

# **KIT CARSON COUNTY LAND USE CODE**

Effective August 17, 2016

# KIT CARSON COUNTY LAND USE CODE

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**ARTICLE 1            GENERAL ADMINISTRATION**

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**DIVISION 1        GENERAL PROVISIONS**

**Section 1-101        Title and Short Title.** These regulations, and all future amendments, shall be known as the Kit Carson County Land Use Code and are also referred to herein as "Land Use Code," "Code" or "Regulations."

**Section 1-102        Authority.** It is the intention of the Board of County Commissioners in adopting the Land Use Code to fully exercise all relevant powers conferred by the laws of the State of Colorado, including but not limited to:

- A.     Colorado Constitution.** All of the powers reserved to the County by the Colorado Constitution.
  
- B.     State Enabling Legislation.** All of the powers granted to the County by:
  - 1.     **Title 16, Article 13, Part 3, C.R.S., *Restraint and Abatement of Nuisances*;**
  - 2.     **Title 24, Article 65.1, C.R.S., *Areas and Activities of State Interest (1041 regulations)*;**
  - 3.     **Title 24, Article 68, C.R.S., *Vested Property Rights Act*;**
  - 4.     **Title 29, Article 20, C.R.S., *Local Government Land Use Control Enabling Act*;**
  - 5.     **Title 30, Article 11, C.R.S., *County Powers and Functions*;**
  - 6.     **Title 30, Article 15, C.R.S., *County Regulations Under Police Powers*;**
  - 7.     **Title 30, Article 28, C.R.S., *County Planning Act*;**
  - 8.     **Title 43, Article 2, C.R.S., *State, County, Municipal and Public Roads*.**

**Section 1-103        Purpose and Intent.**

- A.     General Purposes.** The general purposes of this Land Use Code are:
  - 1.     **Protect Quality of Life.** To protect and promote the health, safety and general welfare of the present and future residents of Kit Carson County.
  - 2.     **Protect the Environment and Environmental Resources.** To ensure

the use of land does not degrade or threaten the quality of the environment and environmental resources.

3. **Regulate Land Use Based On Impacts.** To regulate the use of land based on impacts to the surrounding areas and the community and to eliminate, minimize or mitigate conflicts between different land uses.
4. **Simplify Land Use Planning and the Regulatory Review Process.** To simplify, expedite and provide uniform application of the land use planning and regulatory review process.
5. **Promote the Economic Well-Being of the Community.** To encourage economic diversity in the County and to protect and enhance the County's economic strength and well-being.
6. **Provide for Orderly Development of the County.** To manage development in a manner that provides for balanced and orderly growth patterns and to provide efficient, phased government services to accommodate existing and future residents.
7. **Protect Property Rights.** To preserve and promote the value of property, to protect the tax base of the County and to respect the property rights of citizens.
8. **Protect and Enhance Agriculture and Rural Character.** To protect and enhance agricultural uses, traditional agricultural practices, and the rural characteristics of the County.

**Section 1-104 Jurisdiction.** This Land Use Code shall apply to all land within the unincorporated areas of Kit Carson County.

**Section 1-105 Repealer, Enactment and Effective Date.**

**A. Enactment.** This Land Use Code shall be enacted upon its approval by the Board of County Commissioners, after review and recommendation by the Kit Carson County Planning Commission, following public hearings.

**B. Effective Date.** This Land Use Code, including any future amendments, shall take effect immediately upon adoption by the Board of County Commissioners, unless otherwise set forth in the Board's motion of approval.

**C. Repeal of County's Prior Land Use Regulations.** The "Kit Carson County Land Use Resolution" and "The Land Subdivision Regulations of Kit Carson County, Colorado" and amendments thereto, are hereby repealed on the date of the County's adoption of this Land Use Code.

**Section 1-106 Saving Provisions.**

**A. Permit Applications Pending Review.** The enactment or amendment of this Land Use Code shall not apply to any permits that the County has approved under prior land use regulations or pending applications that the County has determined to be complete under prior land use regulations.

**B. Penalties Accruing or About to Accrue.** The enactment or amendment of this Land Use Code shall not be construed as discontinuing, abating, modifying, or altering any penalty accruing or about to accrue.

**C. Waiver of Rights by County.** The enactment or amendment of this Land Use Code shall not be construed as waiving any right of the County under any provision existing prior to the adoption of this Land Use Code.

**D. Vacation or Annulment of Rights Obtained by Individual.** The enactment or amendment of this Land Use Code shall not be construed as vacating or annulling any rights obtained by any person by lawful action of the County.

**Section 1-107 Implementation of Kit Carson County Comprehensive Plan.**

**A. Implementation of Comprehensive Plan.** Enactment, amendment and administration of this Land Use Code shall be in accordance with and shall serve to implement the goals and policies of the Comprehensive Plan.

**Section 1-108 Interpretation, Rules of Construction of Language and Computation of Time.**

**A. Interpretation of the Provisions of This Land Use Code.**

- 1. Minimum Required.** The provisions of this Land Use Code shall be regarded as the minimum requirements for the protection of the public health, safety, and general welfare.
- 2. Liberal Construction.** This Land Use Code shall be liberally construed to further its underlying purposes.
- 3. Conflict.** If a conflict occurs between provisions of this Land Use Code, or between provisions of this Land Use Code and a state statute or other applicable codes and regulations, the more restrictive provision controls unless otherwise specified in these Regulations.
- 4. Application of Requirements of the Land Use Code.** Unless otherwise specified in these Regulations, the requirements of this Land Use Code are presumed to apply to actions related to a change in land use as defined by this Code.

**B. Rules of Construction of Language.**

1. Words and phrases shall be read in context and construed according to common usage. Words and phrases that have acquired a technical or particular meaning, by legislative definition or otherwise, shall be construed accordingly.
2. The particular controls the general.
3. The word "shall" is always mandatory. The words "may" and "should" are permissive.
4. Unless the context clearly indicates otherwise, words used in the singular number include the plural and words used in the plural number include the singular.
5. If there is a conflict between figures and words expressing a number, the words govern.
6. The phrase "used for" includes "arranged for," "designed for," "intended for," "maintained for," and "occupied for."

**C. Computation of Time.** In computing a period of days, the first day is excluded and the last day is included unless the last day of any period is a Saturday, Sunday or legal holiday, in which case the last day shall be the next working day. Unless otherwise specified in these Regulations, the term "days" shall refer to calendar days.

**Section 1-109 Amendment to Text of This Land Use Code.** The process for amendments to text of this Land Use Code is set forth in Article 3, Section 3-401, *Land Use Code Text Amendment*.

**Section 1-110 Severability.**

**A. Provision Declared Invalid.** If any provision of this Land Use Code is declared invalid by a decision of any court of competent jurisdiction, the effect of such decision shall be limited to that provision which is expressly declared invalid and shall not affect any other provision of this Land Use Code.

**B. Application to Tract of Land Declared Invalid.** If the application of this Land Use Code to any tract of land is declared to be invalid by a decision of any court of competent jurisdiction, then the effect of such decision shall be limited to the tract of land involved. Such decision shall not affect this Land Use Code or the application of any provision thereof to any other tract or land.

## **DIVISION 2      VESTED PROPERTY RIGHTS**

**Section 1-201      Purpose.** The purpose of this Division is to establish a system of vested property rights for this Land Use Code as authorized by Title 24, Article 68, C.R.S, as amended.

### **Section 1-202      Establishment of Vested Property Rights.**

**A.      General.** Pursuant to this Land Use Code, a vested property right shall be deemed established for a period of three (3) years with the approval of a Site Specific Development Plan as defined in Section 1-202(B) of this Article. When a Site Specific Development Plan is approved with a Land Use Change Permit, the permit shall confer upon the landowner the right to undertake and complete the development and use of the property under the terms and conditions of the Site Specific Development Plan. If the term of approval for the Site Specific Development Plan is extended pursuant to these Regulations, the term of vested property rights is extended to conform to the extended approval term.

**B.      Site Specific Development Plan.** For the purposes of this Section, the following documents shall constitute a Site Specific Development Plan establishing a vested property right: A Final Plat for Subdivision; a Subdivision Exemption Plat; a Cluster Subdivision Exemption Plat; or an approved site plan with a Land Use Change Permit. The document that triggers a vested property right shall be so identified at the time of its approval.

**C.      Development Agreement and Extension of Vested Property Rights.** The Board of County Commissioners may enter into a development agreement with the landowner for the extension of vested property rights where, in the discretion of the Board, an extension is warranted due to project size and/or phasing of the development. The Board may also consider an extension of vested property rights for economic cycles and/or market conditions.

**D.      Approval and Effective Date.** A Site Specific Development Plan shall be deemed approved upon the effective date of the Board of County Commissioners' approval action, following a public hearing conducted in accordance with these Regulations. The Board's approval of a Site Specific Development Plan may include such terms and conditions as may be reasonably necessary to protect the public health, safety and general welfare. The approval shall result in a vested property right, although failure to abide by such terms and conditions will result in forfeiture of the vested property right. Within fourteen (14) days of approval of the Site Specific Development Plan by the Board of County Commissioners, the Permittee shall publish a notice of Site Specific Development Plan approval and creation of a vested property right in a newspaper of general circulation in Kit Carson County.

**E.      Exceptions to Vesting of Property Rights.** Once established pursuant to these Regulations, a vested property right precludes any land use action by the County

during the period of time that the property right is established to be vested that would alter, impair, prevent, diminish, or otherwise delay the development or use of the land subject to the Site Specific Development Plan consistent with the terms and conditions of the Site Specific Development Plan, except under one or more of the following conditions.

1. **Landowner's Consent.** With the consent of the affected landowner.
2. **Just Compensation Paid to Landowner.** The affected landowner receives just compensation for all costs, expenses, and liabilities incurred by the landowner, including but not limited to all fees paid in consideration for financing and all architectural, planning, marketing, legal and other consultants' fees incurred after approval of the Site Specific Development Plan by the County, together with interest at the current market rate until paid. Just compensation shall not include any diminution in the value of the property which is caused by such action.
3. **Hazards.** Upon the discovery of natural or man-made hazards on or in the immediate vicinity of the subject property, which hazards could not reasonably have been discovered at the time of the approval of the Site Specific Development Plan, and which hazards, if uncorrected, would pose a serious threat to the public health, safety and welfare.
4. **General Ordinances and Regulations.** The establishment of a vested property right shall not preclude the application of ordinances, resolutions or regulations which are general in nature and are applicable to all property subject to land use regulations by the County, including but not limited to building, fire, plumbing, electrical and mechanical codes.

### **DIVISION 3      DUTIES AND RESPONSIBILITIES OF REVIEW AND DECISION- MAKING BODIES**

#### **Section 1-301      Board of County Commissioners.**

**A.      Membership and Term.** Colorado state statutes at Section 1-4-205, C.R.S. describe the membership requirements and term of office for members of the Board of County Commissioners.

**B.      Powers and Duties.**

1. **Powers and Duties Authorized by State Statute.** The authority granted to the Board of County Commissioners under state statute includes, but is not limited to:
  - a. **Adoption and Amendment of Zoning and Subdivision Regulations.** Authority to adopt and amend zoning and

subdivision regulations, including regulations for planned unit developments and areas and activities of state interest.

- b. **Regulations for Removal of Weeds and Rubbish.** Authority to enact regulations compelling the removal of weeds and rubbish.
- c. **Adoption of Building Code.** Authority to adopt a building code.
- d. **Review of Service Plans for Special Districts.** Authority to review service plans for proposed special districts.
- e. **Intergovernmental Agreements for Land Use and Development.** Authority to enter into intergovernmental agreements to plan for and control land uses and development.

**2. Powers and Duties Under Provisions of This Land Use Code.**

- a. **Implementation of Comprehensive Plan.** In addition to authority granted to the Board of County Commissioners by general or special law, the Board has authority to take such other action not delegated to the Planning Commission, the Board of Adjustment or the Administrator, as the Board of County Commissioners may deem desirable and necessary to implement the provisions of the Comprehensive Plan and this Land Use Code.

**Section 1-302 Planning Commission.**

**A. Membership and Term.**

- 1. **Appointment.** The Board of County Commissioners shall appoint five (5) regular Planning Commission members. The Board may appoint up to two (2) associate members for the purpose of filling a vacancy on the Commission in the event that any regular member is temporarily unable to fulfill his or her responsibilities as a member of the Commission.
- 2. **Qualifications.** All members must be residents of the County.
- 3. **Term of Office.** The term of members shall be three (3) years, and until their respective successors have been appointed. The terms of office shall be staggered by making the appointments so that approximately one-third of the members' terms expire each year.
- 4. **Removal from Office.** Any member of the Planning Commission may be removed for cause (misconduct or nonperformance of duty) by the Board of County Commissioners upon written charges and after a public hearing.

5. **Vacancy.** Whenever a vacancy occurs on the Planning Commission, the member's or associate member's position shall remain vacant until a new member or associate member can be appointed by the Board of County Commissioners. The vacancy shall be filled for the unexpired term in the same manner as the original appointment.
6. **Compensation.** The members of the Planning Commission shall serve without compensation, but shall be reimbursed for travel, mileage and continuing education expenses authorized by the Board of County Commissioners.

**B. Powers and Duties.**

1. **Development of Comprehensive Plan.** The Planning Commission is responsible for the development and adoption of the Comprehensive Plan and any amendments to that Plan.
2. **Advisory Body.** The Planning Commission is an advisory body on matters involving certain land use change permit applications.
3. **Public Meetings.**
  - a. The Planning Commission shall hold regularly scheduled public meetings to take official action on the matters before the Commission. The meetings shall be noticed in compliance with the requirements for public notice set forth in this Code.
  - b. Three members of the Planning Commission shall constitute a quorum necessary for official action.
  - c. The Planning Commission shall keep a record of its proceedings, and the record shall be open to inspection by the public during the normal business hours for County offices.
4. **Rules of Conduct and Procedure.** The procedures followed by the Planning Commission shall be set forth in the official bylaws adopted by the Planning Commission, and pursuant to Title 30, Article 28, C.R.S., as amended

**Section 1-303 Board of Adjustment**

**A. Membership and Term**

1. **Appointment.** The Board of County Commissioners shall appoint five (5) regular Board of Adjustment members. The Board of County Commissioners may appoint two (2) associate members for the purpose

of filling a vacancy on the Board of Adjustment in the event that any regular member is temporarily unable to fulfill his or her responsibilities as a member of the Board of Adjustment.

2. **Qualifications.** All members must be residents of the County. The Board of Adjustment membership shall consist of two members of the Planning Commission.
3. **Term of Office.** The term of regular members shall be three years, and until their respective successors have been appointed. The terms of office shall be staggered so that the term of at least one member will expire each year.
4. **Removal from Office.** Any member of the Board of Adjustment may be removed for cause by the Board of County Commissioners, upon written charges and after a public hearing.
5. **Vacancy.** Whenever a vacancy occurs on the Board of Adjustment, the member's or associate member's position shall remain vacant until a new member or associate member can be appointed by the Board of County Commissioners. The vacancy shall be filled for the unexpired term in the same manner as the original appointment.
6. **Compensation.** The members of the Board of Adjustment shall serve without compensation, but shall be reimbursed for travel, mileage and continuing education expenses authorized by the Board of County Commissioners.

**B. Powers and Duties.**

1. **Variance.** The Board of Adjustment is the decision-making body for requests for variance from certain dimensional requirements of this Land Use Code.
  - a. The Board of Adjustment shall consider a request for variance based on the procedure set forth in Article 3, Section 3-201, *Request for Variance*. In order for the Board of Adjustment to grant a variance, at least four (4) members of the Board of Adjustment must vote in favor of the applicant.
2. **Appeal of Administrative Interpretation.** The Board of Adjustment may consider an appeal by any person aggrieved by a final written administrative interpretation or decision based upon or made in the course of the administration or enforcement of the regulations of this Code. The appeal process is set forth in Article 3, Section 3-205, *Appeal of Administrative Interpretation*.

- a. In order for the Board of Adjustment to grant an appeal which overturns an administrative interpretation or decision, at least four (4) members of the Board of Adjustment must vote in favor of the appellant.

**3. Public Meetings.**

- a. The Board of Adjustment shall meet as called by the Chairman to take official action on the matters before the Board of Adjustment. The meetings shall be open to the public, noticed in compliance with the applicable requirements for public notice set forth in this Code.
- b. Four (4) members of the Board of Adjustment shall constitute a quorum necessary for official action.
- c. The Board of Adjustment shall keep a record of its proceedings, and the record shall be open to inspection by the public during the normal business hours for County offices.

4. **Rules of Conduct and Procedure.** The procedures followed by the Board of Adjustment shall be set forth in the official bylaws adopted by the Board of Adjustment, and pursuant to Title 30, Article 28, C.R.S., as amended.

**DIVISION 4 RIGHT TO FARM**

It is the policy of the Board of County Commissioners that ranching, farming, and all manner of agricultural activities and operations throughout Kit Carson County are integral elements of and necessary for the continued vitality of the County's history, economy, landscape, lifestyle and culture. Given their importance to the County and the state, agricultural lands and operations are worthy of recognition and protection.

**Section 1-401 Agricultural Activities and Operations Within the County Shall Not Be Considered To Be Nuisances.** Colorado is a "Right to Farm State" pursuant to Section 35-3.5-101, *et seq.*, C.R.S. Landowners, residents, and visitors must be prepared to accept the activities, sights, sounds and smells of Kit Carson County agricultural operations as a normal and necessary aspect of living in a county with a strong rural character and a healthy agricultural sector. Those with an urban sensitivity may perceive such activities, sights, sounds and smells as inconveniences, eyesores, noises and odors. However, state law and County policy provides that ranching, farming or other agricultural activities and operations within the County shall not be considered to be nuisances so long as they are operated in conformance with the law and in a non-negligent manner. Therefore, all landowners, residents and visitors must be prepared to encounter sounds, smells, lights, mud, dust, smoke, chemicals,

machinery on public roads, livestock on public roads, storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides, any one or more of which may naturally occur as a part of legal and non-negligent agricultural operations.

## ARTICLE 2

## LAND USE CHANGE PERMIT

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**Section 2-101 Applicability.** The requirement for a Land Use Change Permit and the permit provisions set forth in this Article apply to any proposed change in land use, including divisions of land, for property located in unincorporated Kit Carson County.

**Section 2-102 Permit Required for Land Use Changes.** Any person seeking a change in land use shall obtain a Land Use Change Permit before commencing the use or activity associated with the land use change, unless the proposed use or activity is expressly exempted under Section 2-104, *Exemptions from Land Use Change Permit Requirements*. Failure to obtain a Land Use Change Permit shall be a violation of the Kit Carson County Land Use Code and subject to the enforcement provisions in Article 8, *Enforcement, Violations and Penalties*.

**Section 2-103 Permit Runs With the Land.** Any Land Use Change Permit for land use approved in compliance with this Code shall be binding upon and run with the land.

**Section 2-104 Exemption from Land Use Change Permit Requirements.** The following uses and activities are exempt from the requirement to obtain a Land Use Change Permit. Exemption from Land Use Change Permit requirements is not an exemption from other federal, state and local permit requirements applicable to the proposed development or land use.

**A. Traditional Agricultural Operations.** Traditional agricultural operations, including, but not limited, to, the following.

1. Production, cultivation, growing and harvesting of crops and plants.
2. Raising and breeding livestock, excluding confined animal feed lot operations.
3. Harvesting, storage, grading, packaging, processing distribution and sale of agricultural commodities occurring at the point of production.
4. Construction of sheds, outbuildings and other accessory structures that are necessary to agricultural operations.
5. Construction of internal roads, ponds, dams and ditches necessary to agricultural operations.

**B. Oil and Gas Exploration.** A Land Use Change Permit is not required for oil and gas exploration, and a public hearing, with notice to the general public and to

adjoining land owners, is not required prior to exploration; provided, however, that the person or entity commencing the exploration shall be required to provide to the Administrator with a copy of the permit issued by the State of Colorado Oil and Gas Commission, and a map of the location of all drilling sites. If any structure is constructed or erected for a period of one (1) year or more by the person or entity commencing the exploration, a Land Use Change Permit, with applicable public notice and all other requirements for industrial use, shall be required prior to placement of the permanent structure.

**Section 2-105      Expiration of Permits**

Unless otherwise provided, any Land Use Change Permit shall expire three (3) years after the date of issuance unless the use contemplated thereby has been fully implemented; provided, however, that any change of ownership, change of use, or change of conditions shall require a new application and approval process.

**Section 2-106      Waiting Period**

If an application for a Land Use Change Permit is denied under this Land Use Code, no application for the same proposal that was denied shall be accepted for processing for a period of six months from the date that the application was denied.

## ARTICLE 3

## PERMIT APPLICATION AND REVIEW PROCEDURES

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### DIVISION 1 REVIEW PROCEDURES FOR LAND USE CHANGE APPLICATIONS

**Section 3-101 Review Procedures.** Unless otherwise provided in these Regulations, the following review procedures apply to all land use change applications, including those proposing division of land.

**A. Outline of Process.** The Review process shall consist of the following procedures:

1. Pre-Application Conference
2. Application
3. Determination of Completeness
4. Evaluation by the Administrator
5. Public Hearing by the Planning Commission
6. Action & Final Decision by Planning Commission
7. Review by the Board of County Commissioners

**B. Pre-Application Conference.** Unless otherwise provided in these Regulations, all land use change applications begin with a pre-application conference between the applicant and the Administrator.

**C. Eligibility to Apply.** A Land Use Change Permit application may only be submitted by, or on behalf of, the owners of real property proposed for the use.

1. **Applicant is Not the Owner.** If the applicant is not the owner of the property, or is a contract purchaser of the property, a letter signed by the owner consenting to the submission of the application shall be submitted.
2. **Applicant is Not the Sole Owner.** If the applicant is not the sole owner of the property, a letter signed by the other owner(s) or an association representing the owner(s) consenting to or joining in the Land Use Change Permit application.

**D. Application Form.** The Land Use Change Permit application shall be submitted in the form provided by the County and shall include the information and materials specified for that particular type of application.

1. **Copies.** The correct number of applications shall be submitted, as identified during the pre-application conference or by request of the County.

2. **Application Fee.** The correct processing fee for the application shall be submitted. The fees for the processing of applications are established by Resolution of the Board of County Commissioners.

**E. Minimum Application Contents.** All Land Use Change Permit applications shall include, at a minimum, the following information and materials. Additional materials may be required for certain proposed uses.

1. **Name, Address, Telephone Number and Power of Attorney.** The applicant's name, address and telephone number. If the applicant is to be represented by an agent, a letter signed by the applicant granting power of attorney to the agent shall be submitted, authorizing the agent to represent the applicant and stating the representative's name, address and telephone number.
2. **Legal Description.** The legal description and street address, if such exists, of the parcel on which development is proposed to occur.
3. **Disclosure of Ownership.** A disclosure of ownership of the parcel on which the development is to occur, listing the names of all owners of the property, and all mortgages, judgments, liens, easements, contracts, and agreements that run with the land.
4. **Vicinity Map.** An 8½" x 11" vicinity map locating the subject parcel.
5. **Written Description.** A written description of the proposal and an explanation in written, graphic or model form of how the proposed development complies with the applicable approval standards.
6. **Site Plan.** A site plan of the site, showing existing and proposed features which are relevant to the review of the application, including but not limited to geologic features, waterways, recharge areas, aquatic and terrestrial vegetation, soils and man-made structures.
7. **Water Supply.** A description of the source and capacity of the water supply for the proposal, including decreed or conditional water rights.
8. **Wastewater Treatment.** A description of the proposed wastewater treatment system.
9. **Impact Analysis.** A description of baseline conditions and the impacts that the proposed use may cause, described in terms of the Policies and Standards contained in Article 6 and a complete description of how the applicant will ensure that impacts will be mitigated and each applicable standard will be satisfied.

10. **Property Rights and Permits.** A list of all property rights, permits and approvals necessary for the proposal.

**F. Waiver of Application Requirements.** The Board of County Commissioners may waive one or more of the application requirements or standards if the scale of the proposed activity is so small that there will be no impacts to the County from the project or if it determines the requirement to be unnecessarily expensive or burdensome to the applicant.

**G. Determination of Completeness.** Within fifteen (15) calendar days of receipt of the application materials, the Administrator shall determine whether the application is complete based on compliance with the application requirements.

1. **Application is Not Complete.** If the application is not complete, the Administrator shall inform the applicant of the deficiencies in writing and shall take no further action on the application until the deficiencies are remedied.
2. **Application is Complete.** If the application is complete, the Administrator shall certify it as complete and stamp it with the date of determination of completeness.
3. **Extension of Time for Determination of Completeness.** The Administrator may extend the time to complete review for Determination of Completeness, up to an additional thirty (30) calendar days if the land use change application is sufficient to require additional time or the Administrator's workload justifies the need for an extension of time to review the application for a Determination of Completeness.

**H. Evaluation by Administrator.** The Administrator shall review the Land Use Change Permit application to determine if the proposal satisfies the applicable standards. If the Administrator determines that it does not have the required expertise to properly evaluate specialized aspects of the application then the Administrator may request consultant or referral agency review.

1. **Consultant Review.** The Administrator may authorize all or a portion of the review of the application to be performed by an outside consultant.
2. **Referral Agency Review.** The Administrator may refer all or a portion of the review of the application to a referral agency including, but not limited to, the following:
  - a. **Governmental Entities.** County, state or federal entities having an interest in or authority over the proposed development or any portion thereof.

- b. **Utility Companies and Special Districts.** Utility companies, special service districts serving the proposed development and the school district.
  - c. **County Staff.** Members of the County staff.
  - d. **Technical Consultants.** Engineers, designers, legal consultants and other technical consultants.
3. **Applicant Responsible for Consultant and Referral Agency Review Fees.** The costs of consultant and referral agency review are the responsibility of the applicant. The costs of consultant and referral agency review shall be paid pursuant Section 3-102, *Fees*.
4. **Report.** The Administrator shall prepare a report discussing whether the standards have been satisfied, issues raised through consultant and referral review, mitigation requirements and recommended conditions for approval to ensure that standards are satisfied, and additional information pertinent to review of the application. Prior to the date of a public hearing, the Administrator shall submit the report to the applicant and to the hearing body. A copy of the report shall also be available for public review prior to the hearing.

I. **Planning Commission Review.** The Planning Commission shall review the Land Use Change Permit application at a Public Hearing held within ninety (90) days of the determination of completeness.

- 1. **Action by Planning Commission.** After hearing the evidence and considering all of the comments, the Planning Commission may approve, approve with conditions, or deny the application. Any application that fails to satisfy all applicable criteria shall be denied.
- 2. **Final Decision.** If the Board of County Commissioners does not schedule the Land Use Change Permit application for review pursuant to Section 3-101(J) within ten (10) days, or if the applicant does not file an appeal of the decision to the Board of County Commissioners within thirty (30) days of the Planning Commission's written decision, then the decision of the Planning Commission shall be deemed final.
- 3. **Appearance by Telephone.** Planning Commission members may appear at a scheduled meeting by telephone, through a conference call arrangement which allows the members to hear all proceedings prior to voting. This telephone appearance shall only be used on an emergency basis, and only when it is necessary because there is not a quorum of members who are physically present at the meeting. In the case where public notice and hearing is required by law or otherwise required

pursuant to this Code, at least one staff member from the County shall be physically present in order to conduct business and organize the meeting by conference call. The Kit Carson County Board of County Commissioners may require members to be physically present for a specific meeting on an as-needed basis.

**J. Board of County Commission Review.** The Board may review the Land Use Change Permit application, together with the written Administrator report and the Planning Commission decision, within ten (10) days following the Planning Commission hearing or within thirty (30) days upon a request by the applicant for an appeal.

- 1. Action by the Board.** After hearing all the evidence and considering the Planning Commission decision, the Board may approve, approve with conditions, or deny the application.

**K. Streamlined Process and Administrator Determination on Land Use Change Permit Application Solely for Single-Family Dwellings.** The Administrator shall make good faith efforts to determine as soon as possible whether Land Use Change Permit applications solely for single-family dwellings are complete, and that the applicant has made Notice to Neighboring Property Owners in accordance with Section 3-101(L)(2), and shall make a completeness determination no later than fifteen (15) days of receipt of the application, if not sooner made.

Following a completeness determination in accordance with Section 3-101(G), the Administrator shall compile a written report which sets forth how the application complies with or does not comply with the applicable standards of the Land Use Code. The Administrator may, thereafter, approve the application if it complies with applicable standards of the Land Use Code. This decision may be reviewed by the Planning Commission within thirty (30) days following the approval decision.

If the Administrator denies the application or approves the application with conditions, or if there are any objections raised by the public, the application shall be reviewed and determined by the Planning Commission, following the *Public Notice* and *Public Hearing* requirements of Sections 3-101(L) and 3-101(M).

**L. Notice of Public Hearing.** Unless otherwise provided in these Regulations or law, when a public hearing is required the following public notice shall be required.

- 1. Notice by Publication.** At least fourteen (14) calendar days prior to the date of a scheduled public hearing before the Planning Commission, the applicant shall have published a notice of public hearing in a newspaper of general circulation in the area that the proposed land use change is located.
- 2. Notice to Neighboring Property Owners.** At least fourteen (14) calendar days prior to the date of a scheduled public hearing, the

applicant shall send by certified mail, return receipt requested, a written notice of the public hearing to the owners of record of all property within a five hundred (500) feet radius. The notice shall include a vicinity map, the property's legal description, a short narrative describing the proposed land use change, and an announcement of the date, time and location of the scheduled hearing.

3. **Form of Notices.** A legal notice required by this Land Use Code must include the following information:
  - a. A legal description or the address of the development, or another general description by which the public can identify the site.
  - b. The present use of the site.
  - c. The proposed use of the site.
  - d. The body (Planning Commission or Board of County Commissioners) that will conduct the hearing.
  - e. The date, time and place of the hearing.
  - f. A statement of the availability of application materials for public review and where more information can be obtained.
  - g. The public shall be allowed to submit comments for the consideration of the Planning Commission at regular meetings by telephone or in writing and the telephone number at the meeting place of the Planning Commission shall be provided to the public upon request.
4. **Proof of Notice.** At the public hearing, the applicant shall provide proof of publication and proof of notification of adjacent property owners.

#### **M. Conduct of Public Hearing.**

1. **Rights of All Persons.** Any person may appear at a public hearing and submit evidence, including oral testimony, either individually or as a representative of an organization. Comment also may be submitted in written form before or during the hearing, or within a designated period of time if the hearing is continued pursuant to paragraph 6 below.
2. **Time Limits for Testimony.** The decision-making body may set reasonable time limits for testimony or presentation of evidence during the public hearing. Oral testimony may be limited based upon relevancy, redundancy or time constraints.

3. **Order of Proceedings.** The order of the proceedings shall be as follows:
  - a. **Confirmation of Adequate Public Notice.** The decision-making body shall determine whether or not adequate notice has been accomplished pursuant to the Code requirements for notice of public hearing.
  - b. **Administrator Presentation.** The Administrator shall describe the proposed land use change, and identify the standards that apply and whether the application meets those standards.
  - c. **Applicant's Presentation.** The applicant may make an oral or a written presentation on behalf of the application. The burden of proof is on the applicant to demonstrate that the proposed land use change satisfies the applicable standards.
  - d. **Questions by Decision-Making Body.** The decision-making body may ask questions of the Administrator, the applicant, or members of the public in attendance at any time.
  - e. **Public Comments.** The decision-making body shall hear public comments following the presentation by the applicant. Written comments that have been received before the hearing shall be reported by the Administrator and acknowledged to be part of the hearing record.
  - f. **Administrator Response.** The Administrator may respond to any statement made by the applicant, the public, or the hearing body.
  - g. **Applicant Response.** The applicant may respond to any comments made by the public, the Administrator or the decision-making body.
4. **Close of Public Testimony.** At the conclusion of the public testimony, no further public comment shall be accepted.
5. **Deliberation and Decision.** Following close of public testimony, the decision-making body shall proceed with deliberations. The decision-making body's recommendation or decision to approve, approve with conditions or deny the application shall be set forth in the minutes of the public hearing.
6. **Continuation of Public Hearing.** The decision-making body may continue the public hearing to a fixed date and time. An applicant shall have the right to request, and be granted on a showing of good cause, a continuance of the required hearing. Any subsequent continuances shall

be granted at the discretion of the decision-making body and upon a finding that good cause has been shown for the continuance.

### **Section 3-102 Fees**

**A. Purpose of Fees.** The purpose of fees is to compensate Kit Carson County for the cost of reviewing and processing applications for Land Use Change Permits, Conditional Use Development Permits for Wind Energy Facilities, for divisions of land, and any other permits as required by this Code

**B. Review Agencies Fees.** Any fee assessed by any review agency required to review any Land Use Change Permit application, Conditional Use Development Permit application for a Wind Energy Facility, application for a division of land, or any other permit application as required by this Code shall be paid by the applicant to the County at the time the application is submitted.

**C. Additional Costs.** If the County decides that technical or legal consultants, or additional staff time, will be necessary to determine whether an application conforms with this Land Use Code, the costs of such consultant(s) shall be paid by the applicant. One-half of the estimated additional fee shall be paid at the time of permit application, and the remainder of the fee shall be paid prior to final decision by the Board of County Commissioners.

**D. Fee Schedule.** In addition to the fee charged by the review agencies or additional costs for consultants required, Land Use Change Permit fees, Conditional Use Development Permit fees for a Wind Energy Facility, fees for divisions of land, or any other permit fees as required by this Code shall be established annually by Resolution of the Board of County Commissioners.

## **DIVISION 2 REVIEW PROCEDURES FOR VARIANCES AND APPEAL OF ADMINISTRATIVE INTERPRETATION**

**Section 3-201 Request for Variance.** Variances are deviations from the Land Use Code, that would not be contrary to the public interest when, owing to special circumstances or conditions like exceptional topographic conditions, narrowness, shallowness or the shape of a specific piece of property, the literal enforcement of the provisions of this Code would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property. Variance requests are heard by the Board of Adjustment.

**A. Outline of Process.** The review process for variance requests shall consist of the following procedures:

1. Pre-Application Conference
2. Application
3. Determination of Completeness

4. Evaluation by the Administrator
5. Public Hearing and Decision by the Board of Adjustment

**B. Variances Authorized.** Variances shall only be authorized from the standards for maximum height, minimum building width, or minimum setbacks.

**C. Use Variances Not Authorized.** Establishment or expansion of a use otherwise prohibited shall be not allowed by variance.

**D. Review Process.**

1. **Pre-application Conference.** A pre-application conference shall be held in accordance with Section 3-101(B).
2. **Application.** The application materials required for a request for variance include the following.
  - a. **Application Form and Fees**
  - b. **Name, Address, Telephone Number and Power of Attorney.** The applicant's name, address and telephone number. If the applicant is to be represented by an agent, a letter signed by the applicant granting power of attorney to the agent shall be submitted, authorizing the agent to represent the applicant and stating the representative's name, address and telephone number.
  - c. **Legal Description.** The legal description and street address, if such exists, of the parcel on which development is proposed to occur.
  - d. **Disclosure of Ownership.** A disclosure of ownership of the parcel on which the development is to occur, listing the names of all owners of the property, and all mortgages, judgments, liens, easements, contracts, and agreements that run with the land.
  - e. **Vicinity Map.** An eight and one-half inch by eleven inch (8 ½" x 11") vicinity map locating the subject parcel within Kit Carson County.
  - f. **Written Statement.** A written statement of the proposal and an explanation of how the proposed development complies with the applicable approval standards.
  - g. **Site Plan.** A site plan of the site, showing existing and proposed features which are relevant to the review of the application,

including but not limited to geologic features, waterways, aquatic and terrestrial vegetation, soils and man-made structures.

3. **Determination of Completeness.** The Administrator shall review the application for determination of completeness in accordance with the provisions of Section 3-101(G), *Determination of Completeness*.
4. **Schedule Public Hearing.** The Administrator shall schedule the application for consideration by the Board of Adjustment.
  - a. Public hearing by the Board of Adjustment shall be held within forty-five (45) calendar days of the date of determination of completeness.
  - b. Public notice of the hearing shall be made pursuant to Section 3-101(L), *Notice of Public Hearing*.
5. **Evaluation by Administrator.** Upon determination of completeness, the Administrator shall review the application for compliance with the approval standards set forth in Article 4. An Administrator report shall be prepared pursuant to Section 3-101(H)(4).
  - a. **Review by Referral Agencies.** The Administrator's evaluation of the application may include comment by referral agencies.
6. **Review and Action by the Board of Adjustment.** The final decision to approve, approve with conditions or deny a request for variance shall be made by the Board of Adjustment at a public hearing.
  - a. **Decision by Board.** Following a public hearing conducted pursuant to Section 3-101(M), *Conduct of Public Hearing*, the Board of Adjustment shall approve, approve with conditions or deny the application based upon compliance with the approval standards set forth in Article 4.
    - (i) **Approval of Application.** If the application satisfies the applicable standards, the application may be approved.
    - (ii) **Denial of Application.** If the application fails to satisfy the applicable standards, the application may be denied; or
    - (iii) **Conditional Approval of Application.** The application may be approved with conditions determined necessary for compliance with applicable standards.

7. **Written Notice of Decision.** The Administrator shall inform the applicant of the approval, conditions of approval, or basis for denial in writing within five (5) calendar days of the date of the decision by the Board of Adjustment.

**Section 3-202 Required Showing.** The applicant shall demonstrate the following to the Board of Adjustment before a variance may be authorized:

- A. Special Circumstances Exist.** There are special circumstances or conditions which are peculiar to the land or building for which the variance is sought that do not apply generally to land or buildings in the neighborhood; and
- B. Not Result of Applicant.** The special circumstances and conditions have not resulted from any act of the applicant; and
- C. Strict Application Deprives Reasonable Use.** The special circumstances and conditions are such that the strict application of the provisions of this Land Use Code would deprive the applicant of reasonable use of the land or building; and
- D. Variance is Necessary to Provide Reasonable Use.** The granting of the variance is necessary to provide the applicant a reasonable use of the land or building; and
- E. Minimum Variance.** The granting of the variance is the minimum necessary to make possible the reasonable use of the land or building; and
- F. Not Injurious to Neighborhood.** The granting of the variance will not be injurious to the neighborhood surrounding the land where the variance is proposed, and is otherwise not detrimental to the public welfare or the environment; and
- G. Consistent with Land Development Code.** The granting of the variance is consistent with the general purposes and intent of this Land Use Code.

**Section 3-203 Board of Adjustment Authorized to Impose Conditions.** The Board of Adjustment, in approving the variance, may impose such restrictions and conditions on such approval, and the premises to be developed or used pursuant to such approval, as it determines are required to assure compliance with this Land Use Code and to prevent or minimize adverse effects from the proposed variance on other land in the neighborhood and on the general health, safety and welfare of the County.

**Section 3-204 Expiration of Approved Variance.** All variances shall expire twelve (12) months from the date of issuance if no Land Use Change Permit has been issued to establish the variation authorized, or if the variation does not require a Permit, unless the variation is established, ongoing, and in operation. Such time period shall not be altered by transfer of ownership.

**A. Extension.** Upon written request, the Board of Adjustment may grant one (1) extension of the variance for a period not to exceed six (6) months for good cause shown. No request for an extension shall be considered unless a written application requesting the extension is submitted to the Administrator prior to the date the variance is to expire. The variance shall be deemed extended until the Board of Adjustment has acted upon the request for extension. Failure to submit an application for an extension within the time limits established by this Section shall render the variance null and void.

**Section 3-205 Appeal of an Administrative Interpretation.** The appeal shall be filed with the Administrator within thirty (30) calendar days of the date of the written interpretation or notice of decision.

**A. Outline of Process.** The review process for appeal of administrative interpretation of these Regulations shall consist of the following procedures.

1. Application
2. Determination of Completeness
3. Evaluation by the Administrator
4. Public Hearing and Decision by Board of Adjustment.

**B. Review Process.**

1. **Application.** The application materials required for an Appeal of Administrative Interpretation include the following.
  - a. Application Form and Fees
  - b. Statement of Appeal
2. **Determination of Completeness.** The Administrator shall review the application for determination of completeness in accordance with the provisions of Section 3-101(G), *Determination of Completeness*.
3. **Schedule Public Hearing.** The Administrator shall schedule the application for consideration by the Board of Adjustment.
  - a. Public hearing by the Board of Adjustment shall be held within forty-five (45) calendar days of the date of determination of completeness.
  - b. Public notice of the hearing shall be published by the applicant in a newspaper of general circulation in the County no less than thirty (30) calendar days prior to the date of the hearing.

4. **Evaluation by Administrator.** Upon determination of completeness, the Administrator shall review the application. An Administrator report shall be prepared pursuant to Section 3-101(H)(4).
5. **Review and Action by the Board of Adjustment.** The Board of Adjustment shall review the application and testimony at a properly noticed public hearing.
  - a. **Decision by Board of Adjustment.** Following the public hearing, conducted pursuant to Section 3-101(M), *Conduct of Public Hearing*, the Board of Adjustment shall uphold, modify or reverse the administrative interpretation.
6. **Written Notice of Decision.** The Administrator shall provide the applicant with written notice of decision by the Board of Adjustment within five (5) calendar days of the date of the decision by the Board of Adjustment.

**DIVISION 3            MAJOR ELECTRICAL OR NATURAL GAS FACILITY  
REQUIREMENTS**

**Section 3-301        General Requirements.** Major electrical or natural gas facilities are industrial uses or activities as defined by this Land Use Code, and are subject to the Permit Application and Review Procedure of Article 3, the Land Use Policies and Permit Approval Standards of Article 4, and the standards applicable to all industrial activities of Section 4-401. In addition, major electrical or natural gas facilities shall be subject to the set back requirement of 500 feet under Section 4-303(A)(2).

**Section 3-302        Special Requirements.** The following special requirements are imposed by state law, and shall apply to applications for a Land Use Change Permit for a Major Electrical or Natural Gas Facility subject to Public Utilities Commission jurisdiction, as that term is defined by Section 29-20-108 C.R.S.

**A.     Notice.** A public utility or power authority shall notify the Administrator of its plans to site a Major Electrical or Natural Gas Facility prior to submitting the Land Use Change Permit application, but in no event later than filing a request for a certificate of public convenience and necessity pursuant to Article 5 of Title 40, C.R.C., or the filing of any annual filing with the public utilities commission that proposes or recognizes the need for construction of a new facility or the extension of an existing facility. If a public utility or power authority is not required to obtain a certificate of public convenience and necessity pursuant to Article 5 of Title 40, C.R.S., or file annually with the public utilities commission to notify the public utilities commission of proposed construction of a new facility or the extension of an existing facility, then the public utility or power authority shall notify the County of its intention to site a Major Electrical or Natural Gas Facility when such utility or authority determines that it intends to proceed to permit and construct the facility. During the pre-application meeting, the public utility or power

authority shall consult with the Administrator to identify the specific routes or geographic locations under consideration and attempt to resolve land use issues that may arise from the contemplated Land Use Change Permit application.

**B. Alternatives Analysis.** In addition to the alternatives described within its Land Use Change Permit application, the public utility or power authority shall consider and present reasonable siting and design alternatives to the local government or explain why no reasonable alternatives are available.

**C. Certificate of Public Convenience and Necessity from PUC.** Applicant shall provide documentation that the public utility or power authority has applied for or obtained a certificate of public convenience and necessity from the Public Utilities Commission, pursuant to Article 5, Title 40, C.R.S. and Section 29-20-108, C.R.S.

**D. Statutory Timeframe for Approval of Major Electrical Facility.** Within one hundred twenty (120) days after submission of a completed application for a Major Electrical Facility, the County Planning Commission and the Board of County Commissioners shall review the Land Use Change Permit application following a public hearing, and shall decide whether to approve, approve with conditions or deny the application. If the County does not take final action within such time, the application shall be deemed approved. Nothing in these provisions shall be construed to supersede any timeline set by agreement between the County and a public utility or power authority applying for approval of a Major Electrical Facility.

**E. Appeal of Denial of Application for Major Electrical or Natural Gas Facility.** If the County denies a permit or application of a public utility or power authority that relates to the location, construction, or improvements of Major Electrical or Natural Gas Facilities, or if the County imposes requirements or conditions upon such permit or application that will unreasonably impair the ability of the public utility or power authority to provide safe, reliable, and economical service to the public, the public utility or power authority may appeal the County action to the public utilities commission for a determination under Section 40-4-102, C.R.S., so long as one or more of the following conditions exist:

1. The public utility or power authority has applied for or has obtained a certificate of public convenience and necessity from the public utilities commission pursuant to Section 40-5-101, C.R.S., to construct the Major Electrical or Natural Gas Facility that is the subject of the local government action;
2. A certificate of public convenience and necessity is not required for the public utility or power authority to construct the Major Electrical or Natural Gas Facility that is the subject of the local government action; or

3. The public utilities commission has previously entered an order pursuant to Section 40-4-102, C.R.S., that conflicts with the local government action.

**F. Notice of Approval by the County.** The County shall provide written notice of approval to the Public Utilities Commission and to the concerned electric utility and/or electric transmission entity.

### **Section 3-303 Financial Assurance Requirements for Major Electrical or Natural Gas Facilities**

**A. Financial Security.** The Applicant shall provide sufficient financial guarantee to assure timely and full completion of the project, mitigation requirements and permit conditions in connection with the Land Use Change Permit approval.

1. The applicant shall provide financial assurance in the form of one or more of the following, at the discretion of the Board of County Commissioners: self bond; a surety bond; a federally insured certificate of deposit; government-backed securities; or cash. Evidence of the selected form(s) of financial assurance shall be included with the application materials.
2. The Board may reject the proposed forms of financial assurance if the evidence submitted does not adequately assure that the required funds will be available. The Applicant shall be notified in writing within sixty (60) days of receipt of the evidence of financial assurance of the decision to accept or reject the proposed form(s) of financial assurance.

**B. Amount of Financial Assurance.** The Applicant shall provide to the County a guarantee of financial security in an amount established by the Board, based on no less than 125 percent (125%) of the estimated cost of the project, and payable on demand to the County. Financial assurance amounts may be recalculated on a yearly basis at the discretion of the Board of County Commissioners.

**C. Cancellation of Bond After Board Consent.** Any bond or other form of financial assurance may be cancelled by a surety upon consent of the Board of County Commissioners, after ninety (90) days written notice to the Board, when such cancellation will not detract from or otherwise diminish the purpose of the security.

## **DIVISION 4 TEXT AMENDMENTS**

**Section 3-401 Land Use Code Text Amendment.** Amendments to the text of this Land Use Code may be initiated by the Board of County Commissioners, the Planning Commission or the Administrator.

**A. Outline of Process.** The review process for land use code text amendments shall consist of the following procedures.

1. Proposed Amendment
2. Evaluation by Administrator
3. Public Hearing and Recommendation by the Planning Commission
4. Public Hearing and Decision by the Board of County Commissioners

**B. Review Process.**

1. **Proposed Amendment.** A written Description of proposed land use code text amendment, and justification for amendment shall be submitted to the Administrator.
2. **Schedule Public Hearing.** Within a reasonable time from receipt of the proposed text amendment, the Administrator shall schedule the proposed amendment for consideration by the Planning Commission.
  - a. Public hearing by the Planning Commission shall be held at the next regularly scheduled meeting of the Commission for which proper notice of hearing can be accomplished.
  - b. Public notice of the hearing shall be published by the Administrator in a newspaper of general circulation in the County at least fourteen (14) calendar days prior to the date of public hearing by the Commission.
3. **Evaluation by Administrator Review.** The Administrator shall review the proposed text amendment and prepare a Administrator Report. The Administrator may recommend modifications or alternatives to the proposed amendment.
4. **Recommendation by the Planning Commission.** The proposed text amendment, together with any proposed modifications or alternatives, shall be considered by the Planning Commission at the public hearing. The Planning Commission may recommend approval, modification or denial of the proposed text amendment.
5. **Schedule Public Hearing.** The Administrator shall schedule the application for consideration by the Board of County Commissioners.
  - a. Public hearing by the Board of County Commissioners shall be held within forty-five (45) calendar days of the date of the Planning Commission's recommendation.
  - b. Public notice of the hearing shall be published by the Administrator in a newspaper of general circulation in the County at least thirty

(30) calendar days prior to the date of the public hearing by the Board.

- 6. Review and Action by the Board of County Commissioners.** Following a public hearing, the Board of County Commissioners shall determine whether the text should be amended and the content of any such amendment.
- 7. Effective Date.** Unless otherwise specified by the Board of County Commissioners, an approved amendment to the text of this Land Use Code shall become effective within thirty (30) calendar days of the Board's decision.

## ARTICLE 4

## LAND USE POLICIES AND PERMIT APPROVAL STANDARDS

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### DIVISION 1

### APPLICABILITY

**Section 4-101 General.** No Land Use Change Permit will be issued in Kit Carson County unless it is consistent with the County Land Use Policies contained in this Article 4, Division 2 and the Land Use Standards contained in Article 4, Division 3.

**Section 4-102 Burden on Applicant.** It is the responsibility of any applicant for a Land Use Change Permit to demonstrate that the land use activity contemplated by the application will satisfy all requirements and standards of this Land Use Code. The cost of demonstrating such satisfaction shall be borne by the applicant.

**Section 4-103 Relationship Between Land Use Policies and Land Use Standards.** The Land Use Policies are general statements about the type of land use changes that will be acceptable or unacceptable to the County. The more specific land use standards in Article 4, Division 3 are intended to ensure that no land use change will be implemented that would conflict with the Land Use Policies. In the unusual case that there may be a conflict between the Land Use Policies and the Land Use Standards, the more stringent requirement shall be applied.

### DIVISION 2

### LAND USE POLICIES

**Section 4-201 General Policies.** The following shall be the general policies that guide land use and development within the County.

**A. Public Health, Safety and Environment.** Protect the public health, safety, welfare and the environment of Kit Carson County.

**B. Compatibility with Agricultural Uses.** Encourage growth that is compatible with maintaining or expanding the agricultural economy.

**C. Non-agricultural Uses.** Guide non-agricultural development toward existing growth centers.

**D. Character of the County.** Ensure that no land use change will detract from the environmental, historic, recreation or aesthetic character of the County.

**Section 4-202 Agricultural Policies.** The following shall be agricultural policies that guide land use and development within the County.

**A. Agricultural Economy.** Maintain and protect agriculture as the primary economic activity and lifestyle in the County.

**B. Agricultural Uses.** Retain unincorporated areas of the County primarily for agricultural uses. Non-agricultural uses may be permitted only if they are compatible with adjacent land uses.

**C. Productive Agricultural Land.** Discourage the use of productive agricultural land for non-agricultural purposes.

**D. Crop Production.** Encourage techniques that increase crop production without adversely affecting water, air or soil.

**Section 4-203 Residential Policies.** The following shall be residential policies that guide land use and development within the County.

**A. Cluster.** Encourage clustered development rather than widely dispersed land uses.

**B. Efficient Use of Services.** Ensure that new residential development will be located adjacent to existing municipalities whenever possible so that existing public services and facilities can be utilized efficiently.

**C. Variety of Housing.** Provide for a variety of housing types, including housing for the elderly, developmentally disabled and all income levels.

**D. Separate Incompatible Land Uses.** Separate residential development from incompatible land uses.

**Section 4-204 Commercial Policies.** The following shall be commercial policies that guide land use and development within the County.

**A. Enhance Agricultural Base.** Encourage development that will broaden the existing agricultural base while safeguarding the environment.

**B. Location of Commercial Uses.** Commercial development should be located within existing communities whenever possible. Where commercial development cannot be located within an existing community, it should be located adjacent to existing communities.

**C. Location of Automobile-Related Commercial Uses.** Ensure that automobile-related commercial services are located within existing communities or in commercial clusters along adjacent highways where business or commercial uses have already been established in the immediate vicinity and there is a need for the services at that location.

**Section 4-205 Industrial Policies.** The following shall be industrial policies that guide land use and development within the County.

**A. Compatible with Adjacent Land Uses.** Ensure that industrial activity is compatible with adjacent land uses, and that the location is necessary due to the presence of minerals, transportation facilities, geologic conditions or other circumstances that make the location desirable for industrial activities.

**B. Prevent Environmental Degradation.** Prevent industrial activities that would degrade the existing environment.

**C. Industrial Parks.** Provide for facilities and land to develop industrial parks.

**Section 4-206 Transportation Policies.** The following shall be transportation policies that guide land use and development within the County.

**A. Collector Roads.** Ensure that collector roads are designed, widened and maintained to accommodate traffic.

**B. Railroad Crossings.** Ensure that crossing signals at railroad crossings are signalized.

**C. Airports.** Provide for airports and traffic pattern airspace to be maintained and upgraded.

**D. Highway Expansion and Siting.** Prevent the expansion or siting of highways from degrading the economic base of the County.

**E. New Development.** Prevent new land use proposals that do not adequately provide for roads and rights-of-way.

**F. Hazardous Material Transportation.** Minimize the transportation of hazardous materials on County roads.

**G. Traffic.** Protect existing residential, commercial, industrial or public areas from unnecessary and undesirable traffic while providing adequate access.

**H. Transportation Systems.** Provide a mix of transportation systems including automobile, bus, railroad, air, pedestrian and bicycle.

**Section 4-207 Natural Resource Policies.** The following shall be natural resource policies that guide land use and development within the County.

**A. Water Quality and Quantity.** Preserve, protect and enhance the quality and quantity of water resources. To this end, any land use change that would cause significant degradation of the quality, quantity and dependability of water resources, or that would result in major expenditures of public funds to reacquire or redistribute water resources shall not be allowed.

**B. Development Water Supply.** Demonstrate an adequate water supply to serve the proposed land use activity.

**C. Natural Resource Development.** Encourage the development of oil and gas, gravel and other mineral resources while protecting the environment.

**Section 4-208 Environmental Policies.** The following shall be environmental policies that guide land use and development within the County.

**A. Prevent Degradation.** Ensure that no land use change will cause degradation of air, water, or other environmental resources or consume excessive energy.

**B. New Development.** Prevent new development in floodplains, natural hazard areas, environmentally sensitive lands, important and unique natural features or other areas of environmental importance to the County.

**C. Water and Wastewater Treatment.** Ensure every land use activity is served by adequate water and wastewater treatment facilities that satisfy all state and federal requirements.

**D. Erosion.** Minimize erosion of soil from wind or water.

**E. Natural Drainages.** Maintain natural drainage patterns to the greatest extent possible.

**F. Wildlife.** Protect wildlife and wildlife habitat from impacts of growth and development.

**G. Views and Vistas.** Preserve important views and vistas and other scenic areas.

**Section 4-209 Parks and Recreation Policies.** The following shall be parks and recreation policies that guide land use and development within the County.

**A. Waterbodies.** Encourage the development of water bodies for fishing, boating, picnicking and other recreational uses.

**B. Recreation Programs and Facilities.** Encourage a balanced, accessible program of recreation and facilities for all ages, incomes, and cultural backgrounds with a special emphasis on youth.

**Section 4-210 Public Facilities and Services Policies.** The following shall be public facilities and services policies that guide land use and development within the County.

**A. Police and Fire Protection.** Ensure that the development has adequate police and fire protection.

**B. Special Districts.** Prevent the proliferation of special districts. Consolidation of existing districts will be facilitated whenever efficiency would be improved.

**C. Communication Systems.** Maintain technologically up-to-date communications systems to serve the County.

### **DIVISION 3 LAND USE STANDARDS APPLICABLE TO ALL LAND USE CHANGE PERMIT APPLICATIONS**

**Section 4-301 Purpose and Intent of Land Use Standards.** The purpose of the following standards is to provide a set of requirements that must be satisfied before approval of any Land Use Change Permit. These standards will be applied, together with the policy statements contained in Article 4, Division 2, to the review of Land Use Change Permit applications.

#### **Section 4-302 General Standards**

**A. Property Rights, Permits and Approvals.** The applicant has obtained or will obtain all property rights, permits, and approvals necessary for the proposed project. If the applicant has not obtained all necessary property rights, permits and approvals, the Board may, at its discretion, defer approving the application until the outstanding property rights, permits and approvals are obtained.

**B. Natural Hazards.** The proposed land use is not subject to risk from mudslide, subsidence, erosion or other natural hazards.

**C. Toxic and Hazardous Substances.** The proposed land use will not present an unreasonable risk of exposure to or release of toxic or hazardous substances in amounts deemed to adversely affect human health or the environment.

**D. Private Property Rights.** The proposed land use will not have an adverse effect on private property rights.

**E. Water Quality.** The construction and operation of the proposed land use will not significantly degrade surface or ground water quality. The determination of the effects of the proposed land use shall include the following considerations:

1. Changes to patterns of water circulation, conditions of the substrate, extent and persistence of suspended particulates and clarity, odor, color or taste of water.
2. Applicable water quality standards.
3. Levels of point and nonpoint source pollution.
4. Changes in seasonal flow rates and temperature for affected streams.

5. Changes in aquifer recharge rates, groundwater levels and aquifer capacity including seepage losses through aquifer boundaries and at aquifer-stream interfaces.
6. Changes in circulation patterns, seasonal water levels and temperature of lakes or reservoirs.

**F. Floodplains.** The proposed land use will not significantly deteriorate floodplains, wetlands and riparian areas in the impact area. The determination of effects of the proposal shall include the following considerations:

1. Changes to the structure and function of wetlands and to unique, rare, delicate or irreplaceable riparian areas, vegetation, forest or woodlands.
2. Changes to the filtering and nutrient uptake capacities of wetlands and riparian areas.
3. Changes to aerial extent of wetlands and evolution of wetland species to upland species.

**G. Air Quality.** The proposed land use will not significantly degrade air quality.

**H. Vegetation.** The proposed land use will not significantly deteriorate vegetation. The determination of effects of the proposal shall include the following considerations:

1. Changes to the structure and function of vegetation, including species composition, diversity, biomass, and productivity.
2. Changes in advancement or succession of desirable and less desirable species.

**I. Animals and Animal Habitat.** The proposed land use will not significantly deteriorate terrestrial and aquatic animals, including wildlife and livestock, and their habitats.

**J. Visual Quality, Noise, Vibration and Odor.** The proposed land use will not significantly degrade existing visual quality, noise and vibration levels, and odor. The determination of effects of the project shall include the following considerations:

1. Visual changes to ground cover and vegetation, waterfalls, and streams, or any other natural feature.
2. Noises or odors generated during construction or operation of the project.

3. Visual changes resulting from construction activities and from the existence and operation of the proposed project.
4. Levels of fumes, glare, dust and heat.

**K. Soils and Geology.** The proposed land use will not significantly deteriorate soils and geologic conditions. The determination of the effects of the proposal shall include the following considerations:

1. Changes to the topography, natural drainage, soil morphology and productivity, soil erosion potential, and floodplains.
2. Changes to stream sedimentation, geomorphology, and channel stability.
3. Changes to lake and reservoir bank stability and sedimentation, and safety of existing reservoirs.
4. Special seismic considerations and subsidence.

**L. Land Uses.** The proposed land use will not significantly degrade existing land uses.

**M. Public Services and Facilities.** The proposed land use will not significantly degrade public services and facilities, government revenues and expenditures, housing and/or education quality. The determination of the effects of the proposal shall include the following considerations:

1. The costs to local governments of providing services or facilities required by the project.
2. Revenue to the County and other local governments that will be generated by the project.
3. Changes in the quality of publicly-funded education as evidenced by changes in student/teacher ratios and facility capacities.
4. Changes in housing availability.

**N. Economy.** The proposed land use will not significantly degrade any segment of the local economy within the County. The determination of net effects of the proposal shall include the following considerations:

1. Changes to projected revenues generated from each economic sector (including recreation, tourism, agriculture, and education).

2. Changes in the quality or quantity of the recreation experiences available in the impact area.
3. Changes in the value of agricultural grazing, recreational, and other lands, and the loss of tax revenues caused by such lands being removed from production or becoming unavailable for those uses.
4. Changes in opportunities for economic diversification.

**O. Geologic, Paleontological, Ecological, Historic and Archeological Areas of Importance.** The proposed land use will not significantly degrade areas of geological, paleontological, ecological, historic, or archaeological importance.

**P. Economic Feasibility.** The proposed land use is technically and financially feasible.

1. **Ability of the Applicant.** The applicant has the technical and financial ability to develop and operate the proposed land use activity in a manner that is consistent with the permit conditions and public health, safety and welfare.
2. **Benefit to the County.** The benefits accruing to the County and its citizens from the proposed land use activity outweigh the losses of any natural, agricultural, recreational, tourist-oriented, range, municipal, or industrial resources within the County, or the losses of opportunities to develop such resources.

**Section 4-303 Site Planning Standards.** These site planning standards shall apply to any land use activity. Where the land use activity is part of a Cluster Development (CD), these standards do not apply.

**A. Setbacks.**

1. **Commercial Uses.** The minimum setback for any commercial activity or structure intended for commercial purposes shall be 70 feet from the side property line or the road right-of-way at the front of the property.
2. **Industrial Uses.** The minimum setback for any industrial activity or structure intended for industrial purposes shall be 500 feet unless a different setback applies to the activity or particular use.
3. **Residential Uses.** The minimum setback for any residential structure shall be 70 feet from the property line or the road right of way at the front of the property.

**B. Access.** Every lot shall have access that is sufficient to afford a reasonable means of ingress and egress for emergency vehicles and all traffic accessing the lot.

**C. Road, Alley, Easement, Tree Rows, Driveway and Right-of-Way Design.** All roads, alleys, easements, tree rows, driveways and rights-of-way must conform to County design standards.

**D. Water Availability.** An applicant must demonstrate to the satisfaction of the County that there is an adequate supply of water in terms of quantity and quality available to serve the proposed land use activity for the life of the project.

**E. Sewage Disposal.** If the proposed land use will not be served by a central sewage disposal system, the applicant shall demonstrate by means of an engineering feasibility study prepared by a registered engineer that the proposed location of the leach fields and soil absorption beds and the type of soils are suitable for the Individual Sewage Disposal System ("ISDS"). No application for a Land Use Change Permit shall be approved until the design of any ISDS has been approved by the County Department of Health as in compliance with State and County ISDS regulations.

**Section 4-304 Additional Standards Applicable to Sand Gravel Pits and Sand and Gravel Extraction Operations.** Any Person proposing any sand and gravel pit or any sand and gravel extraction operation in the County will be required to file a Land Use Change Permit application, and to comply with the notice requirements applicable to all Land Use Change Permits. A sand and gravel pit or a sand and gravel extraction operation shall also be required to comply with all state statutes and regulations applicable to sand and gravel mining operations. In addition, a sand and gravel pit or a sand and gravel extraction operation shall comply with all set back requirements of commercial uses, with minimum lot sizes of commercial uses, and with water and sewer requirements if a dwelling is placed on a sand and gravel pit site.

**Section 4-305 Additional Standards Applicable to the Burlington-Kit Carson County Airport Flight Path Area**

**A. Airport Standards.** Any building, structure, or use of land which will effect the designated flight paths as established by the Kit Carson County Airport shall not be allowed to protrude into or otherwise effect the airspace of such designated flight paths. Any structure, building or use shall not be erected, altered or maintained in any zone created by the Burlington/Kit Carson County Airport, including the utility runway visual approach, the utility runway non-precision instrument approach zone, the runway larger than utility visual approach zone, the runway larger than utility with the visual minimum greater than  $\frac{3}{4}$  mile non precision instrument approach zone, the runway larger than utility with a visibility minimum as low as  $\frac{3}{4}$  mile non precision instrument approach zone, transitional zones, horizontal zones, and conical zone. All zones are established by the zoning map designated by the Burlington Airport Master Plan Map, completed September 5, 2000.

**B. Definitions of Airport Zones.** The various airport zones are hereby established and defined as follows:

1. **UTILITY RUNWAY VISUAL APPROACH ZONE** – The inner edge of this approach zone coincides with the width of the primary surface and is 250 feet wide. This approach zone expands outward uniformly to a width of 1,250 feet at a horizontal distance 5,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.
2. **UTILITY RUNWAY NONPRECISION INSTRUMENT APPROACH ZONE** – The inner edge of this approach zone coincides with the width of the primary surface and is 500 feet wide. The approach zone expands outward uniformly to a width of 2,000 feet at a horizontal distance of 5,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.
3. **RUNWAY LARGER THAN UTILITY VISUAL APPROACH ZONE** – The inner edge of this approach zone coincides with the width of the primary surface and is 500 feet wide. The approach zone expands outward uniformly to a width of 1,500 feet at a horizontal distance of 5,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.
4. **RUNWAY LARGER THAN UTILITY WITH A VISIBILITY MINIMUM GREATER THAN ¼ MILE NONPRECISION INSTRUMENT APPROACH ZONE** – The inner edge of this approach zone coincides with the width of the primary surface and is 500 feet wide. The approach zone expands outward uniformly to a width of 3,500 feet at a horizontal distance 10,000 feet from the primary surface. Its centerline is the continuation of the centerline runway.
5. **RUNWAY LARGER THAN UTILITY WITH A VISIBILITY MINIMUM AS LOW AS ¼ MILE NONPRECISION INSTRUMENT APPROACH ZONE** – The inner edge of this approach zone coincides with the width of the primary surface and is 1,000 feet wide. The approach zone expands outward uniformly to a width of 4,000 feet at a horizontal distance 10,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.
6. **TRANSITIONAL ZONES** – The transitional zones are the areas beneath the transitional surfaces.
7. **HORIZONTAL ZONE** – The horizontal zone is established by swinging arcs of 5,000 feet radii for all runways designated utility or visual and 10,000 feet for all others from the center of each end of the primary surface of each runway and connecting the adjacent arcs by drawing lines

tangent to those arcs. The horizontal zone does not include the approach and transitional zones.

8. **CONICAL ZONE** – The conical zone is established as the area that commences at the periphery of the horizontal zone and extends outward therefrom a horizontal distance of 4,000 feet.

#### **DIVISION 4            ADDITIONAL STANDARDS APPLICABLE TO SPECIFIC ACTIVITIES**

In addition to the General Standards contained in Section 4-302, these standards apply to specific categories of activities.

##### **Section 4-401            Standards Applicable to All Industrial Activities**

**A. Lot Size.** An industrial lot cannot be less than 35 acres in size and a larger lot size may be required by the County if the intensity of the proposed use, impacts of the activity and characteristics of existing land uses would require a larger lot size to protect those existing land uses and the environment.

**B. Central Sewage System.** If any industrial building shall produce sewage, it must be served by a central sewage collection system and secondary sewage treatment facility or alternate facilities approved by the Colorado Department of Public Health and the Environment.

**C. Sound.** Every use shall be operated so that the volume of sound generated does not exceed sixty decibels at the boundary line of the property.

**D. Vibration.** Every use shall be operated so that the ground vibration generated is not perceptible, without instruments, at the boundary line of the property.

**E. Smoke and Particulates.** Smoke and particulate emissions shall not exceed applicable air quality standards.

**F. Glare, Heat, Radiation and Fumes.** Every use shall be operated so that it does not emit heat, glare, radiation or fumes that are obnoxious beyond the boundary line of the property.

**G. Outdoor Storage and Disposal.**

1. All flammable or explosive materials shall be stored above ground in an engineered facility.
2. Outdoor storage facilities for fuel, raw materials and products shall be enclosed by a fence or wall adequate to conceal such facilities.

3. No materials or wastes shall be deposited on a property such that they will migrate off the property.
4. Dust control mitigation measures satisfactory to the County must be implemented.
5. Excavations associated with gravel pits or other mining operations shall not be permitted within 30 feet of the property boundary.

**Section 4-402 Additional Standards Applicable to All Commercial Activities.**

In addition to the General Standards contained in Section 4-302, the following additional standards shall apply to commercial activities.

**A. Lot Size.** A commercial lot shall be at least 300 feet in depth measured from the street right-of-way. There is no minimum lot size for a commercial use.

**B. Central Sewage System.** If any commercial activities on a parcel in excess of five acres shall produce sewage, such activities shall be served by a central sewage collection and secondary treatment system or an alternative system approved by the Colorado Department of Public Health and the Environment.

**C. Parking.** The following amount of off-street parking shall be provided for commercial activities:

1. **Hotels and Motels.** One space per unit and at least 3 square feet for each square foot of conference, meeting rooms and other related uses.
2. **Churches and auditoriums.** One space for every four seats.
3. **Other.** At least three square feet of parking space for every one square foot of commercial space.

**Section 4-403 Additional Standards Applicable to Junk Yards.** Any junkyard proposed in the County shall be subject to the following additional requirements.

**A. Additional Application Submittal Requirements.** In addition to the application submittal requirements set forth at Article 3, an applicant for a permit to operate a junkyard shall submit the following additional materials:

1. **Well location.** A map clearly showing and identifying the location of domestic and agricultural water wells within a three mile radius of the junkyard.
2. **Nuisance mitigation.** A plan addressing the abatement or control of nuisances emanating from the operation of the junkyard, including but not limited to dust, light, noise and odor.

3. **Operational specifications.** A description of the type and amount of junk that will be handled at the site; the hours of operation of the junkyard; a description of processing, recycling, incineration or disposal techniques that may be used; and the number of vehicle trips per day to and from the junkyard.

**B. Additional Standards and Conditions.** In addition to the general standards and conditions set forth in Article 4 Division 3, an applicant for a permit to operate a junkyard shall satisfy the following additional standards and conditions:

1. **Screening.** All facilities and operations associated with the junkyard shall be screened from view by fencing or landscaping.
2. **Wind and Animal Control.** All facilities and operations associated with the junkyard shall be designed to prevent wind or animals from scattering trash or rubbish.
3. **Lighting.** Any lighting shall be designed, located and operated so that beams or rays of light do not shine directly on adjacent properties.
4. **Hazardous or Solid Waste Prohibited.** The junkyard operator shall be prohibited from storing, managing, processing, recycling or otherwise handling hazardous or solid waste at the facility.
5. **Junkyard Setback.** The minimum setback from the property line for any junkyard shall be 250 feet from the side property line or the road right-of-way at the front of the property.

**Section 4-404 Additional Standards Applicable to Communications Towers.** Any Commercial Communications Tower proposed in the County shall be subject to the following additional requirements.

**A. Additional Application Submittal Requirements.** In addition to the application submittal requirements set forth in Article 3, of the General Standards in Section 4-302, and the Standards Applicable to All Commercial Activities in Section 4-402, an applicant for a Land Use Change Permit to construct and operate a commercial communications tower shall submit the following additional materials:

1. **Tower Location.** A map clearly showing and identifying the location of the property boundaries, the distance from the base of the tower to the property boundaries and to all occupied structures and traveled roadways, and the exact height of the proposed tower.
2. **Alternative Sites.** The applicant shall provide to the Planning Commission a minimum of two alternative sites for each tower. The applicant shall also

be required to schedule a preliminary informal meeting with the Planning Commission prior to beginning the public notice, surveying process or construction process, and if there is an objection to the two alternative sites selected, a third site may be required by the Planning Commission.

**3. Setback Requirements.** Commercial Communications Towers shall be a special use, and there shall be a minimum setback from the tower to the property line of the distance of one-third of the height of the tower. Guy wires shall be at least 70 feet from any property line. The tower shall also be at least one and one-third (1 1/3) of its height away from any occupied structure or traveled roadway.

**4. Fencing.** All towers, guy wires, equipment, and other structures shall be fenced adequately to discourage unauthorized climbing and vandalism, and to ensure the security of the structures.

**5. Structural Integrity and Federal and State Regulations.** The design of the proposed Communications Tower shall be prepared by a licensed professional engineer, and the structure shall be constructed to ensure structural integrity and to accommodate multiple antennas and equipment. The applicant must not exclude other providers from co-locating on the same tower when co-location is structurally, technically, or otherwise possible. The Communications Tower and related equipment shall comply with all federal and state regulations.

**6. Lighting.** Any lighting on a Communications Tower shall be shielded at its base to prevent too much light shining onto adjacent properties.

**7. Financial Assurance.** The applicant shall provide adequate financial assurance, in the form of a bond or insurance policy to be approved by the Planning Commission, which will be adequate to pay the costs of removing any abandoned tower and equipment.

#### **Section 4-405 Additional Standards and Requirement Applicable to All Activities Effecting County Roads**

**A. Construction Plans.** Prior to the construction of any new driveway or road which connects to a county road, the construction plans of the driveway shall be provided to the Board of County Commissioners of Kit Carson County for his approval. The placement of any new culvert across or beside a county road must also be approved by the road and bridge supervisor. The road and bridge supervisor shall have the authority to require, when he deems it necessary, a construction drawing prepared by a registered professional engineer, licensed in the State of Colorado.

**B. Excavation and Back-filling.** Whenever any excavation cuts into the right-of-way of a county road, the back-filling requirements, including compaction used and materials used, must be approved by the Board of County Commissioners of Kit Carson County.

**C. Drainage Facilities.** Final grades, street geometrics, types of construction and all other street details relative to the design, construction or operation of any storm drainage system must be approved by the road and bridge supervisor of Kit Carson County to ensure proper review of the total drainage system, which includes road side ditches, culverts or storm drains, and interior ditches and main channels.

**D. Right-of-Way.** The right of way of all county roads in Kit Carson County shall be 90 feet. The Kit Carson County Road and Bridge Department has the right to maintain the entire right-of-way, including the mowing of ditches and shoulders, and the removal of all obstacles, tree and plan growth, and any object which obstructs the vision or impairs the safety of the traveling public.

**E. Windbreaks.** All new windbreaks shall not be allowed within 55 feet from center of the county road, up to 150 feet from the center for any traveled intersection. At traveled intersections, the windbreak must be planted in a straight line at a diagonal angle of approximately 45 degrees, running from 2 points on the middle of the county roads at least 150 feet from the center of the intersection.

**F. Asphalt Roads, Streets and Driveways.** Any new asphalt road or driveway connected to a county road, and all county asphalt roads, shall be constructed with a 20 year life expectancy, and shall be approved prior to construction by the Board of County Commissioners of Kit Carson County. The Board of County Commissioners shall have the authority to determine on a case by case basis, the requirements for the sub-grade, sub-base, based course and pavement, and the specifications of thickness of the asphalt pavement. The Board of County Commissioners shall also have the authority to determine any schedule for repairs, including chip dealing and coating of the asphalt.

**G. Utility Cuts and Easements.** The County shall be notified and inspect utility cuts, whenever they are made in the public right-of-way. A written easement, on a form approved by Kit Carson County, shall be required for all utility cuts or easements, and the backfilling of any cut or easement shall be approved by the road and bridge supervisor of Kit Carson County. The party requesting the cut or easement shall notify adjoining landowners in writing by Certified Mail prior to performing work, except in emergencies, and shall request landowner approval of the cut or easement.

**H. Payment of Costs.** The costs of the construction and improvement of any private driveway, street or road, including the costs for any inspection and any tests necessary to be performed required by a professional engineer, will be paid by the developer of the private property owner.

**I. Cattle Guards.** The placement of any cattle guard in the right-of-way of any county road shall be approved in advance by the Board of County Commissioners of Kit Carson County. The private landowner shall be responsible for paying for and maintaining the cattle guard.

**J. Trash in the Right-of-Way.** The placement of any trash or refuse in the right-of-way of any county road is prohibited. If an adjoining landowner who is responsible for placing trash or refuse fails to remove such trash or refuse after being provided with written notice by the county, the county may enforce removal and impose penalties under the enforcement provisions of the Code.

## ARTICLE 5            DIVISIONS OF LAND

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### DIVISION 1    GENERAL PROVISIONS

**Section 5-101        Types of Land Division.** Division of land into two or more parcels is classified by the County as either a subdivision or a subdivision exemption.

**Section 5-102        Plat or Exemption Plat Approval Required.** The division of land into two or more parcels requires plat approval or approval of an exemption plat by the Board of County Commissioners.

**Section 5-103        Sales Prohibited Prior to Subdivision or Subdivision Exemption Plat Approval.** No person with any interest in land located within a subdivision or a proposed subdivision shall transfer or sell any land before the plat for the subdivision or subdivision exemption has been approved by the Board of County Commissioners and filed for recording with the County Clerk and Recorder.

### DIVISION 2    SUBDIVISION REVIEW PROCESS

**Section 5-201        Subdivision Review Process.** The Subdivision Review Process is a plat review process for divisions of land that shall require, and comply with, applicable statutes and the Land Use Change Permit review process in Section 3-101 and 3-102.

**A.        Submittal of Final Plat for Signature by Board.** The approved Final Plat shall be submitted to the Board for signature within one hundred twenty (120) calendar days from the date of approval of the final plat. All conditions of approval shall be met prior to submitting the plat for signature by the Board of County Commissioners.

**B.        Recordation.** The Final Plat shall be filed for recording with the County Clerk and Recorder within thirty (30) calendar days from the date of signature by the Board of County Commissioners.

- 1.        Completion of Conditions of Approval.** The applicant must complete all conditions of final plat approval prior to recording the plat and associated documents.
- 2.        Approval of Improvements Agreement.** The final plat shall not be filed for recording until the Board has approved an Improvements Agreement.
- 3.        Effective Upon Recording.** The plat does not become effective until it is properly filed for recording with the County Clerk and Recorder.

4. **Public Sale of Lots.** A subdivision becomes complete and eligible for public sale of lots and development only after the plat and associated documents are recorded.

**DIVISION 3 SUBDIVISION EXEMPTION.** Certain divisions of land are exempt from the subdivision regulations if the division is not defined as a subdivision by 30-28-101, C.R.S., or if the Board of County Commissioners determines that such a division is not within the purposes of the subdivision statute, Section 30-28-133, C.R.S., *et seq.*, or the subdivision regulations of this Land Use Code. An application requesting subdivision exemption is subject to the approval process in Section 5-401, *Request for Subdivision Exemption and Exemption Plat Approval*. Although exempt from the subdivision regulations, uses of land on parcels of land created through subdivision exemption are subject to other County regulations. All subdivision exemptions shall meet the basic exemption criteria in Article 5, Section 5-301.

**Section 5-301 Types of Subdivision Exemptions.** The Board of County Commissioners has established the following types of subdivision exemptions.

**A. Statutory Exemptions.** The divisions of interests in land to which the term "subdivision" and "subdivided land" does not apply pursuant to Section 30-28-101 (10) (b) (c) and (d), C.R.S. are statutory exemptions. Easements and rights-of-way shall not be considered interests for the purposes of this Section 5-301.

1. Large-lot land divisions.
  - a. All tracts of land thirty-five (35) acres or greater in size created after January 1, 1973 and which are not part of a recorded subdivision are considered to be parcels created by exemption, pursuant to 30-28-101(10)(b), C.R.S.
  - b. Any division of land which creates parcels of land comprising thirty-five or more acres of land and none of which is intended for use by multiple owners.
2. Any division of land created by the court pursuant to the procedure set forth in Section 30-28-101 (10)(d), C.R.S. if the Board of County Commissioners has been given the notice and opportunity to join as a party of interest in the proceeding for the purpose of raising the issue of an intent to evade the statutory requirements for subdivision of land.
3. Any division of land which is created by a lien, mortgage, deed of trust, or any other security instrument.
4. Any division of land which is created by a security or unit of interest in any investment trust regulated under state law or any other interest in an investment entity.

5. Any division of land which creates cemetery lots.
6. Any division of land which creates an interest in oil, gas, minerals, or water which is severed from the surface ownership of real property.
7. Any division of land 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. Any such interest shall be deemed as only one interest for purposes of satisfying the requirements of this Section 5-301.
8. Any combination of contiguous parcels of land into one larger parcel which meets the following conditions.
  - a. If the resulting parcel is less than thirty-five acres in land area, only one interest in the land is allowed.
  - b. If the resulting parcel is thirty-five (35) acres or greater in land area, the land area divided by the number of interests in the resulting parcel equals thirty-five (35) or more acres per interest.
  - c. Consolidation of contiguous parcels or lot mergers initiated by the County shall comply with the statutory requirements of 30-28-139, C.R.S.

**B. Boundary or Lot Line Revision or Correction.** Revisions to boundary lines or lot lines under the following conditions are subdivision exemptions.

1. A revision of boundary lines or lot lines which does not increase the number of parcels previously recorded or approved.
2. A revision of boundary lines or lot lines for the purpose of correcting an engineering or survey error in a recorded plat.

**C. Correction Plats.** Corrections of technical errors in approved and recorded final plats are subdivision exemptions. Technical errors include errors to legal descriptions, acknowledgments, dedication language, plat notes and other items which do not constitute substantial modification of the approved plat.

**D. Cluster Development.** Cluster development approved as a Rural Land Use Cluster Development. The review process for exempt cluster development is set forth in Article 5, Division 5.

1. **Cluster Well Exemption.** The Rural Land Use Cluster Development is authorized by 30-28-101(10)(c)(X), C.R.S. and 30-28-401 C.R.S. *et seq.* A

development approved pursuant to the statutory rural land use process is eligible for the cluster well exemption set forth in 30-28-404 C.R.S.

**E. Exemption by the Board of County Commissioners.** The Board may exempt a division of land if the Board determines that such division is not within the purposes of this Land Use Code or the County Planning Statutes in Article 28; Title 30 of the C.R.S.

#### **DIVISION 4 EXEMPT SUBDIVISION PLAT APPROVAL PROCESS**

**Section 5-401 Request for Subdivision Exemption and Exemption Plat Approval.** Divisions of land that may be exempt from subdivision review are identified in Section 5-301, *Types of Subdivision Exemption*. An application requesting subdivision exemption and approval of the Exemption Plat shall be subject to the following review process.

**A. Review Process.** The Exempt Subdivision Plat Review Process is a plat review process for divisions of land that shall require, and comply with, a Land Use Change Permit review process in Section 3-101 and 3-102, except that the applicant shall not be required to comply with provisions regarding public notice and hearing requirements of Sections 3-101(L) and (M).

**B. Submittal of Exemption Plat for Signature by Board.** The exemption plat for an approved subdivision exemption shall be submitted to the Board of County Commissioners for final approval within ninety (90) calendar days from the date of approval of the application. All conditions of approval shall be met prior to submitting the plat for signature by the Board of County Commissioners and the exemption plat shall be signed by all owners of record.

**C. Recordation.** The exemption plat shall be filed for recording with the County Clerk and Recorder within thirty (30) calendar days from the date of final approval by the Board of County Commissioners.

#### **DIVISION 5 CLUSTER DEVELOPMENT**

**Section 5-501 Purpose.** The purpose of Cluster Development (CD), is to encourage flexibility and innovation in the development of land which:

**A.** Fosters greater variety in the type, design, and layout of buildings and a more rational relationship between residential, business and industrial uses.

**B.** Improves the design, character and quality of development.

**C.** Promotes safe, efficient and economic use of land, public facilities, transportation and services.

- D. Preserves open space to the greatest extent practicable and minimizes adverse environmental impacts of development.
- E. Achieves a compatibility of land uses.
- F. Improves the design and layout of development.
- G. Allows landowners to implement smart growth on land that is exempt from subdivision regulations, in accordance with the guidelines of C.R.S. 30-28-401, *et seq.*

**Section 5-502      Applicability**

**A. Types of Land Uses.** A CD designation may be used for residential purposes. A cluster development is defined as any division of land that creates three or more parcels containing less than 35 acres each, for single-family residential purposes only, with a density that does not exceed two residential units for each 35 acre parcel or increment, and which reserves at least 2/3 of the total area of the tract for the preservation of contiguous open space. As a condition of approving a cluster development, the cluster development plan shall set aside land to preserve open space or to protect wildlife habitat or critical areas and not to permit development of such land for at least 40 years from the date the plan is approved. The minimum parcel size shall be five acres. A water management plan shall be required, which may include metered water usage and restrictions, and any requirements of the applicable ground water management district.

**B. Land Use Change Permit Required for Cluster Developments.** A cluster development requires a Land Use Change Permit. A Land Use Change Permit for a cluster development shall include all of the general requirements of a Land Use Change Permit, including but not limited to notification of adjacent land owners and written application by the property owner of all land being designated for approval as a cluster development.

**C. Domestic Wells.** Any cluster development allowed may obtain only one domestic well permit for each single-family residence, and each lot must have its own domestic well permit. Where domestic wells have been previously drilled or permitted within the same parcel, the cluster development shall not authorize initial domestic wells at a density of more than 2 per thirty-five acre parcel.

**D. Where Permitted.** Land Use Change Permit for a cluster development may be approved in any area of the county. The determination of suitability will be based upon a finding that the proposed cluster development satisfies all relevant standards of Article 6 and 7 of this Land Use CD.

**E. Existing Subdivision Exemptions.** Nothing in this article shall be construed to allow any existing single-family residential lots to obtain a subdivision exemption or a Land Use Change Permit for a cluster development which will provide for a greater

density of development than two single-family residences per thirty-five acre parcel; provided, however, that if a 35 acre or less parcel owned by one owner is located entirely within two miles of an existing municipality within the County, the Planning Commission may consider multiple subdivision exemptions which would provide for a greater density of more than two property divisions per such larger parcel, provided that the minimum lot size shall be 2 ½ acres.

**Section 5-503 Relationship to Subdivision Regulations.** Where any lot within a CD would be less than 35 acres, then the CD must be platted in accordance with the platting procedures contained in this Land Use Code.

**Section 5-504 Review Standards; General Requirements.** In addition to all other requirements applicable to a Land Use Change Permit, an application for CD shall comply with the following review standards.

**A. Consistent With Comprehensive Plan.** The proposed development shall be consistent with and further the policies of the County Comprehensive Plan and any other adopted plans and policies relating to land use and development.

**B. Compatible With Surrounding Land Uses.** The proposed development shall be compatible with the character of surrounding land uses.

**C. Land Use Intensity.** The density and type of Land Use Change Permitted on a given site will be determined as a result of an analysis of the opportunities and constraints provided by the site and the impacts of the proposed land use.

**D. Permitted Uses.** Any combination of residential, commercial and industrial uses that together satisfy all applicable standards may be permitted in a CD.

**Section 5-505 Specific Criteria and Requirements Applicable to CDs**

**A. Open Space.** A minimum of 66% open space shall be required for all CDs.

1. The County shall designate the type and mix of open space to be provided (e.g. natural, agricultural, recreational, public, private).
2. The applicant shall demonstrate to the County adequate means of preserving, protecting and maintaining open space areas.
3. Open space corridors shall be designated to coincide with significant vegetation or wildlife areas to the extent possible.

**B. Variations in Setbacks.** Setback requirements may be varied at the discretion of the County, taking into consideration the purpose and review standards of the CD.

**C. Variations in Height Requirements.** Height requirements may be varied at the discretion of the County, taking into consideration the purpose and review standards of the CD.

**D. Parking.** The County shall designate the number of parking spaces to be required based on the following considerations.

1. Probable number of cars owned or required by occupants of the CD.
2. Parking needs of any non-residential uses, including projected number of customers, employees, deliveries and shipments.
3. Varying time periods of uses whenever joint use of common parking areas is proposed.

**E. Site Planning Criteria.** The following site planning criteria shall apply to any CD site plan.

1. Protect ridges from development that would be visible.
2. Avoid building on areas of unstable soils, slopes and geological hazards.
3. Cluster uses in the most developable and least visually sensitive portions of the site with open space separating the clusters.
4. Roads and utility lines shall be designed to avoid alterations to the existing site contours and shall be placed so that cut and fill is minimized.
5. Provide trails and sidewalks to allow efficient internal circulation as well as links to trail systems on adjacent property.
6. Preserve and maintain any open space by an irrevocable dedication, restrictive covenants or other mechanism acceptable to the County.
7. Design the internal street circulation system to accommodate the type of traffic generated; and to maximize safety, separation from living areas, convenience and access. Bicycle and pedestrian traffic shall be considered and accommodated.
8. Provide for variety in housing type and density and reflect the community character by including features such as front porches, and rural character design features. Multi-family housing shall retain single family scale and form of structures.

- a. Landscaping of the total site shall address concerns including screening, ornamentation, maintenance, water availability and site-suitability.
- b. Locate commercial uses in areas of the CD with easy vehicular, bicycle and pedestrian access to residential units.

**F. Commercial Facilities in Residential or Agricultural Areas.** Where commercial uses are allowed in agricultural or residential areas of the County, the following design standards shall apply to those commercial uses:

- 1. Signage must be visible only from within the CD.
- 2. Buildings shall appear similar in scale and design to agricultural or residential structures in the area.
- 3. Buildings shall be no wider than residential structures in the area.
- 4. Buildings shall be no taller than the tallest residential structure and flat roofs shall be avoided.
- 5. Building materials should appear similar to those used on agricultural or residential structures.
- 6. A primary entrance shall be oriented toward the street.
- 7. Pedestrian walkways, gathering areas, bike racks and other similar amenities shall be provided to encourage pedestrian and bicycle activity.
- 8. Parking shall be located on-street or in the rear of the building.

## ARTICLE 6

## WIND ENERGY FACILITIES

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**Section 6-101 Applicability.** The review process set forth in this Article 6 shall apply to all Wind Energy Facilities that do not fall within the statutory definition of Major Electrical Facilities of a public utility or a power authority, as that term is defined by Section 29-20-108, C.R.S.

If any portion of a Wind Energy Facility is within the statutory definition of a Major Electrical Facility of a public utility or a power authority, that portion shall be subject to a separate application, and shall be subject to the other requirements of Kit Carson Land Use Code and to Colorado statutory and regulatory requirements.

**Section 6-102 Definitions.** In addition to the definitions set forth under Article 11 of the Kit Carson County Land Use Code, the following definitions apply to terms used in the regulatory provisions of this Article 6.

**A. Conditional Use Development Permit for a Wind Energy Facility (Conditional Use Development Permit).** A permit issued by the County required for the siting, construction and operation of a Wind Energy Facility.

**B. Hub Height.** The distance measured from ground level to the center of the turbine hub.

**C. Owner.** The entity or entities with an equity interest in the Wind Energy Facility, including their respective successors and assignees. Owner does not refer to the property owner from whom land is leased to locate a Wind Energy Facility, unless the property owner has an equity interest in the Wind Energy Facility.

**D. MET Tower.** A meteorological tower used for the measurement of wind speed.

**E. Structure.** A structure refers to above ground components of the Wind Energy Facility, including wind turbines and buildings accessory to the Wind Energy Facility. A structure does not include transmission line poles or substations.

**F. System Height.** The combined height of the tower, the wind turbine and any blade extended at its highest point, measured from ground level.

**G. Wind Energy Facility.** An electricity generating facility consisting of one or more Wind Turbines under common ownership or operating control, and includes substations, MET Towers, cables/wires and other buildings accessory to such facility, whose main purpose is to supply electricity to off-site customer(s).

**H. Wind Turbine.** A wind energy conversion system that converts wind energy into electricity through the use of a wind turbine generator. The term "Wind Turbine" shall include the turbine, blade, tower, base and pad transformer.

**Section 6-103 Conditional Use Development Permit Application Requirements for a Wind Energy Facility.**

**A. Application Materials.** The Applicant shall submit an application for a Conditional Use Development Permit to the County that contains the minimum general information and materials required under Article 3, Section 3-101(E) of the Kit Carson County Land Use Code, and shall pay the requisite fees as required by Section 3-102.

Wind Energy Facilities shall require a Conditional Use Development Permit, issued prior to construction by the Board of County Commissioners upon the recommendations of the County Planning Commission. Prior to issuing a Conditional Use Development Permit, and before construction has commenced, the Board of County Commissioners shall, upon the recommendation of the Administrator and the Planning Commission, confirm in writing that all outstanding pre-construction documentation set forth in these regulations has been provided, per the schedule set forth in Section 6-104(C).

The following materials shall be required in all applications for a Conditional Use Development Permit for a Wind Energy Facility:

1. **Location Map.** A location map, to scale, that illustrates the following:
  - a. Location of the proposed Wind Energy Facility in the County, and a description of the current land use.
  - b. All property within the site and within 500 feet of the exterior boundary of the site of the proposed Wind Energy Facility.
  - c. The location and description of the current land use, including agricultural use, dwelling units, microwave communication links and airports.
2. **Conceptual Site Plan.** The Conceptual Site Plan shall be prepared in accordance with the Kit Carson County Land Use Code, including Section 3-101(E)(6) and is to be submitted as part of the Conditional Use Development Permit Application. The Conceptual Site Plan, prepared at a scale acceptable to the Administrator shall include the following elements:
  - a. Date of preparation, revision box, written scale, graphic scale and north arrow (designated as true north).
  - b. Clearly identified boundary lines and dimensions of the site where the proposed Wind Energy Facility will be located.

- c. Project area boundary and approximate size of the site where the proposed Wind Energy Facility will be located, in acres or square feet.
  - d. Location of all existing structures and facilities on the site where the proposed Wind Energy facility will be located, and on properties within 500 feet of the exterior boundary of the site.
  - e. Existing and proposed roads, railroad tracks, utility lines and facilities, irrigation ditches and equipment, and easements and rights-of-way within the site and within 500 feet of the exterior boundary of the site where the proposed Wind Energy Facility will be located, shown by location and dimension.
    - (i) Application shall provide a description of the ownership and a description of the easements and rights-of-way identified on or within 500 feet of the exterior boundary of the site.
  - f. Existing and proposed features and exclusion zones including applicable setbacks that are relevant to the review of the application, including contours, natural and artificial drainage ways, wetland areas, ditches, hydrological features (with flooding limits based on information available through the County), aquatic habitat, geologic features and hazards, and soil types, vegetative cover, dams, reservoirs, excavations, and mines.
  - g. Project description and proposed phasing of development.
    - (i) An application shall provide a description of the project and each phase of development, including the approximate number of Wind Turbines, and the accessory structures, power output (in MW), and infrastructure and interconnection requirements for each phase.
3. **Access.** Description of potential access route(s), including road surface material, proposed Measures for dust control, and proposed road maintenance schedule or program.
4. **Utility Interconnection or Crossing.**
- a. The Applicant will provide certification of intent to enter into an interconnection agreement and crossing agreement(s) to/with applicable utilities.
5. **Impact Analysis.** The Applicant will provide a description of the impacts that the proposed Wind Energy Facility may cause, based upon the

approval standards in Section 6-105 of this Article. This analysis shall include: a description of baseline conditions and the impacts that the proposed use may cause, as described in Section 6-105; a description of how the Applicant will mitigate impacts; and documentation that applicable standards will be satisfied. The Applicant shall also assess the potential effects of the proposed project on County services and capital facilities. In the event that impacts to County services or County capital facilities from construction and operation of a Wind Energy Facility are identified, the Applicant shall develop a plan to maintain County services and County capital facilities. If impacts cannot be fully mitigated, the Applicant may be required to pay the County a mutually agreed upon impact fee to allow the County to maintain existing County Services and Capital facilities.

6. **Decommissioning Plan.** The Applicant shall provide a Decommissioning Plan in accordance with section 6-105(B)(13) of this Article.
7. **Notice to Landowners/Mineral Right Holders.** Applicant shall notify the individual property owners and mineral rights holders within the project site and within 500 feet of the exterior boundary of the project site of the proposed project in accordance with County and State notification requirements.
8. **Additional Information and Waivers.** The County may request additional information that may be required to evaluate the proposed Wind Energy Facility. The County may waive or alter any of these minimum requirements if they are determined to be inappropriate or unnecessary to determining if the application satisfied applicable standards.

**B. Pre-Construction Materials.** The Applicant will be required to submit the following materials prior to commencement of construction and prior to the issuance of a Conditional Use Development Permit:

1. **Detailed Site Plan.** The Detailed Site Plan shall be prepared in accordance with the Kit Carson County Land Use Code, including Section 3-101(E)(6) and is to be submitted prior to construction. The Detailed Site Plan, prepared at a scale acceptable to the Administrator and certified by a professional surveyor, shall also include the following elements:
  - a. Date of preparation, revision box, written scale, graphic scale, and north arrow (designated as true north).
  - b. Location of all proposed structures and facilities, including the location and dimensions for *each* Wind Turbine in the proposed Wind Energy Facility, including:
    - (i) Setbacks for each Wind Turbine from property lines.

- (ii) Setbacks of all accessory buildings and structures.
  - c. Description of utility interconnection and crossing.
  - d. The Detailed Site Plan shall be accompanied by a schematic drawing showing the Wind Turbine and range of dimensions, including system height, rotor diameter, hub height, and rotor ground clearance.
2. **Septic System.** If the proposed Wind Energy Facility includes uses that must be served by a septic system, the Applicant shall comply with applicable Kit Carson County requirements. The Applicant shall provide a statement certifying that the septic system for the Wind Energy Facility will comply with applicable County, State, and Federal requirements.
3. **Water Supply System.** If the proposed Wind Energy Facility includes uses that must be served by water, the Pre-Construction Materials shall describe the water source and sufficiency of the water supply for the Wind Energy Facility, including decreed or conditional water rights. If a well is required, the Applicant shall obtain the necessary permit from the State of Colorado Office of the State Engineer.
4. **Water and/or Wind Erosion Control Plan.** As part of the Pre-Construction Materials, the Applicant will provide a preliminary plan showing existing and proposed grading for the Wind Energy Facility site. The Drainage and Erosion Control Plan shall be accompanied by a description of practices that will be utilized to prevent erosion and run-off during construction. If there are any modifications to this plan, the Applicant will provide a final Drainage and Erosion Control Plan prior to commencement of construction.
5. **Analysis for Erosion, Sedimentation and Flooding.** If any Wind Turbine or accessory facility included in the proposed Wind Energy Facility is located within the 100-year floodplain, the Pre-Construction Materials shall include a preliminary report that addresses the potential for wind erosion, water erosion, sedimentation and flooding. If there are any modifications to the locations of Wind Turbines or ancillary facilities, the Applicant will provide a final report prior to commencement of construction.
6. **Geotechnical Report.** The Applicant shall provide written certification that prior to construction, a professional engineer licensed in the State of Colorado will complete a Geotechnical Study that includes the following:

- a. Soils engineering and engineering geologic characteristics of the site based upon on-site sampling and testing.
  - b. Foundation and tower systems design criteria for all proposed structures.
  - c. Slope stability analysis.
  - d. Grading criteria for ground preparation, cuts and fills, and soil compaction.
7. **Road Agreement.** If any County Roads will be used during construction of a Wind Energy Facility for the purpose of transporting parts, materials and/or equipment, the Applicant shall enter into a Roads Agreement with the County. The Roads Agreement shall comply with Section 6-105(A)(5) of this Article and shall also include the following:
- a. A map showing which County Roads will be used during construction.
  - b. A pre-construction baseline survey of County Roads to be used during construction to document their pre-construction condition.
  - c. A mitigation plan to address traffic congestion and potential impacts to County Roads to be used during construction.
  - d. A legally binding agreement between the Applicant and the County that requires the Applicant to return any County Roads to their pre-construction baseline condition.
8. **Notification Requirements.**
- a. **Notice to FAA and Approval.** The Application will provide written certification that the Federal Aviation Administration (FAA) forms have been submitted to the FAA in accordance with the FAA requirements, and the FAA has issued approval for the location of the Wind Energy Facility.
  - b. **Notice to Operator of Communication Link.** If any Wind Turbine included within the proposed Wind Energy Facility is located within two (2) miles of any wireless communications link, the Applicant shall certify that they will notify the operator of the communication link in writing about the proposed project at least thirty (30) days prior to commencement of construction.

9. **Liability Insurance.** The Applicant shall provide evidence of liability insurance to cover loss or damage to persons and structures during construction and operation of the Wind Energy Facility.
10. **Maintenance of Wind Turbines.** The Applicant shall provide a statement certifying that the Wind Turbines will be maintained and operated in accordance with manufacturer specifications, Owner Environmental Health and Safety Plans, and applicable Occupational Health and Safety Administration (OSHA) requirements to ensure the safety of site personnel and the public.
11. **Additional Information and Waivers.** The County may request additional information that may be required to evaluate the proposed Wind Energy Facility. The County may waive or alter any of these minimum requirements if they are determined to be inappropriate or unnecessary to determining if the application satisfies applicable standards.

**Section 6-104 Conditional Use Development Permit Review and Approval Processes for a Wind Energy Facility.**

**A. Pre-Application Meeting.** Applicant shall schedule a Pre-application Meeting with the Administrator to discuss the proposed Wind Energy Facility.

1. The Pre-application meeting is intended to provide information pertinent to the site and the proposal, to provide an understanding of the applicable review procedures and the standards to be met for approval of the Conditional Use Development Permit application, and to explain the application materials required for submittal.

**B. Completeness Determination and Review of Conditional Use Development Permit Application Materials.** Within thirty (30) business days following receipt of the Conditional Use Development Permit application, the Administrator shall determine whether the application is complete. An application shall be deemed complete if it includes all information identified as being required in the Pre-Application meeting and in Section 6-103(A) of this Article.

1. **Application in Not Complete.** If the application is not complete, the Administrator shall notify the Applicant in writing of any materials that must be submitted for the application to be deemed complete. The time to review the application shall not begin to run until the application has been determined to be complete.
2. **Completeness Date.** Once the application has been determined to be complete, the Administrator shall stamp the application with the date that it was determined to be complete, and all time frames pertaining to review of the application shall be based on the completeness date.

**C. Review of Conditional Use Development Permit Application Materials.**

1. **Review by Administrator.** Within thirty (30) calendar days from the date of the completeness determination, the Administrator shall review the conditional Use Development Permit application to determine its conformance with the requirements of the Land Use Code, including Article 6 Wind Energy Facilities. The Administrator may request additional professional analysis in accordance with Article 3, Section 3-101(H) of the Land Use Code.
  - a. The period for comment by the review agencies shall be thirty (30) calendar days from the date the application is deemed complete by the Administrator, unless an extension has been requested by the referral agency. The Administrator may grant an extension if it is determined that good cause for the delay has been shown. An extension shall not exceed fifteen (15) days. The failure of any agency to respond within the 30-day review period or within the period of extension shall be deemed an approval of such plan by the referral agency.
  - b. The application fee shall be used for direct payment of review fees charged by engineers, consultants and referral agencies. If the costs incurred by the County and outside review agencies and technical consultants exceed the amount of the application fee, any reasonable and documented additional costs will be discussed with the Applicant prior to the County retaining these additional services.
  - c. The Applicant shall have the right to review the comments and recommendations received from the review agencies. The Applicant may submit additional information and make changes in the application to respond to the comments of the review agencies, under the following conditions:
    - (i) If the changes are substantial or significantly alter the nature, character or extent of the application, the Administrator may refer the information and revised application back to some or all review agencies for further comment.
    - (ii) The Administrator may extend the period for comment as appropriate for agencies to review any additional information or revised application materials. Agencies would be allowed an additional thirty (30) days to comment on any new information or revised application materials. The County may grant an extension if it is determined that good cause for delay has been shown. An extension shall not exceed fifteen

(15) days. The failure of any agency to respond within the 30-day review period or within the period of extension shall be deemed an approval of such plan by the referral agency.

- (iii) The period of time for review and final action on an application by the Board is typically between sixty (60) to ninety (90) days following receipt of a complete application. In the event that an extension is required by the Administrator, the period of time for review shall not exceed four (4) months from the date the application was determined to be complete.

- 2. **Evaluation of Application by Administrator.** The Administrator shall review the application for compliance with the relevant approval standards in Section 6-105 and prepare a Administrator report that recommends approval, approval with conditions or denial of the application. The report shall be forwarded to the Applicant and to the Planning Commission no less than fourteen (14) calendar days prior to the Planning Commission public hearing on the application.

**D. Public Hearing and Recommendation by Planning Commission.** The public hearing process, including public notice, hearing procedure, action by Planning Commission, final decision, and Board of County Commissioner review and approval shall be governed by the requirements of Sections 3-101(I) and 3-101(J) of the Land Use Code. A public hearing shall be required for each step of the Planning Commission process. A separate public hearing will be required before the Planning Commission to review and approve the Conceptual Site Plan, and another hearing to review and approve the Pre-Construction Materials. Public notice to land owners shall be required for both hearings.

**E. Approval to Proceed with Construction.** Within thirty (30) business days from the date of receiving Pre-Construction Materials, the Administrator shall review the Pre-Construction Materials to confirm that all conditions of a Conditional Use Development Permit will be met and will prepare a Administrator report that recommends approval, or approval with conditions, or denial of approval of a Conditional Use Development Permit. The Applicant will then be required to schedule another public hearing, with public notice as provided by the notice requirements of this Land Use Code, and the matter will be reviewed again by the Planning Commission. The action of the Planning Commission will then be reviewed by the Board of the County Commissioners, as stated in the provisions of this Land Use Code.

**F. Life of Permits.** The Conditional Use Development Permit for a Wind Energy Facility shall be valid for the life of the Wind Energy Facility, provided there are no amendments or additions to the Wind Energy Facility, and provided that the construction is commenced within three (3) years. Each new construction project which adds new wind turbines or additional structures shall require a new Conditional Use

Development Permit. If new turbines or new towers are installed that increase the acreage or megawatts from the original Detailed Site Plan, a new Conditional Use Development Permit will be required prior to installation, and the fees stated in Section 6-103(A) will be required for such increases. Any other amendments will be charged a fee of \$500.00 per application.

**G. Monitoring.** Upon reasonable notice, the Board or its official representative may coordinate with the Owner to enter the property on which a Wind Energy Facility has been permitted to confirm compliance with the terms of the permit approval and applicable County regulations. All County representatives who enter the premises agree to comply with all of the Owner's safety requirements which may include, but are not limited to, the use of safety glasses, hard hats, and safety vests, which shall be provided by the Owner.

## **Section 6-105 Standards Applicable to Wind Energy Facility.**

### **A. General Standards.**

- 1. Public Health, Safety, and Welfare.** The Proposed Wind Energy Facility shall not be detrimental to the health, safety or general welfare of the community. The Wind Energy Facility, including all Wind Turbines, shall be maintained and operated in accordance with manufacturer specifications, Owner Environmental Health and Safety Plans, and applicable Occupational Health and Safety Administration (OSHA) requirement to ensure the safety of site personnel and the public.
- 2. Compliance with Comprehensive Plan and Intergovernmental Agreements.** The proposed Wind Energy facility is consistent with relevant provisions of the Kit Carson County Comprehensive Plan and any intergovernmental agreement between the County and a municipality that applies to the area where the use will occur.
- 3. Compliance with Other Regulations.** The Wind Energy Facility shall comply with all applicable rules and regulatory requirements of the State and Federal agencies, and of Kit Carson County.
- 4. Water and Waste Water Service.**
  - a.** The water and septic system shall be adequate to serve the Wind Energy Facility.
  - b.** The water and septic system shall comply with County, State, and Federal standards.
- 5. Roadways and Access.**

- a. Legal access to public right-of-way to and from the Wind Energy Facility shall be safe and in conformance with access standards set forth in the County Road and Bridge Standards.
  - b. The Wind Energy Facility shall make reasonable efforts to not cause traffic congestion during operations and unsafe traffic conditions during the construction phase or operations.
  - c. Adequate turning radii shall be installed at all entrances to accommodate large truck movement.
  - d. Off-street parking and loading zones shall be surfaced with gravel or the equivalent and shall be graded to prevent drainage problems.
  - e. Staging activities and parking of equipment and vehicles shall occur on-site and on private rights-of-way, and shall be prohibited on maintained County Roads.
  - f. The use of any County Roads during construction shall be in accordance with and in compliance of Federal, State, County and local regulations governing such activities. The Applicant will prepare a Roads Agreement that includes a mitigation plan address potential impacts to County Roads to be used during construction. As part of the Roads Agreement, the Applicant at their expense will be required to return any County Roads that are impacted by construction to their pre-construction baseline condition.
6. **Service Delivery System Capacity.** The Wind Energy Facility shall not have significant adverse effect on the capability of local government to provide services or exceed the capacity of service delivery systems.
7. **Impact Fees.** In addition to the Roads Agreement as required by Section 6-103(B)(7), the Applicant shall also complete a study to assess the potential effects of the proposed project on County services and Capital facilities. In the event that impacts to County services or County capital facilities from construction and operation of a Wind Energy Facility are identified, the Applicant shall develop a plan to maintain County services and County capital facilities. If impacts cannot be fully mitigated, the Applicant may be required to pay the County a mutually agreed upon impact fee to allow the County to maintain existing County Services and Capital facilities. The Owner shall provide all necessary training to allow the County to adequately handle the increased services provided by local fire departments and ambulance departments caused by the construction and operation of the Wind Energy Facility.

**8. Resource and Environmental Protection Standards.**

- a. Water Quality Standards.** The Wind Energy Facility shall not cause significant degradation of the quality of surface ground water resources and shall comply with applicable County, State, and Federal water protection laws.
- b. Air Quality.** The proposed Wind Energy Facility shall comply with applicable County, State and Federal air quality laws.
- c. Glare, Dust or Noise.** Construction and operation of the Wind Energy Facility shall not significantly increase existing glare, dust or noise at surrounding properties.

  - (i) To minimize the potential for glare, Wind Turbines shall be painted a neutral color such as matte white or matte gray.
  - (ii) The proposed Wind Energy Facility shall comply with the statutory provisions for maximum permissible noise levels for industrial zoning in Section 25-12-103, C.R.S.
  - (iii) Fugitive dust and particulate emissions shall be controlled on the site.
  - (iv) Waste materials shall be handled, stored, and disposed of in a manner that controls fugitive dust, fugitive particulate conditions, blowing debris and other potential nuisance conditions.
  - (v) The Wind Energy Facility shall comply with FAA minimum lighting requirements and be at the lowest intensity allowed. Any array of flashing or pulsed obstruction lighting shall be synchronized to flash simultaneously. No accessory lighting is permitted, except for lighting that is necessary for safety and security purposes.
- d. Erosion and Sedimentation Control.** Erosion and sedimentation control measures that ensure that disturbed areas and soil stockpiles are stabilized during construction shall be implemented. Disturbed areas shall be revegetated in accordance with landowner agreements.
- e. Drainage/Storm-Water Run-Off.** Run-off shall be managed in accordance with applicable County, State and Federal regulations.

(i) If applicable, the Applicant shall obtain a Construction Stormwater Discharge Permit from the Colorado Department of Public Health and the Environment, Water Quality Control Division.

f. **Protection of Agricultural Lands.** The Wind Energy Facility shall not have a significant adverse impact on agricultural lands and agricultural operations above what is allowed for under landowner lease agreements.

**B. Site and Facility Development Standards.**

**1. General Site Plan Standards.**

- a. The site is adequate in size and shape to accommodate the Wind Energy Facility and all appurtenant facilities.
- b. To the extent practicable, the site shall be developed in a manner that preserves the natural features of the site, avoids areas of environmental sensitivity, and minimizes adverse visual impacts.

**2. Height Restrictions.** The height and location of any structure within the Wind Energy Facility shall be subject to FAA approval.

**3. Setbacks.** Unless otherwise required by federal or state regulations applicable to the Wind Energy Facility, the following minimum setbacks shall apply.

- a. **Measurement.** Front, rear and side setbacks shall be measured as the distance between the nearest lot line and the center point of a structure, along a line at right angles to the lot line.
- b. **Safety Setbacks.** The following setbacks shall apply to each Wind Turbine comprising the Wind Energy Facility.

	<b>MINIMUM SETBACK</b>
Setback from above-ground public electric power lines or communication lines	1.1 times system height
Setback from existing public road or highway or railroad	1.1 times system height
Setback from public road or highway with ADT of 7,000 or more	1.1 times system height
Setback from inhabited structures including: residence, school, hospital, church or public library.	2 times system height

Setback from all other property lines, unless appropriate easements are secured from adjacent property owners or other acceptable mitigation is approved by the Board	1.1 times system height
1. Measured from the outer boundary of the public utility right-of-way or easement [or from existing power line or telephone line] 2. Measured from the outer boundary of the public road/highway right-of-way or railroad right-of-way 3. Average daily trips, based on traffic field measurements [determined by CDOT or County]	

- c. **Setback from the Section Lines on a Case-by-Case Basis.** Kit Carson County has established right-of-ways (ROWS) that are located 45 feet on each side of section lines. The purpose of this ROW is to allow for maintenance of existing county roads and construction of new county roads. Placement of wind turbines, including their foundations, within this ROW will be reviewed by Kit Carson County on a case by case basis to confirm that they will not conflict with Kit Carson County's existing road plans and future road plans. In the event of a potential conflict, wind turbines may need to be relocated outside of this established ROW to allow for future construction of County Roads. In the event that there is no conflict, Kit Carson County may issue a variance that will allow for placement of the wind turbine within the existing County ROW. It is the responsibility of the Applicant to apply for a variance in these situations, and to provide exact location of proposed placement of wind turbines and the foundations, and the distance from section lines. In the event a survey is required, the Applicant will be responsible for paying the costs of survey.
  
- d. **Scenic Resources Setback.** Wind Turbines comprising the Wind Energy Facility shall be setback a minimum ¼ mile from any highway, designated to be a scenic highway or roadway by the Kit Carson County Comprehensive Plan or by the state.
  - (i) A scenic resource protection setback requirement may be reduced to 1.1 times the total Wind Turbine height if the Board determines that the characteristics of the surrounding property eliminate or substantially reduce considerations of scenic value.
  
- e. **Notice and Record of Waiver or Reduction of Setback.**
  - (i) Any proposed setback waiver or reduction shall be included in all public notices regarding to the Conditional Use Development Permit application review.

- (ii) If the application is approved with a setback waiver or reduction, the approved setbacks shall be specified in the approval.

4. **Minimum Ground Clearance.** The blade tip of any Wind Turbine shall, at its lowest point, have ground clearance of no less than sixty (60) feet.

5. **Safety and Security.**

- a. Fencing, or other barriers acceptable to the County, shall be installed to prevent unauthorized access to the Wind Energy Facility substations.
- b. Reasonable attempts will be made to maximize the properties of wiring between Wind Turbines and the Wind Energy Facility substation that is located underground.
- c. Guy wires shall be distinctly marked.
- d. Any climbing apparatus that is not secured behind a lockable gate or door shall be a minimum of fifteen (15) feet from ground level.
- e. All access doors to Wind Turbine towers and electrical equipment shall be lockable.
- f. Signs warning of the electrical hazard and other hazards associated with the Wind Energy Facility shall be posted at the base of each Wind Turbine tower, electrical equipment, and at the entrance of the Wind Energy Facility.

6. **Fire Protection.** The Wind Energy Facility shall have adequate fire control and prevention measures.

7. **Underground Location of Electrical Collection System Wiring.** Unless geologic conditions or other technical engineering considerations prevent underground installation, electrical collection system wiring and powerlines for the Wind Energy Facility shall be installed underground except where the Wind Energy Facility collector system wiring is brought together from the project substation to the point of electrical interconnection. Overhead transmission lines are permissible from the project substation to the point of electrical interconnection.

All underground installations located within the public road easement or right-of-way shall comply with the applicable permit and design

requirements of Kit Carson County Road and Bridge, and should include the following elements:

- a. **Restoration.** Any disturbed portion of the right of way shall be restored as nearly as possible to the condition as existing immediately prior to installation.
- b. **Safety.** Safety measures shall be implemented in accordance with County, State and Federal requirements to protect the public.
- c. **Roadway Crossing.** If the installation crosses a roadway, it shall be located as perpendicular to the roadway as physically possible and installed in compliance with the requirements of Kit Carson County Road and Bridge.
- d. **As-Built Drawings.** As-built drawings shall be provided to Kit Carson County Road and Bridge once the installation has been completed.
- e. **Permit and Notice to Proceed.** Work shall not commence until the required permit(s) and notice to proceed with the installation(s) have been issued by Kit Carson County Road and Bridge.

**8. Interconnection and Electrical Distribution Facilities.**

- a. Transmission from the project substation to the point of electrical interconnection shall comply with the National Electrical Code.
- b. Interconnection shall conform to the requirements of the electric utility company, and applicable state and federal regulatory codes.

**9. Electronic Interference.** The applicant shall minimize or mitigate any interference with electromagnetic communications caused by the Wind Energy Facility, including radio, telephone or television signals.

**10. Certification of Equipment and Appurtenant Facilities.**

- a. All wind turbine towers and foundations systems (i.e. structural systems) shall be reviewed by a registered structural engineer, licensed in Colorado, to confirm their compliance with the applicable State, Federal and local regulations and to conform with good engineering practices.
- b. The electrical system shall be certified by a registered electrical engineer, licensed in Colorado, to be compliant with the applicable

State, Federal and local regulations, and to conform with good engineering practices.

11. **Signs.** Wind Turbines shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the Wind Energy Facility.
12. **Color and Finish.**
  - a. All Wind Turbines shall be painted a non-reflective, non-obtrusive white or gray color.
  - b. Design of accessory buildings and related structures shall, to the extent practicable, use materials, colors, textures, screening and landscaping that will blend the Wind Energy Facility to the natural setting and existing environment.
13. **Decommissioning Plan.** Prior to receiving siting approval under these Regulations, the County and the Applicant(s), Owner(s), and/or Operator(s) must formulate a Decommissioning Plan to ensure that the Wind Energy Facility is properly decommissioned. The details of the Decommissioning Plan may be based on existing landowner agreements, but shall include the following:
  - a. Provisions describing the triggering events for the decommissioning of the Wind Energy Facility or any portion thereof. Decommissioning shall be completed within eighteen (18) months of an owner filing a Notice of Termination of Operations with the County.
  - b. Provisions for the removal of structures, debris and cabling including those below the soil surface to depths agreed to in landowner agreements or down twenty-four (24) inches.
  - c. Provisions for the restoration of the soil and vegetation.
  - d. A description of the form of Financial Assurance for decommissioning. The Applicant is required to provide financial assurance in one of the following form(s): self bond, a federally insured certificate of deposit, government-backed securities, corporate guarantee, letter of credit, or cash ("Financial Assurance"). Financial Assurance is to begin the year fifteen (15), unless there is abandonment or decommissioning of the project prior to that time, and secured by the Owner(s) or Operator(s), for the purpose of adequately performing decommissioning, an amount equal to the decommissioning costs.

- e. An estimate of the decommissioning costs certified by a Professional Engineer to be updated every five (5) years, following year fifteen (15), unless there is abandonment or decommissioning or project prior to that time.
- f. Identification of and procedures to access Financial Assurances.
- g. A provision that the terms of the Decommissioning Plan shall be binding upon the Owner(s) or Operator(s) and any of their successors, assigns or heirs.
- h. If decommissioning does not proceed in accordance with the Decommissioning Plan, the County shall have the right, but not the requirement, to enter the property and cause the appropriate abandonment and decommissioning measures as determined by the approved Decommissioning Plan.
- i. A provision that the County shall have the right to review final decommissioning and reclamation to confirm it is consistent with the Decommissioning Plan.
- j. The Applicant may provide documentation to the County to demonstrate that Financial Assurances for decommissioning have been sufficiently addressed as part of the landowner agreements. Documentation of the selected form(s) of financial assurance to be secured in year fifteen (15) shall be filed with the Planning Commission as part of the permit application procedures and prior to the approval of Applicant(s) Conditional Use Development Permit. The Kit Carson Planning Commission may reject the proposed forms of assurance of financial responsibility if the evidence submitted by the Applicant does not adequately assure that funds will be secured as required by these rules. Applicant(s) shall be notified in writing within sixty (60) days of receipt of the evidence of financial assurance of the decision to accept or reject the proposed forms of financial assurance. If an application is approved, any bond or other form of financial assurance may be canceled by the surety only after ninety (90) days written notice to the Board of the County Commissioners, and upon receipt of the Board's written consent, which may be granted when the requirements of the bond or assurance have been filed.
- k. Financial Assurance Forfeiture. Bond or other financial assurance forfeiture proceedings shall occur only in the event that abandonment and decommissioning does not comply with the

Decommissioning Plan and a cure period of sixty (60) days has expired.

## DIVISION 1 GENERAL PROVISIONS

**Section 7-101 Applicability.** The regulatory provisions of this Article shall apply to all permitted land use, including divisions of land, that do not conform to the applicable use regulations of this Code as a result of either the adoption or amendment of this Code, or a final administrative or judicial decision precluding the County from enforcing this Code specific to a use on the basis of estoppel, laches, or waiver.

**Section 7-102 Continuation of Nonconforming Land Use.** A nonconforming land use may be continued and normal or routine maintenance shall be allowed in compliance with the regulatory provisions of this Article.

**A. Nonconforming Structure.** Unless otherwise prohibited by the provisions of this Article, a nonconforming structure may continue to be occupied.

**B. Nonconforming Use.** Unless otherwise prohibited by provisions of this Article, a nonconforming use may be continued and normal or routine maintenance of the structure containing a nonconforming use shall be allowed. Normal or routine maintenance shall include any maintenance or repair which does not impermissibly enlarge or alter the structure containing a nonconforming use, pursuant to Section 7-103, *Enlargement or Alteration of a Nonconforming Land Use*.

**Section 7-103 Enlargement or Alteration of a Nonconforming Land Use.**

**A. Enlargement or Alteration of Nonconforming Land Use Prohibited.** The right to continue a nonconforming land use terminates immediately when the nonconforming land use is enlarged, expanded, extended, or altered in any of the following ways, and the property owner does not successfully pursue any of the options for response to notice of termination of nonconforming land use pursuant to the provisions of Article 8, Enforcement, Violations and Penalties.

1. **Enlargement or Alteration of Nonconforming Structures.** Unless otherwise allowed by provisions of Section 7-103(B) *Permitted Alterations of Nonconforming Land Use*, the alteration, repair or enlargement of a nonconforming structure in any manner which would increase the degree of nonconformity with respect to the floor area, setback or height regulations of this Code.
2. **Addition of New Structure.** The addition of a new structure containing, or accessory to, the nonconforming land use.

3. **Enlargement or Alteration of Conforming Structure.** Unless otherwise allowed by provisions of Section 7-103(B), the enlargement or alteration of a conforming structure containing, or accessory to, a nonconforming land use, including an increase in floor area, an increase in height, or any other alteration or improvement in excess of normal or routine maintenance of the structure and which violates the requirements of this Code.
4. **Enlargement or Alteration of Land Area.** Enlargement or alteration in the land area occupied by the nonconforming land use, unless the basic nature of the use, at the time it became nonconforming, clearly indicated or contemplated such an increase or alteration.
5. **Enlargement or Alteration Creating a Hazard or Nuisance.** Any enlargement or alteration of the nonconforming land use which has the effect or threatened effect of creating a hazard or nuisance on or off the property, of adversely affecting the character of the neighborhood, or of intensifying the use of the land or its need for services.

**B. Permitted Alterations of Nonconforming Land Use.** The following shall not be considered prohibited enlargement or alteration of a nonconforming land use.

1. **Change in Ownership.** A change in ownership of the property upon which the nonconforming land use is located.
2. **Alteration Required for Public Health and Safety.** An alteration or expansion which the Administrator determines to be necessary to rectify a hazardous health or safety situation, or to comply with the public health or safety requirements of another governmental entity having lawful jurisdiction over the structure.
3. **Alteration Required by ADA.** An alteration or expansion necessary to comply with the Americans with Disabilities Act (ADA) requirements.
4. **Extension of Nonconforming Use Within the Structure.** An extension of the nonconforming use within the structure containing the use, provided that such extension is not accompanied by structural alteration identified in Section 7-103(A)(3), *Enlargement or Alteration of Conforming Structure*.
5. **Addition of Solar Energy Device.** The addition of a solar energy device to a nonconforming structure or a structure containing a nonconforming use.
6. **Routine Maintenance.** Any replacement or upgrading of outmoded or worn equipment or supplies provided such activity does not create a hazard or nuisance as identified in Section 7-103 (A)(5), *Enlargement or Alteration Creating a Hazard or Nuisance*.

**7. Structures Associated With Nonconforming Agricultural Use.**

Owners of legal building lots containing agricultural uses which have become nonconforming as a result of adoption or amendment of this Code may restore, modify and maintain existing conforming structures, and may construct new conforming structures, provided such structures are directly related to the agricultural use, and provided the nonconforming use is not enlarged or altered in any other way which violates the Code.

**Section 7-104 Change of Land Use.** A nonconforming land use shall only be changed to a land use which is conforming in the zoning district in which the use is located. Any change of a nonconforming land use to another use shall immediately terminate the right to continue the nonconforming land use, and thereafter the property shall only be used in conformity with the use provisions of its zoning district.

**Section 7-105 Damage or Destruction of Nonconforming Structure or Structure Containing a Nonconforming Use.**

**A. Structure Deemed Destroyed.** A nonconforming structure or structure containing a nonconforming use shall be deemed destroyed when either greater than seventy-five (75) percent of its floor area, or greater than seventy-five (75) percent of its actual value (as determined by the County Assessor) is destroyed.

**B. Structure Intentionally Damaged or Destroyed.** The right to continue a nonconforming land use terminates immediately when the structure containing that land use is damaged or destroyed by an intentional act of the property owner or structure owner or their agent.

**C. Permitted Reconstruction or Restoration of Structure or Use.** When a nonconforming structure or structure containing a nonconforming use is damaged or destroyed by causes outside the control of the owner or their agent, the structure may be restored or reconstructed and the nonconforming use may be reestablished.

- 1. Permit Review Required.** Restoration or reconstruction allowed by the provisions of this Article shall be subject to the permit requirements of this Code and the appropriate permit review process.
- 2. Commencement and Completion of Restoration or Reconstruction.** Restoration or reconstruction of the structure must be commenced within six (6) months after the date on which the structure was damaged or destroyed and completed within eighteen (18) months after the date on which the restoration or reconstruction was commenced.
  - a.** Upon approval by the Board of County Commissioners, these times may be extended for a reasonable period upon a showing of

extraordinary circumstances by the property owner or the owner's agent.

**Section 7-106 Abandonment of a Nonconforming Land Use.** The right to continue a nonconforming land use shall terminate if the land use is determined to be abandoned.

**A. Determination of Abandonment.**

1. A nonconforming land use shall be determined abandoned if the use is discontinued for an uninterrupted period of six (6) months or more, as a result of causes within the control of the property owner or their agent.
2. A nonconforming land use may be determined abandoned if the use is discontinued for an uninterrupted period of less than six (6) months and the property owner expressly states an intent to abandon the land use, or engages in action which unambiguously expresses an intent to abandon.
3. A seasonal nonconforming land use shall be determined abandoned if the use is discontinued for an entire single season based upon the history and nature of the use.
4. A seasonal nonconforming land use may be determined abandoned if that use is discontinued during the season and the property owner expressly states an intent to abandon the land use, or engages in action which unambiguously expresses an intent to abandon.

## ARTICLE 8

## ENFORCEMENT, VIOLATIONS and PENALTIES

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### DIVISION 1 GENERAL PROVISIONS

**Section 8-101 Enforcement Authority.** Provisions of these Regulations shall be enforced by the Board of County Commissioners and the County Attorney through their authority granted by Colorado law.

**A. Subdivision.** The Subdivision and Subdivision Exemption regulations of this Code, set forth in Article 5, *Division of Land*, shall be enforced in accordance with remedies specified under 30-28-110, C.R.S. and 30-28-137, C.R.S.

**B. Other.** All other provisions shall be enforced as a violation of these Regulations in accordance with 30-28-124, C.R.S. and 30-28-124.5, C.R.S.

**Section 8-102 Unlawful to Violate These Land Use Regulations.** It shall be unlawful to develop or use any building, structure, or land in unincorporated Kit Carson County in violation of this Land Use Code.

### **Section 8-103 Remedies.**

**A. Withholding Land Use Change Permits.** The County may withdraw or deny land use change permits, including plat approvals, and any other applicable permits issued under this Code, on any land for which a notice of violation has been issued and the violation has not been corrected in a timely manner. The County may require correction of the violation as a condition of any future approvals.

**B. Cease and Desist Orders.** After notice of a violation and an opportunity to correct the violation, the County may halt work on any land where there is a violation of a provision of this Code or of a permit issued hereunder, through issuance of a cease and desist order. All work shall immediately halt upon issuance of such order. If work continues the unlawful erection, construction, reconstruction, alteration, maintenance or use shall be in violation of this Code.

**C. Injunction.** If any building, structure or land is or is proposed to be erected, constructed, reconstructed, altered, maintained or used in violation of the provisions of this Code, the Board or the County Attorney, in addition to other remedies provided by law, may institute an injunction, mandamus, abatement or other appropriate action or proceeding to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alteration, maintenance or use.

**D. Specific Performance.** The County may seek specific performance of the terms or conditions of any agreement or permit issued under this Code.

**E. Judicial Action.** At the request of the Board of County Commissioners, the County Attorney shall be empowered to bring either a civil or a criminal (or both) action against the owner of any premises or property on which a violation of this Code is alleged and, following investigation, has been confirmed or is reasonably believed to exist.

1. **Civil Remedy.** Civil remedies against violations of this code may include injunction, mandamus, abatement or any other appropriate action or proceeding to prevent, enjoin, abate, or remove the violation. Fines assessed pursuant to these enforcement provisions may be recovered in that same civil action wherein such injunction, mandamus and/or abatement is sought, or separate and district proceedings may be instituted seeking varying forms of relief, as may be allowed by law.
2. **Criminal Remedy.** Criminal violations of this Code shall be punished by a fine in an amount not to exceed one hundred dollars (\$100.00) for each violation or by imprisonment in the County jail for not more than ten (10) days, or by both a fine and imprisonment, and payment of all costs and expenses involved in prosecuting the offense, or by such other remedy as may be specified by law. Each day during which such illegal erection, construction, reconstruction, alteration, maintenance, or use continues shall be deemed a separate offense.

**F. Cumulative Remedies.** All remedies provided for in this section are cumulative, are not exclusive, and shall be in addition to any other remedies provided by law. To the extent that Colorado law may limit the availability of a particular remedy for a particular violation or a part of a violation, such remedy shall remain available for other violations of other parts of the same violation, and all other remedies shall remain available for the same violations or part of a violation.

## **DIVISION 2      ENFORCEMENT PROCESS**

**Section 8-201      Complaint and Verification of Violation.** Upon complaint made or filed by a member of the public or by a County official or employee, the Administrator shall verify the complaint as a violation of this Code.

**Section 8-202      Authority to Enter and Inspect.**

**A. Director Authorized to Inspect.** The Administrator is empowered to inspect and examine any building, other structure, or parcel or other area of land where there is reasonable cause to believe that a use exists or construction, reconstruction, alteration, or maintenance is being performed or has been performed in violation of this Land Use Code.

**B. Consent to Enter or Administrative Entry and Seizure Warrant Not Required.** Consent to enter or an administrative entry and seizure warrant shall not be required in the following circumstances.

1. To conduct inspections during regular county business hours.
2. To conduct inspections within the scope of another official document.
3. To make observations of the premises in plain view from public property or from portions of the premises which are open or accessible to the public, or in which the owner or occupant otherwise lacks a reasonable expectation of privacy.
4. In emergency situations in which the Administrator has reason to believe that the public health or safety is in imminent danger and could be jeopardized by delay.

**C. Administrative Entry and Seizure Warrant.**

1. **Requirements to Issue Warrant.** The following documents shall be required for the court to issue an administrative entry and seizure warrant.
  - a. The applicable regulatory provisions of this Code.
  - b. An affidavit stating the factual basis for the warrant.
  - c. Evidence that the property owner has received notice of the violation and has failed to abate the violation within the prescribed time.
  - d. A general description of the location of the subject property.
  - e. A general description of the violation.
  - f. The proposed method and extent of abatement by the County, including proposed disposal or temporary impoundment of property.

**Section 8-203 Notice of Violation and Response.** If a violation exists, the County shall send written notice of a violation of the Land Use Code to the property owner of record, as identified on the County tax records.

**A. Notice Requirements.**

1. **Service by Mail.** The notice shall be sent by certified mail, return receipt requested, to both the address in the tax records and the property address, if different.

2. **Content of Notice.** The notice of violation shall contain the following information.
  - a. A list and description of all violations with references to the section or sections of the Code violated.
  - b. An order requiring correction of the violation(s).
  - c. The date by which compliance shall be attained.
  - d. The appeal process, if applicable, for the violation(s).

**B. Response.** Unless otherwise provided by these Regulations, a period of thirty (30) calendar days after the date of notice shall be allowed for response to a notice of violation.

1. The alleged violator shall respond by providing evidence satisfactory to the Administrator to show that the determination is in error; or
2. The alleged violator shall restore the site, structure or use of the property to compliance. An inspection by the County shall be required to confirm compliance; or
3. The alleged violator shall obtain approval from the County for an extension of time to attain compliance, showing good cause for extension, with such extension limited to sixty (60) days unless a longer period is approved due to extenuating circumstances ending with an inspection of the property by the County to confirm compliance.

#### **Section 8-204 Abatement by the County.**

**A. Authorization for Abatement by County.** If the alleged violator fails to comply with the County's requirements for abatement of the violation, the Administrator may request that the Board, at a Board meeting, authorize the County to arrange for abatement of the violation.

1. **Notice of Meeting.** At least fourteen (14) calendar days prior to the date of the meeting, the Administrator shall provide notice of the meeting to the alleged violator by certified mail, return receipt requested to both the address in the tax records and the property address, if different.

**B. Execution of Warrant and Abatement of Violation.** Upon authorization by the Board of County Commissioners for abatement by the County, the Administrator shall seek an administrative entry and seizure warrant from the County Court or District Court having jurisdiction over the subject property.

1. Within ten (10) calendar days following the date of issuance of an administrative warrant the County shall abate the violation in accordance with the direction of the court. A copy of the issued warrant shall be provided to the property owner. Proof of the execution of the warrant, including a written inventory of any property impounded by the County, shall be submitted to the court.
2. The proposed method of abatement by the County may be accomplished through the use of County staff or by contract with a private party.

**C. Cost of Abatement Billed to Property Owner.** A bill for the reasonable costs of abatement plus an inspection fee of five (5) percent of that cost shall be mailed to the property owner of record, at both the address in the tax records and the property address, if different. Payment of the bill shall be due within sixty (60) days of the date of the bill.

**D. Collection of Unpaid Bill for Cost of Abatement by County.** If the bill is unpaid after sixty (60) calendar days, the Administrator through the County Clerk shall certify the bill to the County Treasurer, who shall collect the assessment together with a ten (10) percent penalty for the cost of collection, in the same manner as other taxes are collected.

#### **Section 8-205 Enforcement of Subdivision Regulations.**

##### **A. Requirement for County Subdivision Approval.**

1. **Approval in Compliance with Code Required for Recording.** No plans, plats, plots and replats of land laid out in subdivision or building lots or of the streets, highways or alleys, or other portions thereof, intended to be dedicated to a public use or the use of purchasers or owners of lots fronting thereon or adjacent thereto, shall be recorded in any public office unless first approved in compliance with this Code.
2. **Criminal Remedy, Transfer or Sale Prior to Final Plat Approval and Recording.** Any subdivider or agent of a subdivider who transfers or sells land before the final plat has been approved pursuant to this Code and recorded or filed in the Office of the County Clerk and Recorder shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than One Thousand Dollars (\$1000.00) nor less than Five Hundred Dollars (\$500.00) for each parcel or interest in subdivided land which is sold or offered for sale. All fines collected shall be credited to the General Fund of the County. (Section 30-28-110(4)(a), C.R.S.)
3. **Action to Enjoin.** The Board shall have the power to bring an action to enjoin any subdivider from selling proposed subdivided land before the

final plat has been approved by the Board and filed for recording in the Office of the County Clerk and Recorder. (Section 30-28-110(4)(b), C.R.S.)

4. **Permits Withheld.** In addition to any other enforcement action specified in this Code, the Director is authorized to withhold or demand withholding the issuance of any permits under this Code sought or requested for property which is determined to have been divided without the required County approval. (Section 30-28-110(4)(a), C.R.S.)
5. **Conformance with Code Required.** Properties that were divided in violation of the County's land use regulations in effect at the time of such division shall be further subdivided only if the proposal includes provisions which bring the entire original parcel, including the area previously divided in violation of County regulations, into compliance with the provisions of this Code.

**B. Enforcement of Subdivision Process and Platting Requirements.**

1. **Authority to Compel Enforcement.** The Board or the purchaser of any lot or other subdivided land subject to a plat restriction which is the security portion of an Improvements Agreement shall have the authority to bring an action in district court to compel enforcement of the Improvements Agreement on the sale, conveyance, or transfer of any such subdivided land, or enforcement of other applicable provisions for subdivision of land under Colorado law. Such authority shall include the right to compel rescission of sale, conveyance, or transfer of title of any lot or other subdivided land contrary to the restrictions set forth on the plat or in any separate recorded instrument. Any such action shall be commenced prior to issuance of a building permit by the County or otherwise prior to commencement of construction on any such lot or other subdivided land. (Section 30-28-137(3), C.R.S.)
2. **Authority to Bring Action for Injunctive Relief.** In addition to any other remedy provided by Colorado law, the Board or the purchaser of any lot or other subdivided land shall have the authority to bring an action for injunctive relief to enforce any plat restriction (including all obligations contained in documents required to be executed and recorded as part of the Final Plat approval and all commitments of record of the subdivider related to the County's approval of the Final Plat), plat note, plat map, or provision of a subdivision improvements agreement, and for damages arising out of failure to adhere to any such plat restriction, plat note, plat map, or provision of a subdivision improvements agreement pursuant to Section 30-28-137, C.R.S.

**Section 8-206 Acceleration of Enforcement Process to Protect Public Health, Safety and the Environment.** The enforcement process set forth in this Division may be accelerated if the County Public Health Officer or Administrator makes a written finding that the public health, safety, welfare, or the environment could be endangered by a continuing violation. After such finding is made, the County Attorney shall take immediate action to end the threat to the public health, safety, welfare, or the environment through, but not limited to, *ex-parte* restraining orders as authorized under the Colorado Rules of Civil Procedure and/or action by local law enforcement or public safety agencies as deemed appropriate and necessary.

## ARTICLE 9

## FINANCIAL GUARANTEE

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**Section 9-101 Financial Guarantee and Improvements Agreement Required.** Before any Land Use Change Permit is approved, the Board of County Commissioners may require the applicant to file a guarantee of financial security deemed adequate by the Board and payable to the County, and to execute an Improvements Agreement regarding the conditions and improvements identified as requirements of project approval. The purpose of the financial guarantee and Improvements Agreement is to ensure the following.

- A. Completion of Project and Reclamation of the Property.** The Project is completed, including reclamation of property as applicable.
- B. Conditions of Permit Fulfilled.** The applicant performs all improvements, mitigation requirements and permit conditions in connection with the construction, operation and termination of the Project.
- C. Applicant Addresses Responsibility for Impacts to Public Facilities and Services.** The applicant addresses responsibility for increased demand on public facilities and services as a result of the construction, operation and termination of the Project.
- D. Funds are Available to the County to Complete Project, If Necessary.** In the event that the Project is suspended, curtailed or abandoned, the County can complete the Project and necessary improvements, or restore the property to its original condition or an acceptable condition at no additional cost to the County.

**Section 9-102 Amount of Financial Guarantee.** In determining the amount of the financial guarantee, the Board shall consider the following factors.

- A. Completion of Project and Reclamation of Property.** The estimated cost of completing the Project and of returning property to its original condition or to a condition acceptable to the County, as applicable.
- B. Conditions of Permit.** The estimated cost of performing all mitigation requirements and permit conditions in connection with the construction, operation, and termination of the project.
- C. Estimated Cost.** The estimated cost shall be based on the applicant's cost estimate and the following considerations. The Board may require, as a condition of the permit, that the amount of financial security be adjusted based upon bids received for construction of the Project in compliance with permit conditions.
  - 1. The estimated cost for the County to bring in personnel and equipment to complete any unperformed purpose of the financial guarantee.

2. Contingency costs.
3. Consultant fees, including engineering and legal fees.
4. The duration of project construction or activity and a reasonable projection of increased project cost due to inflation, if appropriate.

**Section 9-103 Form of Financial Guarantee.** The financial guarantee may be in any form acceptable to the Board and shall be set forth in an Improvements Agreement executed by the County and the Applicant.

**Section 9-104 Release of Guarantee.** The financial guarantee may be released under any one of the following conditions.

- A. The permit has been surrendered to the Board before commencement of any physical activity on the Project site; or
- B. The Project has been abandoned and the site has been returned to its original condition or to a condition acceptable to the County; or
- C. The Project has been satisfactorily completed; or
- D. A phase or phases of the Project have been satisfactorily completed allowing for partial release of the financial guarantee consistent with project phasing and as agreed to in the Improvements Agreement.

**Section 9-105 Cancellation of the Financial Guarantee.** A financial guarantee may be canceled only upon written consent by the Board. The Board may grant a request to cancel all or a portion of a financial guarantee if canceling the guarantee will not detract from the purposes of the security.

**Section 9-106 Forfeiture of Financial Guarantee.**

**A. Notice and Response.** If the Board determines that a financial guarantee should be forfeited because of any violation of the permit, the Board shall provide written notice to the surety and to the permit holder.

**1. Notice Requirements.**

- a. The County shall send by certified mail, return receipt requested, a written notice of forfeiture of financial guarantee to the surety and to the permit holder.
  - (i) Notices shall be mailed to the last known address of the applicant and of the surety.

- b. The notice shall contain the following information.
  - (i) The reason for forfeiture of the financial guarantee, specifying each permit violation with references to the section or sections of the Code violated.
  - (ii) The permit holder's right to respond by request for a public hearing by the Board, and notice of automatic forfeiture if the permit holder does not respond.
  - (iii) The deadline for response by the permit holder.

2. **Response.** The permit holder may request a hearing by the Board, by written request to the Administrator, within thirty (30) calendar days of receipt of the notice of forfeiture of financial guarantee.

- a. If the permit holder submits a timely request for hearing by the Board, the Administrator shall schedule a public hearing within forty-five (45) calendar days of receipt of the permit holder's request for hearing by the Board.
- b. If the permit holder does not submit a timely request for hearing by the Board, the Board shall order the financial guarantee forfeited.

## B. Public Hearing and Action by the Board.

- 1. **Notification of Hearing.** At least thirty (30) calendar days prior to the date of the scheduled public hearing before the Board of County Commissioners, the permit holder shall have published a notice of public hearing in a newspaper of general circulation in the Project area.
- 2. **Notice to Adjacent Property Owners.** At least thirty (30) calendar days prior to the date of the scheduled public hearing, the permit holder shall send by certified mail, return receipt requested, a written notice of the public hearing to the owners of record of all adjacent property within a 500 feet radius. The notice shall include a vicinity map, the property's legal description, and an announcement of the date, time and location of the scheduled hearing to consider forfeiture of the financial guarantee.
- 3. **Action by Board of County Commissioners.** The Board of County Commissioners shall conduct a public hearing pursuant to Article 3, Section 3-101(M), *Conduct of Public Hearing*. The permit holder may present statements, documents, and other information for consideration by the Board with respect to the alleged violation(s) and forfeiture of financial guarantee.

- a. **Decision by Board.** The Board shall either withdraw the notice or enter an order for forfeiture of the financial guarantee.

**C. Default and Use of Financial Guarantee.** The financial guarantee may be used by the Board in the event of default or allowed default of the permit holder, for the purposes of recovering on the surety or fulfilling the permit obligation of the permit holder. The County may arrange for the lending institution providing money for the permit holder to hold required funds in escrow. Funds shall be disbursed out of escrow by the lending institution to the County upon County's demand for the purposes set forth in this Article.

**D. Inadequate Revenue and Cost Recovery.** If the forfeiture results in inadequate revenue to cover the costs of accomplishing the purposes of the financial guarantee, the County's attorney shall take such steps as deemed proper to recover such costs where recovery is deemed possible.

**Section 9-107 Substitute of Surety.** If the license to do business in Colorado of any surety upon a security filed pursuant to this regulation is suspended or revoked by any state authority, then the applicant shall, within sixty (60) days after receiving notice thereof, substitute a good and sufficient surety licensed to do business in Colorado. Upon failure of the permit holder to make substitution within the time allowed, the Board shall suspend the permit until proper substitution has been made.

## ARTICLE 10      DEFINITIONS

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**Section 10-101      Definitions.** For the purposes of this Code, certain terms or words used herein shall be interpreted as follows:

- A.      The word "person" includes a firm, association, organization, partnership, trust, company, or corporation, as well as an individual.
- B.      The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular.
- C.      The word "shall" is a mandatory requirement, the word "may" is a permissive action, and the word "should" is a preferred action.
- D.      The words "uses" or "occupied" include the words "intended, designed, or arranged to be used or occupied."
- E.      The word "lot" includes the words "plot", "parcel" and "tract."

The following words and phrases shall be interpreted as having the meanings stated below:

**Accessory Building or Structure.** A subordinate building or structure located on the same lot as the principal structure, the use of which is incidental to the principal use.

**Adjacent.** Meeting, abutting or touching at some point, or located across a street, alley or other right-of-way.

**Adjacent Property Owner.** An owner of record of any estate, right, or interest in real property which is adjacent to the subject land.

**Administrative Interpretation.** The land use change permit application and review process by which the Administrator approves applications for land uses.

**Administrator.** Kit Carson County Land Use Administrator, or his/her designee.

**Adverse.** Unfavorable, harmful.

**Agriculture.** The use of land for farming, dairying, pasturage, horticulture, floriculture, viticulture, and animal and poultry husbandry, and the necessary accessory uses for harvesting, packing, treating, or storing the produce, excluding forestry; provided, however, that the operation of any such accessory uses shall be secondary to that of normal agricultural activities and provided further that these uses shall not include uses that are confined animal feeding operations.

**Agricultural Land.** Any land used primarily for the production of crops or livestock, including: irrigated meadows, irrigated and dry pasture, and irrigation ditches; stock drive routes; lands used for barns, corrals and storage of crops or agricultural products. "Agricultural Land" does not include lands used primarily for the production of commercial timber.

**Alley.** A public right-of-way providing secondary access to the rear of a property and not intended for general travel.

**Alteration (Structural).** A change, rearrangement or addition to the structural parts or in the existing facilities of a building or structure, or the moving from one location or position to another.

**Animal Feeding Operation.** As defined by State and Federal Regulations.

**Applicant.** A person or entity submitting an application for land use subject to these Regulations.

**Board of Adjustment.** The body appointed by the Board of County Commissioners whose authority and procedures are described in Sections 30-28-117 and 30-28-118, C.R.S., and in Section 1-303 of this Code.

**Board or Board of County Commissioners.** The Board of County Commissioners of Kit Carson County.

**Building.** Any structure having a roof supported by columns or walls and intended for supporting, enclosing, sheltering or protecting any use or occupancy. The term "building" shall include modular or prefabricated buildings that do not fall within the definition of manufactured housing or mobile homes.

**Building Height (Structure Height).** The distance, measured vertically, from the undisturbed or natural ground surface at the mid-point between the front and rear walls of a building to the top of a flat roof or mansard roof or to the mid-point between the eave line and the peak of a gable, hip, shed or similar pitched roof.

**CDOT.** Colorado Department of Transportation.

**Change in Land Use.** Any development, grading, construction, activity or operation that changes the basic character, configuration or use of land or structures after the enactment of this Land Use Code constitutes a change in land use.

**Cluster, Cluster Development.** The concentration of development, including buildings, driveways, and water supply and wastewater treatment facilities on one or more compact areas of a development parcel, preserving the remainder as productive agricultural land or undeveloped open space, and avoiding impacting areas of identified

value for wildlife habitat, scenic features of a rural landscape, historical agricultural uses, and significant environmental features.

**Commercial Use or Activity.** Any use or activity primarily devoted to business such as the purchase, sale, lease or exchange of goods and/or the provision of services.

**Comprehensive Plan.** A plan, or any portion thereof, adopted by Kit Carson County Board of County Commissioners establishing the goals, objectives and policies of the County.

**Confined/Concentrated Animal Feeding Operation.** As defined by State and Federal Regulations.

**Contiguous.** Sharing an edge or boundary, touching.

**Correction Plat.** Revision of a previously approved plat, which is intended to correct minor surveying, drafting or wording errors in the plat.

**County.** The County of Kit Carson, State of Colorado.

**Decibel.** The basic unit for measuring the difference of sound pressure levels from a sound event to a reference pressure. To approximate the range of frequencies of sound most audible to the human ear, an "A-weighting" factor is applied. Sound levels are usually reported in A-weighted decibels, abbreviated dBA.

**Density.** A unit of measurement, specific to development, to be interpreted as the number of dwelling units per acre of land.

**Development.** Any construction or activity, excluding normal agriculture activities, which changes the basic character or the use of the land.

**Dwelling.** One or more rooms designed to function as a single living facility and containing only one kitchen plus living, sanitary and sleeping facilities.

**Excavation.** The removal of earth material by artificial means, also referred to as a cut.

**FAA.** The Federal Aviation Administration.

**Final Plat (Subdivision).** A map of a land subdivision prepared according to applicable laws of the State of Colorado and Article 5 of this Land Use Code.

**Flood or Flooding.** A general and temporary condition of partial or complete inundation of normally dry land areas from either the overflow of watercourses, or the unusual and rapid accumulation or runoff of surface waters from any source.

**Floodplain.** An area including and adjacent to the stream channel, which is subject to flooding as the result of the occurrence of an intermediate regional flood and which is so adverse to past, current, or foreseeable construction or land use as to constitute a significant hazard to public health and safety or to property. The term includes but is not limited to:

1. Mainstream floodplains;
2. Debris-fan floodplains; and
3. Dry wash channels and dry wash floodplains.

**Floor Area.** Floor area, also called gross floor area, means the total square footage of the building measured along the outside walls of the building and including each floor level, but not including open balconies, garages or other enclosed automobile parking areas and basement storage areas, and not including one-half (1/2) of all storage and display areas for durable goods.

**Hazard.** A natural or manmade phenomenon or condition which is a significant source of risk, danger or peril.

**Impact.** The direct or indirect effect or consequence resulting from a development upon land, the environment, the community or any part or segment thereof. The term shall include, but not be limited to, physical, environmental, economic, visual, auditory or social consequences or effects.

**Individual Sewage Disposal System (ISDS).** An absorption system of any size or flow or a system or facility for treating, neutralizing, stabilizing or disposing of sewage that is not part of or connected to a sewage treatment works as that term is defined in Section 25-10-103(20), C.R.S., as amended.

**Industrial Use or Activity.** Uses engaged in processing or manufacturing of materials from either extracted or raw materials or from previously prepared materials resulting in a new product designed for wholesale or retail sale.

1. *Extraction.* Extraction operations include, but are not limited to: petroleum and natural gas wells; shale and coal mines; gravel pits; timber cutting.
2. *Processing.* Processing operations include, but are not limited to: petroleum refining; oil shale crushing, retorting and refining; ore smelting; coal crushing and cleaning; saw mills; alfalfa pellet mills; food canning or packing; creation of glass, ceramic or plastic materials; gravel crushing; cement manufacture; and concrete batch plants.

3. *Fabrication.* Fabrication operations include, but are not limited to: manufacture of equipment, vehicles and consumer goods from processed materials; wood and metal working operations; and batch plants.
4. *Repair.* Industrial repair operations include, but are not limited to: automobile and heavy equipment repair; and appliance repair.
5. *Material handling.* Material handling operations include, but are not limited to: a transfer station for construction waste such as wood, drywall, metals, paper, plastic and other types of construction materials.

**Junk.** Any material unfit for its original intended use, discarded, worn out, dismantled, or deteriorated to such condition that it is not useable, safe or fit for human use or habitation.

**Junk Yard.** A building, structure, or parcel of land used for the collecting, storage, dismantling, salvage, recycling, demolition or sale of junk.

**Land Use Change.** Any land use or development activity that changes the basic character, configuration or use of land or buildings and structures after the enactment of this Land Use Code.

**Land Use Change Permit.** Approval by the County for any land use change subject to County review by this Land Use Code.

**Land Use Code.** The Kit Carson County Land Use Code. The terms "Code" and "Regulations" also refer to the Kit Carson County Land Use Code.

**Land Use Standards.** The land use standards of Kit Carson County set forth in Article 6 herein.

**Livestock.** Domestic animals that are used for food for human or animal consumption, breeding, draft or profit.

**Lot.** A parcel, plot or tract of land which is the subject of a Land Use Change Permit application, land use activity proposal, or which is occupied by a structure, together with the yards and open spaces required by this Land Use Code.

**Lot Line.** The external boundary of a lot.

**Lot Size or Area.** The total horizontal area within the lot lines.

**Major Electrical or Natural Gas Facilities.** Major electrical or natural gas facilities as defined by C.R.S. 29-20-108(3) that are subject to Public Utilities Commission jurisdiction.

**Mining, Mine.** Any area of land from which minerals are extracted in nonliquid form or are extracted in a liquid form while workers are underground, and including any accessory support facilities; ways and roads appurtenant to such area; and lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, facilities, equipment, machines, tools, or other property, including impoundments, retention dams, and tailing ponds, on the surface or underground, used in, or to be used in, or resulting from the work of extracting such minerals from their natural deposits in nonliquid form or, if in liquid form, used by workers underground or used or to be used in the milling of such minerals or the work of preparing coal or other minerals.

**Mitigation.** An action which will have one or more of the following effects:

1. Avoiding an impact by not taking a certain action or parts of an action;
2. Minimizing an impact by limiting the degree or magnitude of the action or its implementation;
3. Rectifying an impact by repairing, rehabilitating, or restoring the impact area, facility or service;
4. Reducing or eliminating an impact over time by preservation and maintenance operations; and
5. Compensating for an impact by replacing or providing suitable biological and physical conditions; and by replacing or providing suitable services and facilities.

**Municipality.** An incorporated city or town.

**Natural Hazards.** Mudslides, subsidence areas, floodplains, seismic faults, rockslides, erosion and other naturally occurring phenomena that can pose hazards to life or property.

**Nonconforming (Use/Structure).** A land division or lot, building or structure, or use of land legally existing at the time of enactment of this Land Use Code and which does not conform to this Code. Such land divisions, buildings or structures, or use of the land are "grandfathered" and subject to the terms and provisions of Article 7 of this Land Use Code.

**Open Space.** Any land or water area which serves the specific use of: providing park and recreation opportunities, conserving natural areas and environmental resources, or protecting areas of agricultural, archeological or historical significance. Open space shall not be considered synonymous with vacant or unused land or yards as part of a platted lot.

**Person.** Any individual, corporation, governmental entity, estate, trust, partnership, association, or other legal entity.

**Planning Commission.** The County Planning Commission, which is appointed by the Board of County Commissioners of Kit Carson County.

**Plat.** 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. ( C.R.S 30-28-101 (5))

**Public Hearing.** A meeting called by a public body, for which public notice has been given in compliance with the provisions of this Code and which is held in a place where the general public may attend, with the principal purpose of receiving testimony or public comment on a specific application or issue.

**Riparian/Riparian Areas.** Related to, living or located on the bank of a natural watercourse or lake. Riparian areas include groups of plants, animals and aquatic communities whose presence is either directly or indirectly attributed to water-influenced or water-related factors. Areas exempt from this definition are manmade agricultural structures and devices including irrigation ditches, sprinklers and artificial ponds.

**Rubbish.** Garbage and trash, including but not limited to: unwanted or discarded household items; waste from building construction, remodeling and repair including used lumber and building materials; tree branches, grass and shrub clippings, leaves or other general yard and garden waste; newspapers, magazines, packaging materials, waste paper or cardboard, boxes and crates, rags; dead animal carcasses; and any other unsightly or discarded material including scrap metal, scrap material, bottles and tin cans, which causes or is likely to cause a public hazard or nuisance, or is unacceptably offensive in light of community standards of cleanliness or generally accepted neighborhood aesthetics.

**Runway.** A defined area on an airport prepared for landing and takeoff of aircraft along its length.

**Setback.** The required minimum distance between the point that the facing wall intersects with the finished grade of the building and the related front, side, or rear lot line.

**Significant.** Deserving to be considered; important; notable and not trifling.

**Significantly Degrade.** To lower in grade or desirability to a significant, as opposed to a trifling, degree.

**Significantly Deteriorate.** To make inferior in quality or value to a significant, as opposed to a trifling, degree.

**Site Specific Development Plan.** The approved plan which has been submitted to the County to establish a vested right pursuant to Title 24, Article 68, C.R.S., as amended, and set forth in Section 1-202(B) of this Code.

**Slope.** Change in vertical elevation of a property over a specified horizontal distance, measured between contour intervals.

**Solar Energy Device.** A device which converts the sun's radiant energy into thermal, chemical, mechanical, or electric energy.

**Solid Waste.** The term "solid waste" includes: garbage or refuse; sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility; solid, liquid, semisolid, or contained gaseous material discarded from industrial operations, commercial operations or community activities. "Solid waste" does not include: any solid or dissolved materials in domestic sewage; agricultural wastes; solid or dissolved materials in irrigation return flows; industrial discharges which are point sources subject to permits under the provisions of the Colorado Water Quality Control Act, Title 25, Article 8, C.R.S.; materials handled at facilities licensed pursuant to the regulatory provisions under the Radiation Control Act, Title 25, Article 11, C.R.S; and scrap metal that is being recycled or shredded circuit boards that are being recycled.

**Special Districts.** Quasi-municipal corporations established under state statute to provide public facilities or services.

**Structure.** Anything constructed or erected which requires location on the ground or attachment of something having a location on the ground. "Structure" shall include immobilized mobile homes.

**Subdivision or Subdivided Land.** The division of land into two (2) or more lots, tracts, sites, parcels, separate interests or interests in common, unless exempted from the term subdivision by Section 30-28-110, C.R.S., or by regulatory provisions of this Code.

**Transitional Surface (Airport).** See Airport Imaginary Surfaces.

**Unsafe Structure.** A structure or building which is determined to present a substantial danger or hazard to the general public health and safety, including:

1. A structure or building which is dilapidated, unused or uninhabited because of deterioration or decay;
2. A structure or building that constitutes a fire hazard;
3. A structure or building that subjects adjacent or adjoining properties to a danger of property damage by storms, soil erosion or rodent infestation, or is a place frequented by trespassers and transients seeking a temporary shelter.

**Use.** The purpose for which any land, structure or building is designed, maintained or occupied.

**Variance.** A modification of the strict terms of the relevant regulations where such modification will not be contrary to the public interest and where owing to conditions peculiar to the property and not the result of the action of the applicant a literal enforcement of the regulations would result in unnecessary and undue hardship.

**Vested Property Right.** The right to undertake and complete the development and use of property under the terms and conditions of a County-approved site specific development plan, as defined in Section 24-68-102(5), C.R.S.

**Water Treatment Facility.** A facility, excluding community cisterns, designed to provide and hold a potable water supply, at a capacity of five thousand (5,000) gallons per day or more.

**Sewage Treatment Facility.** Any sewage treatment plant, sewage treatment works, sewage disposal facilities, pumping and ventilating plants or stations, compensating reservoirs or other plants, structures, facilities, equipment and appurtenances useful or convenient for the interception, transportation, treatment, purification or disposal of sewage, liquid wastes, solid wastes, or industrial wastes.

**Weeds and Brush.** Any underbrush, brush, shrub or plant material greater than twelve (12) inches in height which:

1. Ordinarily grows without cultivation; not in planting beds or otherwise in a controlled manner; or not for the purpose of food production; and
2. Is allowed to grow in such a manner or extent that it causes or is likely to cause a public hazard or nuisance, or is unacceptably offensive in light of community standards of cleanliness or generally accepted neighborhood aesthetics; and
3. Is not an undesirable plant designated under the County's Noxious Weed Management Plan, pursuant to the "Colorado Noxious Weed Act" the removal of which shall be governed by that Plan and not this Article.

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