) and ADD Cottage Industry from Specific Development (Eli Email). Also DELETE Incidental Commercial use (replaced with Cottage Industry).

Commented [CH41]: ADU sizes (in other codes) range from 500–1200 sf

Commented [CH42]: Established as part of BoA By-Laws. Not currently used in LUC, but intent would be to add as part of appeal section.

¹ Words and phrases that are highlighted with red type are defined elsewhere in this document.

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Agricultural Support and Rural Industries means a group of land uses that either provide support for agricultural operations, process agricultural outputs or other natural resources, or that are often located in rural areas due to the need for separation from population centers.

Agricultural Workforce Housing means dwelling units that are located on the site of an agricultural or agribusiness use, operation, or activity or an intensive agriculture use, which provide housing for employees or contractors who work on the site.

Airport or Airstrip means any area of land or water that is used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas that are used, or intended for use, for supporting buildings (e.g., hangars, fueling areas, terminals, or control towers), or other facilities or rights-of-way, together with all buildings and facilities located thereon. The term “Airport” refers to a publicly owned and managed facility that is open for public use without operational restrictions on its use. The term “airstrip” refers to a runway for take-off and landing of fixed-wing aircraft that is not open for public use (e.g., use is limited to a single property owner, a property owners’ association, or a public safety entity or governmental unit), or offers limited facilities for general aviation purposes.

Alternative Communication Facility means a wireless communication facility with an alternative design that camouflages or conceals the presence of antennae or towers; such as, but not limited to, artificial trees, clocks, light poles, bell towers, and steeples. A stand-alone pole in the public right-of-way upon which small cell antenna facilities are installed is considered an alternative communication facility to the extent it meets the camouflage and concealment standards of this definition.

Animal Units means a unit of measurement for determining the intensity of use of land for the keeping of livestock, by comparing the impacts of various animals to the impacts of a 1,000 lb. cow. Animal units are measured as provided in the table below. Animal unit calculations by the State of Colorado may be different than this chart. As a result, a Large AFO by Delta County definition may or may not be regulated by the State as well as by the County.

ANIMAL UNITS (1 AU = 1,000 LB. COW)	
Animal	Animal Unit (“AU”) Calculation
Cattle-Beef	1.0
Cattle-Dairy	1.4
Chicken	0.02
Elk	0.5
Geese, Ducks, Turkey	0.03
Goat	0.2
Horse	1.0
Sheep	0.2
Swine	0.4
Bison	1.0

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Antenna means an apparatus designed for the purpose of emitting radiofrequency (“RF”) radiation, to be operated or operating from a fixed location pursuant to Federal Communications Commission (“FCC”) authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term “antenna” does not include an unintentional radiator, mobile station, or device authorized under 47 C.F.R. part 15.

Antenna Equipment means equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.

Antenna Facility means an antenna and associated antenna equipment.

Applicant means a person or entity that submits a siting application and the agents, employees, and contractors of such person or entity.

Application. See Siting Application.

Authorization means any approval that the County must issue under applicable law prior to the deployment of personal wireless service facilities, including, but not limited to, approval under this Resolution.

Automobile Fueling or Service Station means a commercial facility that is used for the retail dispensing or sales of motor fuels; propane; Level 3 DC fast-charging of electric vehicles; washing of motor vehicles; towing of automobiles and light trucks (but not storage, wrecking, or salvage of inoperable automobiles or light trucks); and/or the sale and installation of lubricants, tires, batteries, brakes, mufflers, and similar vehicle repairs. The phrase “fueling/service station” does not include collision centers or facilities that provide transmission repair, engine overhauls, or repair of commercial vehicles. The phrase “Fueling or Service Station” includes associated retail stores that sell ready-to-eat food products (not intended for on-premises consumption), groceries, consumable motor vehicle supplies, or sundries.

B

Base Station means a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The phrase “base station” includes, but is not limited to:

- (1) Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul;
- (2) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks);
- (3) Any structure other than a wireless communications tower that, at the time an application is filed, already supports or houses equipment described in items (1) or (2), above (for the purposes of this definition, “WIRELESS EQUIPMENT”), that has been reviewed and approved by the County, even if the structure was not built for the sole or primary purpose of providing such support.

The phrase “base station” does not include:

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(1) A wireless communications tower or any equipment associated with a wireless communications tower.

(2) Any structure that, at the time an application is filed, does not support or house wireless equipment.

Battery Energy Storage System (BESS) means a rechargeable energy storage system consisting of batteries, battery chargers, controls, power conditioning systems and associated electrical equipment designed to provide electrical power to a building or provide electrical grid-related services

Bed and Breakfast means a single-family dwelling unit in which a maximum of four guest rooms for overnight lodging (for terms of less than 30 days) is provided, which may include meals, and which is operated by the permanent resident of the dwelling unit.

Block means a unit of land bounded by streets or by a combination of streets and public land, railroad right of way, or any other barrier to the continuity of development.

Boundary Agreement means a written agreement between two or more parties, including an illustrative map or plat, to resolve any disputed line, corner, or boundary of an existing parcel of land that is signed (by all parties) and recorded in the real estate records of the County Clerk and Recorder.

Boundary Line Adjustment means an adjustment or revision of established, undisputed, existing boundary lines between parcels or lots, where such adjustment does not result in creating an additional parcel/lot less than 35 acres.

Boundary Survey (aka Record of Results, Certificate) means a detailed map that identifies and documents existing conditions, including physical boundaries or property lines for a specific parcel of land and/or right-of-way. Results in no change from existing conditions.

Buffering or Buffering Strip means open space, landscaping areas, fences, walls, or any combination thereof used to physically separate or screen one use or property from another so as to visually shield or block noise, lights, or other nuisances.

Business Day means any day that is not a holiday as defined in 47 C.F.R. § 1.4(e)(2), and any day that is not a legal holiday as defined by the State of Colorado or Delta County, Colorado.

C

Campground means an ~~site, lot or parcel area or tract of land on which accommodations made available to persons~~ for temporary ~~occupancy~~, non-permanent, overnight accommodations (not to exceed six months in any one calendar year by any particular guest) ~~are located~~, including for the parking or placement of recreational vehicles, ~~such as~~ motor homes, ~~trailers, truck~~ campers, ~~mobile tiny homes~~, cabins, yurts, ~~or~~ tents, ~~or similar devices~~ used for human occupancy. "Campground" is similar to a Recreational Vehicle Park with temporary accommodations, but different from a Manufactured Home Park where there are permanent services (water, wastewater, electricity, etc.).

Camping Unit means any tent, trailer, cabin, lean-to, recreation vehicle, or similar structure established or maintained and operated in a campground or upon any property as temporary living quarters for recreation, education, agricultural worker housing, or vacation purposes.

Commented [CH43]: Adding two definitions for clarity Terminology presented to Surveyors. Distinction between disputed and undisputed property lines.

Commented [CH44]: Part of terminology presented to Surveyors

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Cemetery means a place that is dedicated to, used, and intended to be used for the permanent interment of human remains, and may include a burial plot for earth interments, a mausoleum for vault or crypt interments, a columbarium for cinerary interments, or any combination of one or more of the above. The term “cemetery” does not include areas of private property that are used for burials of members of the property owner’s family.

Change of Use means any use that is substantially different from the previous use of a building or land.

Code of Federal Regulations (“CFR”) means the codification of the general and permanent Rules published in the Federal Register by the executive departments and agencies of the Federal Government. It is divided into 50 titles that represent broad areas subject to Federal regulation.

Co-location, in general, means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

Commercial, with reference to categories of land uses, means a group of land uses that involve general commercial activity.

Commercial Facility means land, structures, and/or buildings that are used for commercial purposes, but not including home businesses and incidental commercial activities.

Commercial Mobile Services means any mobile service (as defined in 47 U.S.C. § 153) that is provided for-profit and makes interconnected service available:

(3) To the public; or

(4) To such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the FCC.

Communal Living means more than one family (see definition of “Family”) living on a property in more than one ~~single-family detached~~ dwelling unit, ~~manufactured home, recreational vehicle, or tiny home~~ (see definition of “Dwelling Unit”) built or installed for permanent living. A group of people living together, but in their own private homes. Communal living may include shared community buildings such as a community meeting space.

Community Land Uses means a group of land uses that provide community gathering places or services, such as places of assembly, education, or interment of human remains.

Community Water System means a public water system that supplies at least 15 service connections used by year-round residents or that regularly supplies at least 25 year-round residents.

Concept Plan means a drawing, not necessarily to scale, showing the location of buildings, access, and infrastructure, or other information necessary to demonstrate compliance with the requirements of this Code.

Conditional Use means a use that is permitted in a particular zoning district upon showing that such use in a specific location will comply with all the conditions and standards for the location or

Commented [CH45]: Type of unit does not matter (Tiny homes, RVs, Manufactured Units, etc.). However, it becomes a Mobile Home Park (MHP) if 3+ mobile homes and/or RVs are placed on the same parcel (definition added from prior MHP resolution).

Commented [46]: Remove reference to “Sketch Plan” to differentiate from past practices specific to subdivisions

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operation of the use as specified in this Land Use Code and authorized by the Board of County Commissioners.

Commented [CH47]: "Code" is capitalized in most of the LUC.

Condominium means a building or group of buildings in which dwelling units, offices, or floor area are owned individually, and the structure, common areas, and facilities are owned by all owners on a proportional, undivided basis.

Corner Lot means a lot that has two street frontages that form a corner or sharp curve, generally due to a location at the intersection of two streets.

County means Delta County, Colorado.

Covenants means a restriction on the use of the land set forth on the deed.

D

Delta County Roadway Design and Construction Standards means the Delta County Roadway Design and Construction Standards, dated December 12, 2005, including appendices, as such documents may be amended or superseded from time to time.

Deployment means placement, construction, or modification of a personal wireless service facility.

Developer. See "Subdivider or Developer"

Development Area means the portion of a property or lot remaining after the minimum setbacks, open space, park, or right-of-way dedication, and *stewardship areas* (See Chapter 4 Section 1A)

Density means the number of families, individuals, dwelling units, households, housing structures, or lots per acre per unit of land.

Director means the Director of Planning and Community Development or designee thereof.

Disposition means a contract of sale resulting in the transfer of equitable title to an interest in subdivided land; an option to purchase an interest in subdivided land; a lease or an assignment of an interest in subdivided land; or any other conveyance of an interest in subdivided land which is not made pursuant to one of the foregoing.

Ditch Company means a person or organization (public or private) that owns, controls, or operates a ditch, reservoir, canal, or pipeline in which water is stored or through which water is transported for beneficial use, including but not limited to a mutual ditch company or an irrigation district. The phrase "ditch company" does not include the phrases "public water system."

Duplex means a residential property with two, attached, dwelling units.

Commented [CH48]: Add definition to reflect LU Matrix (Table 2.b)

Dwelling Unit means a building or portion of a building that provides complete independent living facilities, including permanent provisions for living, sleeping, eating, cooking and sanitation, for one family. Includes: Mobile Homes, Modular Homes, Tiny Homes, Recreational Vehicles (when connected to permanent infrastructure), Yurts, Cabins, Accessory Dwelling Units, etc.

E

Easement means a grant of one or more of the property rights by the property owner to and/or for use by the public, a corporation, or another person or entity.

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Egress means an exit.

Eligible Facilities Request means any request for modification of an existing wireless communications tower or base station that does not substantially change the physical dimensions of such tower or base station as measured from the original tower or base station zoning or siting approval, involving: co-location of new transmission equipment; removal of transmission equipment; or replacement of transmission equipment.

Eligible Support Structure means any existing wireless communications tower or base station.

Equestrian Facilities means a boarding stable, riding school or academy, riding arena, or exhibition facility for horses, donkeys, or mules, for animals not owned by the owner or lessee of the property. Equestrian facilities typically include barns, stables, corrals, riding arenas, and/or paddocks used for the feeding, housing, and exercising of horses.

Evidence means any map, table, chart, contract, or other document or testimony, prepared or certified by a qualified person to attest to a specific claim or condition, which evidence shall be relevant and competent and shall support the position maintained by the subdivider.

Exempt Well means a well that does not exceed 15 gallons per minute of production and used for ordinary household purposes, fire protection, the watering of poultry, domestic animals and livestock on farms and ranches and for the irrigation of not over one acre of home gardens and lawns but not used for more than three single-family dwellings.

Existing, in reference to wireless communications towers or base stations, means a constructed tower or base station that was reviewed, approved, and lawfully constructed in accordance with all requirements of applicable law as of the time of an eligible facilities request; or wireless communications tower that exists as a legal, non-conforming use which was lawfully constructed.

F

Family means one or more persons related by blood, marriage, adoption, guardianship, or similar relationship (including domestic partners), occupying a dwelling unit and living as a single housekeeping unit. Residents of a group home, as defined in this Section, shall also be deemed to constitute a family.

Farm, Orchard, or Ranch means land that is used for commercial crop production, horticulture, floriculture, viticulture, or forestry, or to produce food or fiber products that originate from the land's productivity, and may include value-added agricultural processing (e.g., a vineyard with an on-site winery, or a produce stand on a farm site are both within the definition of the phrase "Farm, Orchard, or Ranch"). The phrase "Farm, Orchard, or Ranch" does not include land that is used to produce food or fiber products for the personal use of the landowner, or for incidental commercial activities. The phrase "Farm, Orchard, or Ranch" does not include any of the specific land uses within the group "Intensive Agriculture," nor does it include any of the other specific land uses within the group "Agricultural and Agribusiness Uses, Operations, and Activities."

Farm Supply/Feed and Seed means a commercial facility that sells, rents, or repairs agricultural machinery, equipment, and supplies for use in soil preparation and maintenance, the planting and

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harvesting of crops, and other operations and processes pertaining to farming, beekeeping, or livestock operations.

Federal Register means the official daily publication for Rules, proposed Rules, and notices of Federal agencies and organizations, as well as executive orders and other presidential documents.

Fence means a structure that serves as an enclosure, barrier, screen, or boundary, or that serves to mark a boundary, enclose a piece of land or divide a piece of land into distinct portions and that is usually constructed from wood, metal, wire, vinyl, masonry, stone, or other manufactured material.

Fee (Simple) Title means absolute title to land, free of any other claims against the title, which one can sell or pass to another by will or inheritance.

Freestanding Communication Facility means a communication facility that consists of a stand-alone support structure or tower, antennas and accessory equipment.

G

Greenhouse means a building whose roof and sides are made largely of glass or other transparent or translucent material and in which the temperature and humidity can be regulated for the cultivation of plants for subsequent sale.

Group home means a state-licensed group home that is specifically identified in C.R.S. §§ 31-23-303(2)(a) (community residential homes with eight (8) or fewer residents), (2)(b)(II) (group homes for the aged with eight (8) or fewer residents), and (2)(b.5) (group homes for persons with behavioral or mental health disorders with eight (8) or fewer residents). The phrase "group home" specifically does not include any other type of group living arrangement.

Growth Management Area means an unincorporated area surrounding a municipality within which both the County and the municipality agree to jointly participate in planning and the review of proposed developments in accordance with an Intergovernmental Agreement between the participating entities.

Guest Ranch means a working farm or ranch that also includes rooms for lodging that are rented to guests for terms of less than 30 days. Guest ranches may include areas for outdoor recreation and provide organized outdoor activities such as horseback riding, rock climbing, rafting, hiking, hunting, and fishing. Guest ranches may also provide meals for guests, and may be used for private special events (e.g., private parties, corporate retreats, and weddings).

H

Hazardous Waste Landfill means all contiguous land, including publicly-owned land, under common ownership that is used for hazardous waste disposal as such phrase is defined in C.R.S. § 35-15-200.3(4), except that such term shall not include any site that is in compliance with an approved reclamation plan contained in a permit issued pursuant to Article 32 of Title 34, C.R.S., or Article 33 of Title 34, C.R.S.

Height means the height of a building, pole, tower, or other structure, measured: for buildings, from the average grade along the front of the building (closest to the front property line) to the highest point of the

Commented [CH49]: Add definition to reflect how County wants title for road dedications. This will be address as part of subdivision regulations since also has effect of creating a division of land.
Terminology presented to Surveyors

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building; and for structures, from the base of the structure to the top of the structure, including any attached antennae or other appurtenances.

Hemp Cultivation means a commercial facility that is used for cultivation of industrial hemp, which may include the processing of the industrial hemp on the land where it is produced (*e.g.*, a CBD oil extraction facility on the site of the hemp cultivation operation is within the definition of “Hemp Cultivation”).

Household means one or more persons, whether related or not, living together in a dwelling unit, with common access to and common use of all living and eating areas and all areas and facilities

Hunting, Fishing, or Watersports Club means a commercial facility that provides access to land or water to its members (and not to the general public) for the purposes of hunting, fishing, or watersports (*e.g.*, swimming, boating, or water skiing), and which may include buildings that provide facilities for assembly, dining, camping, and/or temporary or seasonal lodging. Hunting, fishing, or watersports clubs may also be used for special events (*e.g.*, private parties, corporate retreats, and weddings).

I

Improvements Agreement means a legally binding contract made by and between the developer/subdivider and the County whereby the developer guarantees the installation of all improvements (whether proposed by the developer/subdivider or required by the Board of County Commissioners or both) that are designed to serve the occupants of a development or subdivision or the general public, and provides for a financial security arrangement to ensure such installation.

~~**Incidental Commercial Activities** means the commercial use of residential property that is obviously subordinate to the residential use.~~

Individual Sewage Disposal System (“ISDS”) means an absorption system of any size or flow, or a facility for collecting, treating, neutralizing, stabilizing or disposal of sewage, ~~which is not a part of~~ or connected to a sewage treatment works. More commonly known as a septic system or Onsite Wastewater Treatment System (OWTS).

Industrial Hemp means a plant of the genus *cannabis* and any part of the plant, whether growing or not, containing a *delta-9 tetrahydrocannabinol* concentration of no more than three-tenths of one percent (0.3% or 0.003) on a dry weight basis.

Intensive Agriculture means a group of land uses that involve the raising, care, or feeding livestock, where the number of animals is equivalent to or greater than 50 animal units, and, the animals are stabled, confined, fed and/or maintained a total of 45 days or more in any 12-month period, and, where crops, vegetation, forage growth, or post-harvest residues are not growing, irrigated and sustained in the normal growing season over any portion of the lot or facility. The phrase “intensive agriculture” also includes concentrated aquatic animal production (“CAAP”). The phrase “intensive agriculture” does not encompass (without more) cattle and sheep that are moved between winter and summer pastures, including those confined for more than 45 days due to adverse conditions, and breeding stock on property where other cattle are grazing. The phrase “Intensive Agriculture” includes:

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Commented [CH50]: Dated term (1973-2013). Now referred to as OWTS. Health regs being updated. Referenced in LUC as ISDS. Definition aligns with OWTS.

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- a. *Small Animal Feeding Operation ("SAFO")*, which means any building or outdoor corral, pen, or other enclosure used to confine animals, where the number of animals is between 50 and 149 animal units, for the purpose of feeding or care, where no forage is harvested.
- b. *Medium Animal Feeding Operation ("MAFO")*, which means any building, outdoor corral, pen, or other enclosure used to confine animals, where the number of animals is between 150 and 999 animal units, for the purpose of feeding or care, where no forage is harvested.
- c. *Large Animal Feeding Operations ("LAFO")*, which means any building, outdoor corral, pen, or other enclosure used to confine animals, where the number of animals is 1,000 or more animal units, for the purpose of feeding or care, where no forage is harvested.
- d. *Concentrated Aquatic Animal Production ("CAAP")*, which means a hatchery, fish farm, or other facility that is designated by the U.S. EPA (*see* 40 CFR 122.25), or which satisfies the following criteria:
 - 1) The facilities raise cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year, except:
 - i. Facilities that produce less than 20,000 pounds of aquatic animals per year; and
 - ii. Facilities that feed less than 5,000 pounds of food during the calendar month of maximum feeding.
 - 2) If the facilities raise warm water fish species or other warm water aquatic animals in ponds, raceways, or other similar structures that discharge at least 30 days per year, except:
 - i. Closed ponds which discharge only during periods of excess runoff; or
 - ii. Facilities that produce less than 100,000 pounds of aquatic animals per year.
- e. *Fish Hatchery* (not "CAAP"), which means any facility, structure, lake, pond, tank, or tanker truck used for the purpose of propagating, selling, brokering, trading, or transporting live fish or viable gametes, except a concentrated aquatic animal production facility ("CAAP").

Interior Lot means a lot with one street frontage.

Intergovernmental Agreement (IGA) means any agreement that involves or is made between two or more governments in cooperation to solve problems of mutual concern. Intergovernmental agreements can be made between or among a broad range of governmental or quasi-governmental entities.

Commented [CH51]: Add to provide definition, not currently included. Part of the review process for referrals.

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J

Junk means wrecked, scrapped, ruined, partially dismantled, dismantled, or inoperable and unlicensed motor vehicles (*e.g.*, recreational vehicles, commercial vehicles, passenger vehicles, construction equipment, trucks, boats, and trailers); inoperable major appliances and equipment (*e.g.*, water heaters, ranges, ovens, refrigerators, mowers); manufactured or mobile homes that are in a dilapidated, uninhabitable condition; construction debris or used construction materials; and household waste. The term “junk” does not include inoperable farm equipment.

Junk Storage means an area of land (outside of an enclosed building) that is used for the storage of junk, except where such junk is input for a rural medium industry or rural heavy industry (in which case the junk storage is considered part of the industrial use); materials that are stored in a salvage yard (see definition of phrase “Salvage Yard”); materials that are stored in a waste transfer station; or materials that are permanently disposed of in a landfill.

K

Kennel means a commercial facility for breeding, boarding, training, and/or selling of household pets. The term “kennel” does not include incidental commercial activities.

L

Landfill means an area of land that is used for the disposal of non-hazardous solid wastes.

Lodging means a building or group of buildings which provides guest rooms for overnight lodging (for terms of less than 30 days), which may also provide the following amenities: (1) food service for guests; (2) conference rooms, ballrooms, and comparable special event space; (3) recreational activities or programming (*e.g.*, swimming, golf, tennis, horseback riding, etc.); (4) personal services (*e.g.*, spa services, fitness training, sports instruction, etc.); or (5) entertainment programming (not including in-room televisions or internet access). Inns or lodges may also be used for private special events (*e.g.*, private parties, corporate retreats, and weddings).

Lot means a recognized subdivision of property with a written legal description that addresses permissions or constraints upon its development. A parcel of land that has passed through a legal subdivision process created by the state and the local jurisdiction. (*e.g.*, Lot and Block description)

Lot Frontage means the lot line that is coterminous with a road right-of-way (public or private).

Lot Line means a legal boundary of a lot.

M

Maintenance Agreement means an agreement signed by the developer to insure facilities or work to ginsure correction of failures of improvements required by these regulations, and/or to maintain the same.

~~**Manufactured Home** means:~~

~~a.—A building that:~~

~~1) —Is transportable in one or more sections;~~

Commented [CH52]: Distinguish “lot” v “parcel”
Terminology presented to Surveyors

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- 2) ~~In the traveling mode is 8 body ft. or more in width or 40 body ft. or more in length; or, when erected on site, is 320 sf. or more in floor area;~~
- 3) ~~Is built on a permanent chassis;~~
- 4) ~~Is designed to be used as a dwelling unit with or without a permanent foundation when connected to the required utilities;~~
- 5) ~~Includes the plumbing, heating, air conditioning and electrical systems contained therein; and~~
- 6) ~~Complies with the standards established under 42 U.S.C. § 5401 et seq., Manufactured Home Construction and Safety Standards; or~~

~~b.a. Any structure that meets all the criteria of the above-stated definition except the size requirements (a)1, and with respect to which the manufacturer voluntarily files a certification required by the Secretary of Housing and Urban Development that the structure complies with the standards established under 42 U.S.C. § 5401, et seq~~

Manufactured Home means a factory-built home (built to standards established under 42 U.S.C. § 5401 et seq., *Manufactured Home Construction and Safety Standards*) that can be placed on a piece of land as a permanent dwelling unit. A manufactured home is a portable structure that is capable of being transported on State Highways in compliance with C.R.S. § 42-4-501. The term “manufactured home” shall not include travel trailers, camper trailers, campers or self-contained motor homes or camper buses. A manufactured home that is less than 400 square feet can also be considered a “Tiny Home.”

Manufactured Home Park means a parcel of land that includes streets and utilities, and that is divided into spaces that are individually leased for the purpose of installing a manufactured home for residential purposes. Manufactured Home Parks are designed like a subdivision, providing all utilities and infrastructure, but spaces are leased, not sold. If spaces are to be sold, subdivision shall be required. any lot or parcel of land on which is placed or improved for sites for three or more moveable structures with water, sewer or septic, and electrical services available for dwelling or sleeping purposes, regardless of whether or not a charge is made for such accommodation. For purposes of this section, a movable structure includes, but is not limited to, mobile homes, recreational vehicles and tiny homes.

Commercial Marijuana Uses means the following uses:

- a. ~~A medical marijuana center;~~
- b. ~~A medical marijuana infused product manufacturer;~~
- c. ~~An optional premises cultivation operation;~~
- d. ~~A medical marijuana testing facility;~~
- e. ~~A retail marijuana cultivation facility;~~
- f. ~~A retail marijuana products manufacturing facility;~~

Commented [53]: Simplify and relation between Mfg, Mobile Home (pre-1976), and Tiny Home. HB22-1242 would distinguish between Tiny Homes (movable) and any size house built on site (permanent)

Commented [CH54]: More specific definition based on number of units and aligns with 1997 mobile home park resolution (integrated regulations as part of Specific Use standards). Distinguished from RV Park/Campground as permanent connection to septic

Commented [CH55]: Deleted following PC discussion relative to reference of Commercial Cannabis Ordinance in Section 2.C

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~~g. A retail marijuana store; or~~

~~h. A retail marijuana testing facility;~~

~~as such phrases are defined by the Colorado Revised Statutes, as amended from time to time.~~

Minerals Extraction/Quarry means a commercial facility involving the extraction of salable minerals (including, but is not limited to, building stone, clay, coal, diatomaceous earth, gravel, precious or semi-precious stones or metals, or sand) from the earth. The phrase “Minerals Extraction/Quarry” does not include the phrase “Oil and Gas Extraction,” cut and fill operations within a single property or between properties under single ownership; or the construction, cleaning, or reshaping of irrigation ditches or reservoirs (even if the soil is sold for use as fill).

~~**Minor Plat** means a final plat where no more than two lots are created through subdivision.~~

Mitigation means methods used to alleviate or lessen the impact of development.

Mobile Home means a manufactured home constructed prior to June 15, 1976.

Modular Home means a customized, prefabricated building system built almost entirely in a factory setting. ~~Once the main modules of a new home are constructed - complete with attached walls, floor, ceiling, wiring, plumbing and interior fixtures - they are transported to the property and placed on a permanent foundation. Each home is designed and constructed to meet all state and national building and fire codes, and a local builder does the final finish work.~~

Multifamily means ~~multiple four or more dwelling units attached to one another by any means a common wall, designed for occupation by more than one family.~~

N

Neighbor shall mean owner of a ~~property~~ adjoining the applicant's property AND, other property owners, entities, groups and organizations as determined by the Director.

Non-Community Water System means a public water system that is not a community water system. A non-community water system is either a “transient, non-community water system” or a “non-transient, non-community water system.”

Nonconforming means a lot, use, structure, or building where the lot, area, dimensions, or location of which was lawful prior to the adoption, revision, or amendment of this ~~L~~and ~~U~~se ~~C~~ode but that fails by reason of such adoption, revision, or amendment to conform to the present requirements of this ~~L~~and ~~U~~se ~~C~~ode.

Non-Transient, Non-Community Water System means a public water system that is not a community water system and that regularly serves at least 25 of the same individuals, corporations, companies, associations, partnerships, municipalities, or State, Federal, or tribal agencies over six months per year.

Notice of Deficiency means a written notice from the Director to the Applicant that the application is materially incomplete, clearly and specifically identifying the missing documents or information and the specific rule or regulation creating the obligation to submit such documents or information.

Commented [CH56]: No change to text. Moved to “Plat (Minor)” so plat definitions are together

Commented [CH57]: Added per PC discussion. Used language from National Home Builders Association website.

Commented [CH58]: Adjusted per PC discussion 4/27. NOTE: Duplex and Triplex can also be considered multifamily, but might have different permitting requirements when there are 4+ units. “Any means can include non-habitable elements (e.g. trellis).

Commented [CH59]: From BoA By-Laws

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O

Offices means a building or buildings from which professional, administrative, financial, clerical, brokering, real estate, medical, and limited technical services are provided by a group of three or more unrelated principals, contractors, or employees. The term “Office” includes, but is not limited to, the following businesses or services:

- a. Accounting, auditing, and bookkeeping;
- b. Advertising and graphic design;
- c. Architectural, engineering, and surveying services;
- d. Attorneys and court reporters;
- e. Brokering of motor vehicles, commodities, and other items where the thing brokered is not stored on-site;
- f. Business incubators (unless the businesses being incubated are classified as another type of use);
- g. Computer programming and data recovery services;
- h. Corporate headquarters;
- i. Data mining, data processing, data storage, and word processing services;
- j. Detective agencies;
- k. Government administration or services;
- l. Insurance;
- m. Interior design;
- n. Medical offices and clinics;
- o. Real estate sales and off-site rental services;
- p. Research and development (not including on-site manufacturing or fabrication, and not including marijuana uses);
- q. Retail catalog, internet, and telephone order processing, but not warehousing; and
- r. Shared office and virtual office services.

Official Hazard Area Maps means maps that are on file with the County that identify the general location of natural hazards.

Oil and Gas Extraction means exploration for and production of oil and/or natural gas.²

² Note that this definition may be modified or expanded as the result of the work of the committee that is reviewing the County's oil and gas regulations.

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Oil and Gas Support Services means commercial facilities that provide direct support to oil and gas extraction, including:

- a. Disposal and recycling sites for production waste (except production water disposed through either secondary recovery or deep well disposal methods where the mode of transport to such injection wells is exclusively via pipeline from the source, and no on-site storage occurs)
- b. Oil and gas processing facilities and related equipment, including, but not limited to, compressors that are associated with gas processing or which compress gas to enter a pipeline for transport to market.
- c. Midstream activities, including the processing, storing, transporting, and marketing of oil, natural gas, and natural gas liquids.

The phrase “oil and gas support services” does not include businesses whose activities are primarily manufacturing and fabricating, or whose function is primarily general corporate offices.

Other Active Outdoor Recreation means active outdoor recreation activities not otherwise specifically defined by this Code, such as zip line parks, batting cages, and mini golf courses, or other similar activities. The phrase “other active outdoor recreation” does not include outdoor shooting ranges or other uses that are specifically defined in this Code.

Other Wireless Communications Facility means:

- (1) Communications facilities that are mounted on a base station; or
- (2) Modification of an existing wireless communications tower or base station that involves:
 - a. Collocation of new transmission equipment;
 - b. Removal of transmission equipment; or
 - c. Replacement of transmission equipment.

Outdoor Theater means an outdoor area surrounded by rows of seats or benches (which may be tiered) or lawn seating areas, designed for the viewing of sporting events, rodeos, equestrian events, livestock exhibitions, concerts, or other organized entertainment; or an area of land that includes one or more large outdoor screens or other structures for the display of motion pictures, as well as and an area for parking automobiles from which the motion pictures are viewed. The phrase “Outdoor Theaters” may include concession sales.

Owner means an individual or entity holding a fee-simple or leasehold ownership interest in property that is subject to this Resolution, and includes an applicant for approval under this Resolution who is acting with the consent or direction of a fee-simple owner. The term “owner” also includes operators, managers, or any other person or entity who have responsibility for the approved facilities, as authorized by a fee-simple owner.

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P

Paintball Course means an outdoor area of land used for mock war games using paintball guns or laser equipment. Paintball courses may include structures, bunkers, obstacles, vending, and pro shops.

Parcel means a quantity of land capable of being described in a certificate of title or described in a certificate of title by reference to a plan filed or registered in a land titles office. A quantity of land identified for taxation purposes. (e.g., Metes and Bounds description)

Commented [CH60]: Parcel vs Lot
Terminology presented to Surveyors

Parks, Passive Recreation, Open Space, or Golf Course means areas of land that provide recreation opportunities outdoors for the public (open to the community) or residents of a subdivision or development, which are generally not commercial in nature (except golf courses, which may be commercial facilities). The phrase “Parks, Passive Recreation, Open Space, Golf Course” includes areas for recreational activities including, but not limited to:

- a. Jogging, cycling, tot-lots, fitness trails, and playgrounds;
- b. Sports fields (e.g., soccer fields, baseball diamonds, or football fields) or outdoor sports courts (e.g., tennis, racquetball, or basketball);
- c. Golf courses and golf driving ranges;
- d. Arboretums, wildlife sanctuaries, forests, and other natural areas which may be used for walking, snowshoeing, mountain biking, or hiking; or
- e. Passive recreation-oriented parks, including picnic areas.

Personal Wireless Service means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.

Personal Wireless Service Facility means an antenna facility or a structure that is used for the provision of personal wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services.

Place of Assembly means an indoor or outdoor space where people gather for civic, cultural, educational or religious purposes, that is not more specifically defined elsewhere. The phrase “place of assembly” includes, but is not limited to, adult day care facility, church, community center, fraternal organization, grange hall, lecture hall, meeting hall, religious or not religious retreat center, mosque, and place of worship, private club, synagogue, or temple.

Plat means a map and supporting materials of certain described land prepared in accordance with subdivision regulations as an instrument for recording of real estate interests with the County Clerk and Recorder.

~~**Preliminary Plan** means the map of a proposed subdivision and specified supporting materials, drawn and submitted in accordance with the requirements of adopted regulations, to permit the evaluation of the proposal prior to detailed engineering and design.~~

Commented [CH61]: Not used in LUC where it needs definition. Remove possibility to confuse with Preliminary Plat.

Plat (Final) means a map, or maps, of a land subdivision prepared in accordance with this Code, with necessary affidavits, dedication and acceptances and with complete bearings and dimensions of all lines

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defining all lots, boundaries, easements, roads, driveways, building areas, non-building areas, intended as an instrument for recording with the County's Clerk and Recorder.

Plat (Minor) means a final plat where no more than two lots are created through subdivision

Plat (Preliminary) means a subdivision where 3 or more lots are created, showing the salient features of a proposed subdivision submitted to an approving authority for purposes of consideration prior to a final plat.

Plat (Vacation) means a plat illustrating the vacation of a portion of a dedicated right-of-way. Vacation, as used with land use actions, can also apply to vacating portion(s) of an approved (phased) Plat, consistent with provisions of State law.

Prohibited Uses means a group of land uses that are not allowed anywhere in the unincorporated Delta County.

Public Right-of-Way means a strip of land, generally located between private property boundaries, which is owned by a governmental entity, dedicated to public use, or impressed with an easement for public use, which is primarily used for pedestrian or vehicular travel, and which is publicly maintained, in whole or in part, for such use. Public right-of-way may include without limitation the street, gutter, curb, shoulder, sidewalk, sidewalk area, on-street parking area or parking strip, drainage swale, planting strip, and any public way.

Public Water System ("PWS") means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. The phrase includes:

- a. Any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such systems.
- b. Any collection or pretreatment storage facilities not under such control, which are used primarily in connection with such systems.

A Public Water System is either a "Community Water System" or a "Non-Community Water System." The phrase "Public Water System" does not include the phrase "Ditch Company."

R

Racetrack means a commercial facility consisting of a track, either paved or unpaved, which is used primarily for the sport of racing motor vehicles (e.g., cars, go-karts, motorcycles, or all-terrain vehicles). A racetrack may include seating, concession areas, restaurants, sky boxes, parking facilities, maintenance facilities, accessory offices, and accessory retail facilities. The phrase "race track" includes any facility used for driving automobiles under simulated racing or driving conditions (test tracks, "shakedown" tracks, or other similar facilities), regardless of whether they include seating, concession areas, or retail facilities for the general public.

Rebuttable Presumption means a fact that is presumed to exist unless it is disproved by a preponderance of the evidence.

Commented [CH62]: Minor Plat renamed and relocated so all "plat" terms are together. Added other Plat terminology per what was presented to Surveyors

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Recreational Vehicle means a vehicular-type unit ~~that is primarily designed as temporary quarters for recreational, camping, or travel use, that either has its own motive power or is mounted on or drawn by another vehicle used for living or sleeping and/or recreational, camping, or travel purposes, that either has its own motive power or is mounted on or drawn by another vehicle.~~ Includes automobiles when used for sleeping purposes, pick-up coaches (campers), motorized homes, boats, travel trailers and camping trailers not meeting the definition or specification for a manufactured or mobile home.

Commented [63]: Edited to better align with Rubbish/Junk Ord and Pre-HUD Ord.

Recreational Vehicle (RV) Park means any site, lot or parcel of land occupied or intended for occupancy two (2) or more recreational vehicle sites are located, established, or maintained for occupancy by recreational vehicles of the general public as temporary living quarters for recreation or vacation purposes by campers, vacationers, or travelers, whether or not a fee is charged. Storage of two (2) or more unoccupied recreational vehicles does not constitute an R.V. park. "RV Park" is similar to a Campground with temporary accommodations, but different from a Manufactured Home Park where there are permanent services (water, wastewater, electricity, etc.).

Renewable Energy Facility means a commercial facility for the production of more than 100 kW of renewable energy (e.g., solar, wind, or geothermal). Renewable energy facilities include necessary transmission. The phrase "renewable energy facility" does not include the generation of renewable energy to cover the energy demands of the principal land use, even if the demands exceed 100 kW.

Commented [CH64]:
PC comments:
Consider tiering and use of content neutral parameters (footprint, setbacks, lot coverage, etc.) and remove tie to output (wattage).

Renewable Energy Facility (Personal Scale) means a facility for the production of renewable energy (e.g., solar, wind, or geothermal) where the energy produced is used solely for purposes on the property where it is located AND does not meet the threshold for commercial scale.

Renewable Energy Facility (Commercial Scale, aka Utility Scale) means a facility for the production of renewable energy (e.g., solar, wind, or geothermal) where the footprint is:

- a. Located on 5% of the total property area OR 10 acres, whichever is less; AND
- b. Energy produced is sold/contracted for use other than the property where the energy is produced.

Commented [CH65]: For comparison, Garnet Mesa is 27% coverage.
5% of 200 acres = 10 acres
Utility scale requires 5-10 acres per MW depending on the technology.

Renewable energy facilities include necessary transmission and battery storage (see definition of *Battery Energy Storage System*).

Replat means a procedure by which minor amendments may be made to an approved final plat where the revision involves minor adjustments to lot lines, adjustments and/or building envelopes, minor amendments to plat notes, minor right of way adjustments, or minor utility easement adjustments. All lands must be part of a previously approved the same final plat, no additional lots or building site are created, no impacts to county roads or other service providers is created, or the revision corrects minor errors on the plat.

Residential Use means any property, whether developed or not, that is zoned A5 or UGA, and any other property that has a residential tax assessment indicating residential use of the property. For

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the purposes of measuring setbacks for Intensive Agriculture, the setback should be measured from the property line of the property that meets the Residential Use definition.

Resort or Conference Center Hotel means a commercial facility that provides more than 10 rooms for overnight accommodations for terms of less than 30 days, which may also provide the following amenities: (1) food service for guests; (2) conference rooms, ballrooms, and comparable special event space; (3) recreational activities or programming (*e.g.*, swimming, golf, tennis, horseback riding, etc.); (4) personal services (*e.g.*, spa services, fitness training, sports instruction, etc.); or (5) entertainment programming (not including in-room televisions or internet access).

Restaurant means any commercial facility in which the principal business is the sale of food and beverages to customers in a ready-to-consume state, for consumption either within the restaurant building, outside but on the premises, or off the premises, and which may include a drive-in or drive-through facility. Fermented malt beverages, and/or malt, special malt, or vinous and spirituous liquors may be served pursuant to applicable alcohol beverage licenses.

Retail Sales and Services means a commercial facility characterized by the selling of tangible goods/merchandise or services/intangibles directly to the consumer, generally without an appointment. The phrase “Retail Sales and Services” does not include terms and phrases that are more specifically defined (*e.g.*, “Marijuana Uses,” “Automobile Fueling or Service Station,” or “Truck Stop/Truck Wash”).

Right-of-Way means any public street or road that is dedicated to public use for vehicular traffic except for those rights-of-way owned by the Colorado Department of Transportation (“CDOT”). Right-of-way excludes any trails or recreational paths used for pedestrian, bicycle, or equestrian use.

Roof-Mounted Communication Facility means a communication facility that is mounted and supported on the roof or any rooftop appurtenance of a legally existing building or structure.

Rural Heavy Industry means industrial uses that are not described specifically elsewhere, and which may be described in one of the following four ways:

- a. Primary processing or manufacturing or repair operations that involve:
 - 1) A material risk of significant environmental contamination, explosion, or fire;
 - 2) Perceptible ground vibration at the property line;
 - 3) Excessive noise or dust emissions at the property line and downwind;
 - 4) Large-scale outdoor storage of inputs or products;
 - 5) Significant outdoor installations of processing equipment;
 - 6) Outside emission of objectionable odors;
 - 7) More than 30 trips by semi-trailer trucks per day; or
- b. Processing of minerals (except precious and semi-precious stone cutting for jewelry or precision instruments such as lasers or watches), ores, or fossil fuels; or

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- c. Activities that are required to undergo New Source Review under the Federal Clean Air Act, or are subject to construction or operation permits pursuant to the Colorado Stationary Sources Program or Title V of the Federal Clean Air Act; or

Industrial Wastewater Treatment Facility, which is any facility or group of units used for the pretreatment, treatment, or handling of industrial waters, wastewater, reuse water, and wastes that are discharged into state waters.

Rural Light Industry means an industrial operation that does not emit unusual or excessive dust, smoke, fumes, gas, noxious odors, or noise, and which has operations that are generally confined within buildings or structures. Such uses may include, but are not limited to, grain elevators, grain storage and mixing, gun manufacturing, light manufacturing, warehouses, packing plants, and food or beverage processing and packaging facilities (including wineries, breweries, and distilleries) that are conducted entirely within enclosed buildings.

Rural Medium Industry means an industrial operation that may include outdoor storage or operations, or which emits dust, smoke, fumes, gas, noxious odors, or noise, but which does not involve material hazards or require an individual permit under the Clean Air Act or Clean Water Act. Such uses may include, but are not limited to, farm machinery manufacturing, assembly, or repair; motor vehicle body shops or repair shops; machine shops; manufacturing facilities, hemp processing that involves outdoor storage or flammable chemicals; slaughterhouse or rendering plant; and food or beverage processing and packaging facilities (including wineries, breweries, and distilleries) that are not conducted entirely within enclosed buildings; and sawmills or pulp mills that do not qualify as “Rural Heavy Industry” due to their scale.

Rural Recreation and Hospitality means a group of land uses that involve outdoor recreation, overnight accommodations, and entertainment in the rural environment.

Rural Residential means a group of residential land uses that are permissible in the County.

S

Salvage Yard means a commercial facility that is maintained, used, or operated for storing, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts (such salvage yards are also referred to by Colorado statutes as “automobile graveyards”).

Sawmill or Pulp Mill means a commercial facility where logs are sawn, split, shaved, stripped, chipped, or otherwise processed, or other plant materials are processed, to produce wood or fiber products. The phrase “sawmill or pulp mill” does not include the processing of timber for use on the same lot by the owner or resident of that lot.

Schools and Child Care Centers means facilities that are operated for the care and education of children, or that provide secondary or vocational education to children or adults. The phrase “Schools and Child Care Centers” does not include any facility that is licensed as a family child care home, a foster care home, or a specialized group facility that is licensed to provide care for three or more children pursuant to C.R.S. § 26-6-102(10), but that is actually providing care for three or fewer children who are determined to have a developmental disability by a community centered board, or who are diagnosed with a serious emotional disturbance.

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Sensitive Lands means land that because of its elevation, topography, vegetation, unique or exceptional agricultural value, habitat or wildlife corridor value, water resource value, historic or cultural value has been determined by the Board of County Commissioners (as specified in this Code) or other agencies with jurisdiction to require special consideration or specific regulation.

Sexually-Oriented Business means any business defined by Colorado Revised Statutes or further defined through Colorado case law as a sexually oriented business.

Shall means mandatory.

Shooting Range means a commercial facility with an outdoor area designed and operated for shooting firearms at targets (e.g., skeet, trap, target, or comparable sport shooting). The phrase “shooting range” does not include the phrase “hunting, fishing, or watersports club,” nor does it include hunting on public or private land.

Short-Term (Vacation) Rental means a primary dwelling or accessory dwelling structure that is rented for durations of less than 30 consecutive days. This includes dwellings rented out by individual owners and dwellings rented out on behalf of an owner by a property management entity.

Shot Clock means a period of time set by the Federal Communications Commission that is presumptively reasonable for the processing of various types of applications under this Resolution.

Silviculture means the commercial cultivation of forest trees for wood or pulp. It does not include the phrases “hemp cultivation” or “marijuana uses,” or the incidental sales of firewood or mulch that is created from trees that are removed, cut, or pruned in the normal course of landscape maintenance, land development, or disaster response.

~~**Single-Family Detached Cluster Option** means a group of single-family detached residences that are constructed on lots that are smaller than the applicable zoning district would otherwise allow, such that a portion of the original property may be put to use as open space, farmland, and/or an area for natural resource preservation.~~

Single-Family Detached Residence means a dwelling unit that occupies an individual building, and is separated from other buildings and dwelling units by outside walls. Tiny homes, recreational vehicles, yurts, or other structures that are not generally intended for permanent living may be considered single-family detached residences when connected to permanent, reliable infrastructure, including power, water, and either sewer or a permitted individual sewage disposal system.

Site means the specific boundaries of the leased or owned property or specifically defined area of the wireless communication facility subject to review under this Resolution and any access or utility easements related to same. For towers, base stations and alternative communication facilities in the public rights-of-way, a “site” is limited to that area comprising the base of the structure and to associated transmission equipment located on the ground.

Site Plan means a drawing, to scale, showing the location of buildings, access, and infrastructure, or other information necessary to demonstrate compliance with the requirements of this code.

Siting Application means a written submission to the County requesting authorization for the deployment of a personal wireless service facility at a specified location.

Commented [CH66]: Term used in current legislation
Includes Airbnb, Vrbo, and other types of vacation rentals

Commented [CH67]: Related to Clustered Subdivision, not
used in LUC context, so no need to define.

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~~**Sketch Plan** means a drawing, not necessarily to scale, showing the location of buildings, access, and infrastructure, or other information necessary to demonstrate compliance with the requirements of this code.~~

Commented [CH68]: Changed to "Concept" Plan to differentiate from past practices where Sketches went to hearing bodies.

Slaughterhouse means a commercial facility where livestock is slaughtered and/or prepared (e.g., butchering, processing, packing, or treating) for distribution (e.g., to food distributors, retailers, restaurants, or directly to consumers). The facilities may be designed to accommodate the confinement of live animals prior to slaughter and the storage of meat products prior to distribution or sale.

~~**Small Cell Antenna Facility** means a communication facility where each antenna is located inside an enclosure of no more than three cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet; and primary equipment enclosures are no larger than 17 cubic feet in volume. The following associated equipment may be located outside of the primary equipment enclosure and, if so located, is not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation box, ground-based enclosure, back-up power systems, grounding equipment, power transfer switch and cut-off switch.~~

~~**Small Wireless Facilities** are facilities that meet each of the following conditions:~~

- a. ~~The facilities:~~
 - 1) ~~Are mounted on structures 50 feet or less in height including their antennas,~~
~~or~~
 - 2) ~~Are mounted on structures no more than 10 percent taller than other~~
~~adjacent structures, or~~
 - 3) ~~Do not extend existing structures on which they are located to a height of~~
~~more than 50 feet or by more than 10 percent, whichever is greater;~~
- b. ~~Each antenna associated with the deployment, excluding associated antenna~~
~~equipment is no more than three cubic feet in volume;~~
- c. ~~All other wireless equipment associated with the structure, including the wireless~~
~~equipment associated with the antenna and any pre-existing associated equipment~~
~~on the structure, is no more than 28 cubic feet in volume;~~
- d. ~~The facilities do not require antenna structure registration under 47 C.F.R. part 17;~~
~~and~~
- e. ~~The facilities do not result in human exposure to radiofrequency radiation in excess~~
~~of the applicable safety standards specified in 47 C.F.R. § 1.1307(b).~~

~~**Structure (Telecommunication)** means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services).~~

Subdivided Land. See "Subdivision or Subdivided Land"

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Subdivider or Developer means any person, firm, partnership, joint venture, association, or corporation participating as owner, promoter, developer, or sales agent in the planning, platting, development, promotion, sale, or lease of a subdivision.

Subdivision or Subdivided Land means any parcel of land in the unincorporated Delta County that is to be used for condominiums, apartments, or any other multiple-dwelling units, unless such land when previously subdivided was accompanied by a filing that complied with the provisions of this Code, or previous Delta County Subdivisions, with substantially the same density, or which is divided into two or more parcels, separate interests, or interests in common, unless exempted as provided in this definition. As used in this definition, "interests" includes any and all interests in the surface of land but excludes any and all subsurface interests. The following are not included within the definition of "subdivision or subdivided land":

- a. Any division of land which creates parcels of land each of which comprises 35 or more acres of land and none of which is intended for use by multiple owners.
- b. Unless the method of disposition is adopted for the purpose of evading this Code, the terms "subdivision" and "subdivided land," shall not apply to any division of land:
 - 1) Which creates parcels of land, such that the land area of each of the parcels, when divided by the number of interests in any such parcel, results in thirty-five or more acres per interest;
 - 2) Which could be created by any court in this state pursuant to the law of eminent domain, or by operation of law, or by order of any court in this state if the Board of County Commissioners is given timely notice of any such pending action by the court and given opportunity to join as a party in interest in such proceeding for the purpose of raising the issue of evasion of this Code prior to entry of the court order; and, if the Board does not file an appropriate pleading within 20 days after receipt of such notice by the court, then such action may proceed before the court;
 - 3) Which is created by a lien, mortgage, deed of trust, or any other security instrument;
 - 4) Which is created by a security or unit of interest in any investment trust regulated under the laws of this state or any other interest in an investment entity;
 - 5) Which creates cemetery lots;
 - 6) Which creates an interest in oil, gas, minerals, or water which is severed from the surface ownership of real property;
 - 7) Which is created by the acquisition of an interest in land in the name of a husband and wife or other persons in joint tenancy or as tenants in common,

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and any such interest shall be deemed for purposes of this definition as only one interest;

- 8) Which is created by the combination of contiguous parcels of land into one larger parcel. If the resulting parcel is less than 35 acres in land area, only one interest in said land is allowed. If the resulting parcel is greater than 35 acres in land area, such land area, divided by the number of interests in the resulting parcel, must result in 35 or more acres per interest. Easements and rights-of-way shall not be considered interests for purposes of this clause.
- 9) Which is created by a contract concerning the sale of land which is contingent upon the purchaser's obtaining approval to subdivide, pursuant to this Code, the land which the purchaser is to acquire pursuant to the contract; and
- 10) Which creates a cluster development pursuant to the rural land use process.

Subdivision Improvements Agreement means ~~one or more security~~ arrangements that the County accepts in order to ~~guarantee completion and financially~~ secure ~~ing~~ the ~~actual~~ cost of construction of such public improvements as are required by subdivision regulations within the subdivision.

Subdivision Regulations means those provisions of this Code that control the subdivision of land, including Chapter 4, Site Design and Environmental Stewardship; Chapter 5, Public Facilities, Infrastructure, and Services; Chapter 6, Land Dedication and Fees-in-Lieu; those of Chapter 8, Review Processes that specifically address subdivision (minor plats, preliminary plats, and final plats); Chapter 11, Nonconformities; Chapter 12, Appeals; Chapter 13, Enforcement & Remedies and related definitions. Standards that are included within the subdivision regulations are applied as provided in this Code (e.g., to conditional uses), and are not necessarily limited to subdivision approvals.

Commented [CH69]: Confirm reference when revised.

Surveyor means one who is licensed by the State of Colorado as a land surveyor and is qualified to make accurate field measurements and to mark, describe, and define land boundaries.

T

Temporary Mobile Wireless Communication Facility means ~~a wireless communication facility that is capable of being moved and consists of a cellular antenna tower and electronic radio transceiver equipment on a truck or trailer designed to provide expanded cellular network coverage or capacity.~~

Theater means a building that is used for dramatic, operatic, or other live performances, or for the display of motion pictures, which is open to the public, and where audience members pay for admission. The term "Theater" does not include the phrase "Sexually-Oriented Business."

Through Lot means a lot with a street frontage at the front and rear lot lines.

Tiny Home means ~~a portable structure that is capable of being transported on State Highways in compliance with C.R.S. § 42-4-501, which meets the following criteria:~~

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- a. ~~It is primarily designed to provide temporary living quarters for recreational, camping, travel, or seasonal use;~~
- b. ~~It is built on a single chassis mounted on wheels, or on skids; and~~
- c. ~~It has a gross trailer area not exceeding 400 square ft. in the set-up mode.~~

~~The phrase “tiny home” does not include dwelling units that do not exceed 400 square ft. in floor area if they are constructed on a permanent foundation and not thereafter designed to be transported. Such dwelling units are “single family detached dwelling units,” a manufactured dwelling unit with a maximum of 400 square feet of floor area, excluding lofts, to be used as permanent housing with permanent provisions for living, sleeping, eating, cooking, and sanitation built in accordance with the state building code; is mounted on a wheeled trailer chassis and is titled and registered to tow legally; and is designed and built to look like a conventional residential structure, using conventional building materials (thus architecturally distinct from mobile homes and RVs).~~

~~**Tower** means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.~~

Transient, Non-Community Water System means a non-community water system that does not regularly serve at least 25 of the same individuals, corporations, companies, associations, partnerships, municipalities, or State, Federal, or tribal agencies over six months per year.

Transmission Equipment means equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable and regular and backup power supply. The phrase “transmission equipment” includes equipment associated with wireless communications services including, but not limited to, private, broadcast and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

Triplex means a multifamily residential property with three, attached living units.

Truck Stop/Truck Wash means a commercial facility engaged primarily in the fueling, servicing, repair, washing, or parking of tractor trucks or similar heavy commercial vehicles, including the sale of accessories and equipment for such vehicles. The phrase “Truck Stop/Truck Wash” may also include overnight accommodations, showers, or restaurant facilities that are primarily for the use of truck crews.

U

Unincorporated means situated outside of cities and towns, so that, when used in connection with “territory,” “areas,” or the like, it covers, includes, and relates to territory or areas that are not within the boundaries of any city or town.

Unlicensed Wireless Service means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services (as defined in 47 U.S.C. § 303(v)).

Commented [CH70]: HB22-1242 includes Tiny Homes with manufactured units and Mobile Home Park provisions. Distinguish mobile from fixed or built on site (a unit built on site is a unit regardless of size).

Commented [CH71]: Align with Table 2.b

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Utilities, Communications, Mining, Energy, Transportation, and Disposal Land Uses means a group of land uses that involve utilities, communications, mining, energy, transportation, and disposal.

V

Value-Added Agricultural Processing means the processing and/or packaging of agricultural products, for which the primary ingredient is raised or grown on the site of the processing or packaging. The phrase “Value-Added Agricultural Processing” may include the sales of such products. The phrase “Value-Added Agricultural Processing” does not include processing agricultural products into fuels, lubricants, paints, varnishes, or the like.

Veterinary Hospital or Clinic means a commercial facility where animals are brought for medical or surgical treatment, and where such animals may be held during the time of treatment and recuperation.

W

Wall-Mounted Communication Facility means a communication facility that is mounted and supported entirely on the wall of a legally existing building, including the walls of architectural features such as parapets, chimneys and similar appurtenances.

Water or Wastewater Treatment Plant means the facility or facilities within a public water system, that is (are) used to alter the physical, chemical, or bacteriological quality of the water (*e.g.*, to make it potable) before it reaches the consumer; or a “Domestic Wastewater Treatment Facility,” which is any facility or group of units used for the treatment of domestic wastewater or for the reduction and handling of solids and gases removed from such wastes, whether or not such facility or group of units is discharging into state waters. The phrase “Water or Wastewater Treatment Plant” does not include the phrase “on-site wastewater treatment system.”

Wetland means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Wildfire means a fire occurring in a wildland, rural setting.

Wildfire Hazard Area means an area designated by the Colorado State Forest Service as having a high or severe wildfire hazard rating.

Wildfire Hazard Rating means a rating provided by the Colorado State Forest Service regarding an area’s potential wildfire hazard.

Wildlife Habitat means a natural or man-made environment which contains the elements of food, shelter, water and space in a combination and quantity necessary for the survival of one or more wildlife species.

Wind Energy Facility (WEF) means all necessary devices that together convert wind energy into electricity, including the rotor, nacelle, generator, WEF tower, electrical components, WEF foundation, transformer, and electrical cabling from the WEF tower to the substation(s). WEF shall include MET towers, a meteorological tower for the measurement of wind speed. The term “wind

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turbine” shall include the turbine, blade, tower, base and pad transformer that converts wind energy into electricity through the use of a wind turbine generator.

Wireless Communications Facility means a facility and all elements thereof, including but not limited to support towers, antennas, and accessory equipment buildings, that together facilitate communication by the electronic transmission of telephone, radio, television, internet, wireless, or microwave impulses of an FCC licensed carrier, but excluding those used exclusively for private radio and television reception, private citizen’s band, or amateur radio communications.

Wireless Communication Facilities mean facilities that transmit and/or receive electromagnetic wireless communication signals. It includes antennas, microwave dishes, horns and other types of equipment for the transmission or receipt of such signals, communication towers or similar structures supporting said equipment, equipment buildings, parking area and other accessory development. A wireless communication facility does not include a facility entirely enclosed within a permitted building where the installation does not require a modification of the exterior of the building; nor does it include a device attached to a building, used for serving that building only and otherwise permitted under other provisions of this Resolution.

Wireless Communications Tower. See “Tower

Y

Yurt means a semi-permanent building (typically round in shape) that is constructed using a pole or lattice framework that is covered by fabric or other flexible material.

Commented [CH72]: Replace with definition from Wireless Resolution