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GUIDELINES AND REGULATIONS FOR AREAS AND ACTIVITIES OF STATE INTEREST

ELBERT COUNTY

STATE OF COLORADO

Adopted April 19, 1995
Revised August 22, 2001
Revised April 4, 2002
Revised August 27, 2003
Revised December 7, 2005

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Chapter 1 Administrative Regulations

Article 1 Introductory and General Provisions

1-101 Title and Citation

These regulations may be cited as the "Elbert County Guidelines and Regulations for Areas and Activities of State Interest" or the "Elbert County 1041 Regulations."

1-102 Purpose and Findings

(1) The purpose and intent of the regulations in this Chapter 1, is to facilitate identification, designation, and administration of matters of State interest, consistent with the statutory requirements and criteria set fourth in Section 24-65. 1-101, et seg., C.R.S., and the Guidelines for Identification and Designation of Areas and Activities of State Interest, approved by the Colorado Land Use Commission.

(2) The Board of County Commissioners, Elbert County, State of Colorado, finds that;

(a) The notice and public hearing requirements of Section 24-65.1-404, C.R.S. have been followed;

(b) These Regulations are necessary because of the intensity of current and foreseeable development pressures on and within this County;

(c) These Regulations were adopted after taking into consideration applicable guidelines adopted and issued by the Colorado Land Use Commission;

(d) These Regulations apply to the entire unincorporated territory of Elbert County;

(e) These Regulations interpret and apply to any regulations adopted for specific areas of state interest and specific activities of state interest, which have been, or may be, designated by the Board of County Commissioners of Elbert County.

1-103 Authority

These Regulations are authorized by, inter alia, Section 24-65.1-101, et seg., C.R.S.; Section 30-28-101, et seg., C.R.S.; Section 30-28-201, et seg., C.R.S.; Section 29-20-101, et seg., C.R.S.; and Section 24-32-111, C.R.S. These Regulations are necessary for the preservation of the public health, safety and welfare.

1-104 Applicability

These Regulations shall apply to all proceedings concerning identification and designation of any developments in any area of state interest, or any activity of state interest, which has been, or may hereafter, be designated by the Board of County Commissioners of Elbert County, and the control of development in any such area or activity.

1-105 Exemptions

The Portions of these Guidelines and Regulations authorized exclusively under Section 24-65.1-101, et seq., C.R.S., shall not apply to any development in an area of state interest or any activity of state interest, which meets any one of the following conditions, as of May 17, 1974:

(1) The specific development or activity is covered by a current building permit issued by Elbert County;

(2) The specific development or activity has been approved by the electorate of Elbert County; provided that approval by the electorate of any bond issue, by itself, shall not be construed as approval of the specific development or activity;

(3) The specific development or activity is to be on land which has been conditionally or finally approved for planned unit development or for use substantially the same as planned unit development;

(4) The specific development or activity is to be on land which has been zoned by Elbert County in response to an application which specifically contemplated said use; or

(5) The specific development or activity is to be on land with respect to which a development plan has been conditionally or finally approved by Elbert County.

1-106 Relationship of Regulations to other County, State and Federal Requirements

(1) Whenever these Guidelines and Regulations are found to be inconsistent with any other resolution with any other resolution, ordinance, code, regulation, master plan, or other enactment of Elbert County, the enactment imposing the more restrictive standards or requirements shall control.

(2) In the event these Guidelines and Regulations are found to be less stringent than the statutory criteria for administration of matters of state interest set forth in Sections 24-65.1-202, C.R.S., the statutory criteria shall control.

(3) In the event these Guidelines and Regulations are found to be more stringent than the statutory criteria for administration of matters of state interest set forth in Sections 24-65.1-202 and 24-65.1-204, C.R.S., these regulations shall control pursuant to the authority of section 24-65.1-402 (3), C.R.S.

(4) Where these regulations overlap with the County's requirements for zoning, special or conditional use review or for review pursuant to C.R.S. §30-28-110(1), these regulations shall control, and a separate review process under special or conditional use or statutory review, shall be not be required, unless expressly stated to the contrary in these regulations. Where these regulations overlap with other applicable County requirements, including, but not limited to, County flood plain regulations, all applicable regulations shall be followed, and all required County permits or approvals shall be obtained.

(5) These Guidelines and Regulations are intended to be applied in addition to, and not in lieu of, all other regulations of Elbert County, including, without limitation, Elbert County Zoning Regulations, adopted May 1983, and Elbert County Subdivision Regulations, adopted May 1983, and Elbert County Growth Management Plan, adopted October 1982, as they may be amended from time to time.

(6) Permit requirements included in these Regulations shall be in addition to and in conformance with all applicable State and Federal laws, rules and regulations.

(7) In the event that any political subdivision, agency, instrumentality or corporation of the State of Colorado or the United States government or an entity regulated by such a designated governmental unit, seeks to conduct a designated area or activity of state interest in Elbert County, the intent of these regulations is that the Board of County Commissioners shall exercise its authority, pursuant to these regulations and state statute, to the maximum extent allowable consistent with federal and state law and regulations.

1-107 Duties of the Board of County Commissioners

Unless otherwise specifically provided, it shall be the duty of the Board of County Commissioners of Elbert County to perform all functions set forth in these regulations pertaining to matters of state interest. The Board of County Commissioners shall also be generally empowered to hear appeals from any person aggrieved by any decision of the Planning Director, made in the course of administering these regulations.

1-108 Severability

If any section, clause, provision, or portion of these Guidelines and Regulations should be found to be unconstitutional or otherwise invalid by court of competent

jurisdiction, the remainder shall not be affected thereby, and is hereby declared to be necessary for the public health, safety and welfare.

1-109 Definitions

The words and terms used in these Guidelines and Regulations for administration of areas and activities of state interest shall have the meanings set forth below, unless the context requires otherwise:

(1) Applicant: any individual, partnership, corporation, association, company, or other public or corporate body, including the federal government or any federal entity, and including any political subdivision, agency, instrumentality, or corporation of the state, seeking a development permit under these Regulations.

(2) Board of County Commissioners or Board: the Board of County Commissioners, Elbert County, State of Colorado.

(3) Designation: only that legal procedure specified by Section 24-65. 1-401, et seq., C.R.S., carried out by the Board of County Commissioners.

(4) Development: any construction or activity, which changes the inherent character, or the use of land, on which the construction or activity occurs.

(5) Elbert County Growth Management Plan and Master Plan: The Elbert County Growth Management Plan as adopted in 1982 and as may be subsequently amended, including the adoption of a Master Plan.

(6) Layman's Description: a general, nonlegal description, and the popular name, if any, of the tract of land upon which the activity or development is to be conducted. The term "general description" means "layman's description."

(7) Legal Description: any description from which it is possible to locate accurately on the ground, the boundaries of the land being described.

(8) Matter of state interest: an area of state interest, or an activity of state interest, or both.

(9) Person: any private individual, limited liability company, partnership, corporation, association, company, or other public or corporate body, including the federal government, and including any political subdivision, agency, instrumentality, or corporation of the State or the United States government.

(10) Planning Director: the Director of the Elbert County Planning Department.

(11) Receipt of Application: the time at which the completed application is accepted by the Planning Director, pursuant to Section 2.201 (2) of these Regulations.

(12) Significant Adverse Environmental Impact: As the Planning Director may determine, if significant adverse impact to the environment is indicated in the referral comments from the appropriate Referral, and such agencies request and recommend a specific mitigation plan.

(13) Significant Adverse Socio-Economic Impact: As the Planning Director may determine, based on public input and the referral comments from the agencies, and government entities, including districts, providing services to the Community and the County.

1-110 Amendment

Amendments to these regulations shall be accomplished in the same manner as the original adoption thereof, pursuant to the same public notice and public hearing requirements.

Article 2 Designation of Matters of State Interest

1-201 Board of County Commissioners to Make Designations

Designations and amendments of designations may be initiated in three ways:

(1) The Board of County Commissioners may, in its discretion, designate and adopt regulations for the administration of any matter of state interest.

(2) The Elbert County Planning Commission may, on its own, motion, or upon request by the Board of County Commissioners, recommend the designation of matters of state interest. The Board of County Commissioners shall decide, in its sole discretion, whether or not to designate any or all of the requested matters of state interest pursuant to statutory procedures.

(3) If the Colorado Land Use Commission submits a formal request to the Board of County Commissioners pursuant to Section 24-65.1-407, C.R.S. with regard to a specific matter, which the Colorado Land Use Commission considers to be of state interest within Elbert County, the Board of County

Commissioners shall publish notice and conduct a hearing pursuant to section 24-65.1-407 (1) (a), C.R.S. After the Board of County Commissioners has received such a request, no person shall engage in development in the area, or conduct the activity specifically described in said request, until the Board of County Commissioners has held its hearing and issued its order relating thereto.

1-202 Public Hearing Required

(1) The Board of County Commissioners shall hold a public hearing, before designating any matter of state interest, and adopting regulations for the administration thereof. Such hearing shall be scheduled, and notice of such hearing shall be given as set for the below.

(2) The Board, in its discretion, may request that the Planning Commission hold a hearing and provide a recommendation to the Board on the proposed designation, prior to the Board's hearing. Notice of any hearing before the Planning Commission shall be published no less than seven days before the Planning Commission hearing date, in a newspaper of general circulation in the County. The Planning Commission shall preserve a record of its proceedings, and shall make a written report of its recommendations, if any, to the Board of County Commissioners, which report shall be advisory only.

(3) In the event that the Colorado Land Use Commission submits a formal request to take action, such as public hearing for designation shall be held within ninety (90) days after receipt of the formal request.

1-203 Notice of Public Hearing, Mailing List, Publication

(1) The Board of County Commissioners shall prepare a notice of the designation hearing which shall include:

(a) The time and place of the hearing;

(b) The place at which materials relating to the matter to be designated, and any guidelines and regulations for the administration thereof, may be examined;

(c) The telephone number where inquiries may be answered;

(d) A description of the area or activity proposed to be designated in sufficient detail, to provide reasonable notice as to property, which would be included.

(2) The Board of County Commissioners shall maintain a mailing list of the names of those persons requesting of the Clerk of the Board of County Commissioners, that their names and addresses be placed on the list, and shall pay to the Clerk an annual fee of twenty dollars ($20.00) to cover the costs of production, handling and mailing of notices of all such hearings, pursuant to Sections 24-65.1-404 (2) (b) and 24-65.1-501 (2) (c), C.R.S. In order to have a name and address retained on said mailing list, such persons shall resubmit their name and address, and pay said annual fee before January 31st of each year.

(3) At least thirty (30) days, but no more than sixty (60) days before the public hearing, the Board of County Commissioners shall publish the notice one time in a newspaper of general circulation in the County, and shall mail the notice by first class mail to each of the following:

(a) The Colorado Land Use Commission, and other state and federal agencies, as deemed appropriate, in the discretion of the Board of County Commissioners; and

(b) Persons on the mailing list (subsequent to the initial adoption of guidelines and regulations).

1-204 Matters to be Considered at Designation Hearing

At the public hearings on designation, the Planning Commission, to the extent applicable, and the Board of County Commissioners, shall consider such evidence as they deem appropriate, including, but not limited to, testimony and documents addressing the following considerations:

(1) The intensity of current and foreseeable development;

(2) The matters and considerations set forth in any applicable guidelines for identification and designation issued by the Colorado Land Use Commission;

(3) The boundaries of any area proposed for designation;

(4) Reasons why the particular area or activity is of state interest, the adverse impacts that would result from uncontrolled development of any such area, or uncontrolled conduct of such activity, and the advantage of development of such area or conduct of such activity, in a coordinated manner;

(5) The extent to which other governmental entities regulate the area or activity proposed to be designated;

(6) The applicable criteria for administration of the proposed area or activity, as set forth in these regulations and Section 24-65.1-201 et seq.,C.R.S.;

(7) The legislative declarations started in Sections 24-65-102, 24-65.1-101, and 29-20-102, C.R.S. ; and

(8) The Elbert County Master Plan or any municipal master or comprehensive plan adopted as part of, pertaining to, or affected by the area or activity under consideration.

1-205 Conduct of Designation Hearing

(1) At the public hearing on designation, the Board of County Commissioners shall receive into the public record:

(a) Testimony and evidence from any and all persons or organizations desiring to appear and be heard, including County staff;

(b) Any documents that may be offered; and

(c) If applicable, the recommendations of the Elbert County Planning Commission.

(2) The Board may impose reasonable time limitations on testimony, and may invite persons representing the point of view, to consolidate their presentations.

(3) The Colorado Rules of Civil Procedure will not govern the conduct of the hearing, which is legislative in nature.

(4) The Board may continue the hearing from time to time, for a period, not to exceed 60 days. If the hearing is continued, no additional notice of the hearing needs to be given, other than oral announcement at the time and place of the continuance of the next scheduled hearing time and place.

(5) After the hearing is closed, the Board of County Commissioners shall not Accept, for the record, any additional public input, either oral or written, except as specifically permitted by the Board.

1-206 Record of Designation Proceeding

(1) The Board of County Commissioners shall collect and preserve the following record of the public hearing:

(a) Copy of the notice of the hearing;

(b) The certificate(s) of publication of the notice of the hearing, and a listing of all persons to whom the notice was mailed;

(c) The names and addresses of persons who presented written or oral statements or offered documentary evidence;

(d) Any written statements or documents presented in support of, or in opposition to, the proposed designation of the matter of state interest;

(e) Any recording or transcript, if any, of the hearing;

(f) The Order of Designation of the area or activity of state interest; and

(g) A map or maps depicting each area of state interest designated.

(2) Any person may, at his or her own expense, provide for the recording of the hearing and transcription thereof, provided however, that a copy of the recording or transcript thereof, if transcribed, shall be furnished free of charge to the Board of County Commissioners and applicant, and shall become part of the record.

1-207 Adoption of Designation and Regulations

(1) At the conclusion of the hearing, or within thirty (30) days thereafter, the Board of County Commissioners may adopt, adopt with modification, or reject the proposed designation, which was the subject of public hearing. If designation and regulation under Section 24-65.1-101, et seq., C.R.S., is rejected, the Board of County Commissioners may regulate the matter under any other available land use control authority, or it may reject the regulation of the matter entirely.

(2) Such action shall be taken by resolution.

(3) In the event the Board of County Commissioners finally determines that any matter is a matter of state interest, it shall be the Board's duty, acting by resolution, to designate such matter, and adopt regulations for the administration thereof.

(4) Each designation order adopted by the Board of County Commissioners shall:

(a) Specify the boundaries of the designated area of state interest, or the boundary of the area in which an activity of state interest has been designated;

(b) State reasons why the designation is appropriate, in light of the factors specified above, to be considered at the public hearings; and

(c) Specify the regulations applicable to the designated matter of state interest.

A specimen designation order is attached hereto as Exhibit A.

1-208 Submission Material to Colorado Land Use Commission

Upon adoption of a designation order, the Board of County Commissioners shall forward to the Colorado Land Use Commission, all relevant materials, including

the record of any public hearing, relating to Section 24-65.1-406, C.R.S. If, within thirty (30) days after receipt of a designation order and regulation, the Colorado Land Use Commission has notified the Board of County Commissioners that modification of the designation or regulations is recommended, the Board of County Commissioners shall, within thirty (30) days after receipt of the recommended modifications:

(1) Modify the original order, in a manner consistent with the recommendations of the Colorado Land Use Commission, and resubmit the order to the Colorado Land Use Commission, or

(2) Notify the Colorado Land Use Commission that the Commission's recommendations are rejected.

1-209 Recording of Notice of Designation

A notice of the designation shall be certified by the Board of County Commissioners to the County Clerk and Recorder, and shall be filled in the same manner as any document affecting real property.

1-210 Effect of Designation – Moratorium Until Final Determination

After a matter of state interest is designated pursuant hereto, no person shall engage in development in such area, and no such activity shall be conducted until the designation and regulations for such area or activity are finally determined as required by Section 24-65.1- 404 (4) C.R.S.

1-211 Combined Designation and Permit Hearing

If a person proposes to engage in development in an area of state interest or to conduct an activity of state interest not previously identified, designated, or for which regulations have not been adopted, or for which amendments are pending, the governing body alone may hold one hearing, for determination of identification, designation and regulations, as well as for granting or denying the permit. No permit that is granted at the conclusion of any such hearing shall be authority to engage in development, or to conduct an activity, until the identification, designation and regulations are finally determined.

Chapter 2 Permit Regulations

Article 1 Permit Requirements

2-101 Activities Requiring Permits

Any person desiring to engage in a development in a designated area of state interest, or to conduct a designated activity of state interest once designated, pursuant to these Regulations, must apply for and obtain a permit from Elbert County Board of County Commissioners. In the event a development or activity is proposed as an integral part of a subdivision or PUD, it shall be the responsibility of the service provider and developer, to comply with the requirements of these Regulations.

2-102 Specific Activities Exempted from the Permit Process

(1) Any system, extension, or project not covered by the preceding section.

(2) Systems, extensions, or projects, which are located on unincorporated land that is an enclave within the municipality proposing the activity.

(3) Upgrades to existing facilities that are required maintenance or otherwise required by federal, state, or county regulations, including preparing or replacing old or outdated equipment, or installing new equipment or ancillary facilities, provided the improvements do not expand levels of service beyond design capacity, and provided further that the upgrade does not alter the location of the existing facility.

(4) Any system, extension, or project necessary to serve any subdivision, or other use approved under the County's zoning, subdivision or other land use regulations (with the exception of uses reviewed solely under Section 30–28–110(1), C.R.S.), which meets one of the following criteria:

(a) That the service provider obtains a specific exemption from the Planning Director, approval or denial of which may be appealed to the Board of County Commissioners within 15 days of the action taken. Such exemption shall be based on the conclusion that review of the proposed service facilities falls outside the purposes of these regulations. Exemption under this section is not subject to the procedures of Section 2-103 below.

(b) That the Board specifies, in its approval of the subdivision or other use, that separate review of the system, extension or proposal, is not necessary under these regulations.

(5) Any system, extension, or project which, as of the date designation of the applicable area or activity of state interest, meets any one of the following conditions:

(a) Is part of a project, system or extension that has received final discretionary County approval, and is protected by a site-specific development plan or agreement, whose vesting period has not expired.

(b) Has a complete application filed and in process for a discretionary County land use approval (not including an application under C.R.S. Section 30-28-110(1)), provided the applicant (if a public entity) formally commits to being bound by any conditions of a final County approval or by denial of the application.

(c) Has a County zoning permit issued (i) within the preceding 90 days; (ii) with in the previous two years and on which work has commenced and been diligently pursued or completed; or (iii) as to which vested rights, if any, were obtained and remained effective, all as provided in the Elbert County Zoning Regulations.

(6) Any system, extension or project otherwise covered under Section 2-101 above, for which an application for an exemption is filed with the Planning Director no later than three months after the date of adoption by the Board, of the applicable regulations for the applicable area or activity of state interest, and the proponent demonstrates, to the satisfaction of the Board, at a public hearing, of which the proponent shall receive reasonable prior notice, that:

(a) the proponent has made significant financial commitments to the planning or engineering of the system, extension, or project on or before the date of designation of the applicable area or activity of state interest; and

(b) review of the system, extension, or project under these regulations is unnecessary to fulfill the purposes of these regulations, because it would not significantly affect the protection of the public health, safety, and welfare of the natural environment.

2-103 Determination of Whether a Proposed Activity is Subject to the Permit Requirement

(1) The Planning Director shall determine, in writing, the applicability of these Regulations to the conduct of particular proposed activities. The Planning Director shall make such determination within ten calendar days after receiving a written request containing adequate information for the Planning Director to make the determination. If any person is aggrieved by the decision of the Planning Director to include an activity within, or exempt it from these regulations, that person may file an appeal to the Board, with the Planning

Director, no later than ten days after the date of the Planning Director's written decision.

(2) The Board shall schedule a public hearing on the appeal to be held no more than 30 days after the appeal if filed.

(3) For the purpose of deciding the appeal, the Board may require the applicant to provide a description and declaration of the scope of the activity, including, but not necessarily limited to:

(a) The site of the proposed activity;

(b) The size, if proposed, of any transmission lines, storage tanks, or other structures;

(c) The number of County residents to be served by the activity;

(d) The increase in the County population that is projected as a result of the activity; and

(e) The water rights on which the activity relies.

(4) At the appeal hearing, the appellant shall have the burden of proving that the Planning Director erred in the decision to include or exclude the activity from these regulations.

(5) The Board's decision shall not be final for purposes of an appeal under Rule 106, C.R.C.P.

Article 2 Permit Application

2-201 Permits Required After Designation; Receipt of Application Form

(1) Any person desiring to engage in a development, expansion or project subject to these Regulations, shall submit an application for a permit, in the form attached as Exhibit B.

(2) An application shall not be accepted or processed, unless it is deemed complete for the appropriate stage of review, by the Planning Director. All fees, maps, plans, and reports required by these regulations shall accompany the application. The Planning Director shall review the application for completeness within ten days of the submission. If the Planning Director considers the application incomplete, the Planning Director shall specify what additional information is required. An application need not meet the submission requirements for other than the particular development alternative for which a permit is being sought in order for the application to be considered

complete. When the Planning Director considers a submitted application to be complete, the Planning Director shall note upon the application the date and hour of its receipt.

(3) When an applicant seeks a permit to engage in development in more than one area of state interest, or to conduct more than one activity of state interest, or to engage in development in one area of state interest, and to conduct one activity of state interest, a single application may be completed for all such activities or developments, and may be reviewed by the Board in one consolidated hearing.

(4) In addition to the substantive information specified in these Regulations, a complete application must designate all agents for the applicant and exhibit the applicant's or agent's signature. If the signature is by an agent, written proof of the agent's authority must also be submitted. The signature on an application form will be assumed to indicate the applicant's concurrence with all submissions and commitments made by their designated agent, unless otherwise specified in writing in the application.

2-202 Application Fee

Each application shall be accompanied by the applicant's certified check in the amount of the initial application fee, set by the Board of County Commissioners from time to time. Such fee shall be uniform and reasonable, and shall be included on the fee schedule maintained by the Planning Director. If the application has been divided into preliminary and final stages, pursuant to these Regulations, the application fee shall accompany the preliminary application. The initial fee shall nonrefundable. Thereafter, the applicant shall be responsible for paying any of the County's reasonable costs of processing the application, which exceed the amount of the initial fee, including but not limited to costs of consultants, attorneys, copies, long distance telephone, and facsimile transmission expenses. Reimbursement of the County's costs of processing shall be made within30 days of invoice by the County to the applicant therefore, which invoices may be generated on a monthly or such other basis, as determined by the Planning Director. The Planning Director may also require deposit, in advance, of expenses deemed significant and reasonably likely to be incurred by the Planning Director, in the Director's sold discretion. If the applicant fails to pay the initial application fee, or to reimburse or deposit expenses to the County in a timely manner, the County may refuse to process or suspend processing of an application, including refusal to hold hearings or issue decisions.

2-203 Consultants

(1) If the County does not have qualified staff to review certain elements of an application, or referral agencies are not able to adequately advise the County regarding certain elements of an application, the Board may authorize the review to be performed by a consultant engaged or approved by the Planning Director. All fees for such consultant shall be paid by the applicant. In determining its need to retain a consultant, the County may consider the technical expertise which is available from the applicant. However, the County reserves the right to engage an independent consultant. If the County proposes to engage an independent consultant, the Planning Director shall prepare a written summary, which shall describe the proposed scope of the consultant's engagement, the qualifications of the consultant, the identity of the consultant, if known, the estimated cost of the consultation, and a maximum cost based on the consultant's estimate, after reviewing the County's scope work. This summary shall be made available to the applicant, and the applicant shall be given a reasonable opportunity to comment on the proposal, which comments shall be considered by the County, but shall not be biding on it. The County shall then respond to the applicant, as to the terms of the consultant's engagement, and the applicant shall have a reasonable opportunity to withdraw the application, as an alternative to going forward with the application under such terms.

(2) The County may submit the application to a referral agency, with a request that they review technical or other specific aspects of the application in an area of the agency's expertise, as provided below. Should the agency impose a fee for such a review, said fee shall be included in the processing expenses to be paid by the applicant.

(3) Professional qualifications of consultants for the applicant.

(a) A professional consultant may not be necessary for all applications. Only the following will require professional assistance:

(i) Improvement plans and reports for water supply, sanitation, drainage, utilities, soils, grading, roads, structures, pollution mitigation devices, and other civil engineering work for the project, must be certified by a registered Colorado Professional Engineer, or other qualified professional engineer exempted from licensing requirements by state statute.

(ii) All documents containing land survey descriptions must be certified by a registered Colorado Professional Land Surveyor, or other qualified professional surveyor, exempted from licensing requirements by state statute.

(iii)Geology reports shall be prepared by either a member of the American Institute of Professional Geologists, a member of the Association of Engineering Geologists, an individual registered as a geologist by a state, or other qualified professional geologist, exempted from licensing requirements by state statute.

(b) All data and plans submitted for review must show the qualifications of the individual in charge of the work.

2-204 Waiver of Submission Requirements

The Planning Director may waive any part of the submission requirements, which are not relevant to the decision on the application.

2-205 Intergovernmental Agreements

Upon the request of the State of Colorado or a political subdivision of the state, as defined by Section 29-1-202(1), C.R.S., proposing to engage in an area or activity of state interest, the requirements of these Regulations may be met by the approval of an intergovernmental agreement between the County and such applicant. The County may, but shall be under no obligation to, approve such an intergovernmental agreement in lieu of a permit application and review, as provided by these Regulations. In the event such an agreement is approved by the county, no permit application to conduct the activity or area of state interest shall be required, provided that all of the following conditions are met:

(1) The state or political subdivision applicant and the County must both be authorized by Article XIV, Section 18(2) of the Colorado Constitution and Sections 29-1-201 et seg., 29-20-105 and 29-20-107, C.R.S., to enter into the agreement.

(2) The purpose and intent of these Guidelines and Regulations must be satisfied by the terms of the agreement.

(3) A public hearing must be conducted by the Board of County Commissioners, consistent with the provisions of these Regulations for hearing on a development permit application, with the exception that references to "permit application" shall be deemed replaced with "proposed intergovernmental agreement." Prior to the hearing, the Board of County Commissioners shall approve the form of any proposed intergovernmental agreement, subject, however, to final approval of the agreement at the conclusion of, or subsequent to, the public hearing, and based on the evidence presented thereto. The public hearing shall be for the purpose of taking comment on the proposed intergovernmental agreement, the provisions of which have been determined to be acceptable to the applicant and to the County.

(4) Both the Board of County Commissioners and the governing body of the state or political subdivision applicant, must approve the agreement in the manner required of each of them by the Colorado Constitution, statutes and any applicable charter, ordinance or resolution.

(5) Exercise of the provisions of this Section by the state or political subdivision applicant, will not prevent that entity from electing, at any time, to proceed under the permit provisions of these Regulations. Additionally, any entity which has previously proceeded under the permit provisions of these Regulations, may at any time, elect to proceed, instead, under this section.

2-206 Referral Requirements

(1) The Planning Director shall refer the application to the following property owners for comment:

(a) Surface property owners of the project site, and within 1320 feet of the boundaries of the property proposed to be physically disturbed;

(b) Interest holders (excluding mineral interests) in any real property proposed to be physically disturbed or crossed by the activity or development which is the subject of the application; and

(c) Mineral interest holders in the case of projects to be constructed more than ten feet below the surface, excluding foundation structures for above-ground transmission lines.

(2) The Planning director, in the Director's sole discretion, may determine that the application should also be referred to referral agencies appropriate to the subject matter application for comment.

(3) The Planning Director shall identify the referral agencies and the extent of the property owners to receive notification by referral, as part of the pre-application conference or preliminary review, if applicable, or if not, within 10 days after the pre-application conference.

(4) The Applicant shall provide a sufficient number of referral packets to the Planning Director. Such packets shall contain a site plan of the proposed project (full size or reduced to letter size) and the application, or a summary of the application, in form approved by the Planning Director. Referral agencies shall receive a notification letter, including a location map, summarizing the application in form approved by the Planning Director. All packets shall be mailed by the U.S. Mail, first-class postage prepaid, by the Planning Department, and a record of the mailing kept in the Department's Application file.

(5) The packets shall be accompanied by a notice from the Planning Director, advising that the complete application file may be reviewed in the offices of the Planning Department during normal office hours, and shall include of the name of the proposal, the name of owners of the affected property, docket number, general location, number of acres affected, proposed use, and any other information deemed appropriate by the Planning Director. The notice shall also advise the date advise of the date and time of the public hearing set on the application, and that failure of the recipient of the referral packet to appear at the hearing, or submit written comments no later then ten days prior to the hearing, shall be construed as approval of the proposed project.

(6) Unless otherwise specified elsewhere in these Regulations, the time allowed for referral review shall be 35 days.

(7) After this referral period, the Planning Director shall review the referral comments within ten days and shall prepare a staff report within five days of said review.

Article 3 Permit Hearing

2-301 Notice of Permit Hearing

No later than thirty (30) days after receipt of a completed application for a permit, which shall mean from receipt of the final application, in instances where the application proceeds in preliminary and final stages, the Planning Director shall set and publish notice of the date, time and place for hearing on said application. Notice of the public shall be published once in a newspaper of general circulation in Elbert County, not less than thirty (30), nor more than sixty (60) days before the date set for hearing, and shall also be given to other persons and entities, in the same manner as set forth for the notice of a designation hearing. Completed application shall mean an application deemed complete by the Planning Director.

2-302 Conduct of Permit Hearing

(1) The Board of County Commissioners shall conduct the public hearing in a manner affording procedural due process to the applicant and supporters of the project, as well as to any person who opposes issuance of the permit.

(2) The Board of County Commissioners shall hear testimony and receive evidence, including:

(a) The recommendations of the Elbert County Planning Director and Planning Commission, if any;

(b) Testimony and evidence from any and all persons or organizations desiring to appear and be heard, including County staff; and

(c) Any documents that may be offered.

(3) Although the Colorado Rules of Civil Procedure do not govern the conduct of the hearing, all persons appearing at the hearing, in person or by counsel, shall be afforded the right of cross-examination, as well as reasonable opportunity to offer evidence in rebuttal.

(4) Any person may, at his own expense, provide for the recording of the hearing and transcription thereof, provided, however, that a copy of the recording or transcript thereof, if transcribed, shall be furnished free of charge to the Board of County Commissioners and applicant, and shall become part of the record.

(5) The Board of County Commissioners shall collect and preserve the following record of the public hearing:

(a) The permit application;

(b) A copy of the notice of the hearing, the certificate(s) of publication of the notice of hearing, and a listing of all persons to whom the notice was mailed;

(c) Any written statements or documents presented in support of ,or in opposition to, the permit application;

(d) The names and addresses of all persons who presented oral or written statements, appeared as witnesses, or offered documentary evidence;

(e) Any recording or transcript, if any, of the hearing;

(f) Written minutes of the Board of County Commissioners relating to the public hearing;

(g) The resolution of the Board of County Commissioners granting or denying the permit application; and

(h) A copy of the permit, if issued.

(6) In cases in which the development or activity must also comply with other provisions of County Zoning or Subdivision regulations, the permit hearing required by these Regulations may be held at the same time as the hearing on such other land use matter, as further specified in the chapter relating to the relevant area or activity of state interest.

2-303 Approval or Denial of Permit Application

(1) If the Board of County Commissioners finds that there is not sufficient information concerning any material feature of a proposed development or activity, the Board of County Commissioners may deny the application, or it may continue the hearing, until the additional information has been received. However, no such continuance may exceed thirty (30) days, and no more than two continuances may be granted, unless agreed to by the applicant.

(2) The Board of County Commissioners shall approve an application for a permit to engage in development in an area of state interest, or for the conduct of an activity of state interest, if the proposed development or activity complies with the provisions of the regulations governing such area or activity. The Board of County Commissioners may attach reasonable conditions to its approval. If the proposed development does not comply with the regulations governing the area or activity, the permit shall be denied.

(3) The burden of proof shall be upon the applicant to show compliance with the provisions of the Guidelines and Regulations governing the area or activity of state interest involved in the application, as set forth in the chapter applicable to each such designation.

(4) The Board of County Commissioners shall state, in writing, reasons for its decision on a permit application, and its findings and conclusions.

(5) If the Board of county Commissioners does not reach a decision on a permit application within thirty (30) days after the completion of the permit hearing, the permit shall be deemed approved. If the Board of County Commissioners, consisting of an even number of commissioners, takes action on a permit application and fails to approve the application by a majority vote, such action shall constitute a decision to deny the application.

2-304 Judicial Review

Any action seeking judicial review of a final decision of the Board of County Commissioners shall be initiated within thirty (30) days after the decision is made, in the District Court in and for Elbert County, pursuant to Rule 106 of the Colorado Rules of Civil Procedure.

Article 4 Issuance, Revocation or Suspension of Permits

2-401 Issuance of Permits

(1) The permit shall be issued on the form adopted by the Board of County Commissioners. A specimen permit is attached hereto as Exhibit C-1.

(2) The permit may be issued for an indefinite term, or for a specific period of years.

2-402 Financial Security

(1) Before any permit is issued, the Board of County Commissioners may, in its discretion, require the applicant to file a guarantee of financial security, deemed adequate by the Board of County Commissioners, and payable to Elbert County. If such a financial guarantee is required, the Board shall include, in its written decision, findings as to the reason for the security, and the basis for the amount of security required. To the extent feasible, the Board shall notify the applicant as soon as it concludes that it may require financial security for the project, which notification may include the Board's position at that time, on the reason for the requirement, and the amount of security under consideration, so that the applicant may speak to such matters in the public hearing on the permit.

(2) The purpose of the financial guarantee shall be to assure that the applicant, or permittee, shall faithfully perform all requirements of the permit or applicable regulations, adopted by the Board of County Commissioners.

(3) Any requirement for a financial guarantee shall be specified in the written decision of the Board on the permit application.

2-403 Revocation or Suspension of Permits

In the event the Board of County Commissioners has reason to believe that the provision of any permit, or the terms of any regulation for administration have been violated by the holder of the permit, the Board of County Commissioners may temporarily suspend the permit for a period of thirty (30) days. Before Imposing such a temporary suspension, the Board of county Commissioners shall give the permit holder written notice of the specific violation, and shall allow the permit holder a period a period of at least fifteen (15) days to correct the violations. If the permit holder does not concur that there is a violation, he shall, within fifteen (15) days of his receipt of such notice, show cause to the Board of County Commissioners why temporary suspension should not be ordered. A hearing shall be held within said thirty (30) day period, pursuant to the following subsection.

(1) Prior to, or subsequent to, a temporary suspension, the Board of County Commissioners may permanently revoke or suspend the permit, after conducting a public hearing is substantially the same the same manner and after substantially the same notice as for permit hearings, and if it finds:

(a) A violation of any provision of the permit or applicable regulation for administration of the matter of state interest; or

(b) The applicant has failed to take substantial steps to initiate the permitted development or activity within twenty-four (24) months from the date of the permit, or, if such steps have been taken, the applicant has failed to complete the development or activity with reasonable diligence. "Substantial steps" do not require construction activity, and may include, among other things, legal or administration proceedings and activities directly associated with the applicant's project. An extensive of the time within which substantial steps to initiate the permitted development or activity need be taken, may be granted by the Board of County Commissioners, upon the request of the applicant, and a showing of good cause therefore.

(2) Upon good cause shown, any revoked or suspended permit may be reinstated, effective immediately upon such reinstatement, within 12 months after revocation or suspension.

2-404 Annual Review

(1) Within thirty (30) days prior to each annual anniversary date of the granting of a permit by the Board of County Commissioners, the permittee shall submit a report detailing all past activities conducted by the permittee, pursuant to the permit, including a satisfactory showing that the permittee has complied with all conditions of the permit and applicable regulations. The permittee need not inform the Board of County Commissioners of activities of activities, such as operational changes, which are not the subject of a permit condition.

(2) The Board of County Commissioners shall review the report set forth in section 2-404(1) within thirty (30) days from the date of submittal thereof. If the Board of County Commissioners determines, based upon its review, that the permittee is likely to have violated the provisions of the permit or applicable regulations, it shall consider the matter at a scheduled public hearing. If the Board of County Commissioners determines, at the public hearing, that the permittee has violated the provisions of the permit or applicable regulations, the Board of County Commissioners may suspend or revoke the permit in accordance with these Regulations.

(3) Upon notice to the Board of County Commissioners of the fulfillment of all permit conditions, and the Board of County Commissioner's concurrence therein, the Board of County Commissioners shall terminate any annual review requirements.

(4) The Board of County Commissioners may waive or modify the annual review requirements, on its own initiative and discretion, or upon petition of the permittee, and a showing of good cause therefore.

Article 5 Administration, Enforcement and Penalties

2-501 Enforcement and Penalties

Any person engaging in a development in a designated area of a state interest, or conducting a designated activity of state interest, who does not obtain a permit pursuant to these Regulations, who does not comply with permit requirements, or who acts outside the authority of the permit, and may be enjoined by the County or the Colorado Land Use Commission from engaging in such development or conducting such activity, and may be subject to such other criminal or civil liability, as may be prescribed by law.

2-502 Mapping Disputes

Where interpretation is needed as to the exact location of the boundary of any area designated for areas and activities of state interest, and where there appears to be a conflict between a mapped boundary and actual field conditions, the Board of County Commissioners shall make the necessary determination of the boundary. Any person contesting the location of the boundary shall be given an opportunity to present a case on the subject to the Board of County Commissioners.

2-503 Inspection

(1) The Board of County Commissioner, or its authorized representative, is hereby empowered and directed to inspect and examine the use, occupation, or development of, or activity in each and every area or activity, subject to these guidelines and Regulations, for the purpose of determining from time to time, whether or not any use, occupation, development or activity is in violation of any of the provisions of these Regulations or of any permit issued or required, pursuant to these or other applicable regulations.

(2) If a violation shall be found to exist, the Board of County Commissioners, or its authorized representative, shall by written order, direct that such remedial action be taken forthwith, as will result in full compliance with the applicable regulations, provided, however, that the issuance of such order shall in no way or manner be deemed a prerequisite to the institution of such enforcement proceedings as are set forth in the Regulations; and provided further, that compliance with such order shall not necessarily be deemed to be a defense to any alleged violation of these Regulations, or other applicable regulations of Elbert County or the State of Colorado.

2-504 Nonconforming Uses

The provisions of these Regulations shall not apply to any nonconforming use, only to the extent such use existed on the date the area is designated or subjected

to these Regulations. Nonconforming uses shall be defined and regulated as provided in the Elbert County Zoning Resolution Part I, Section 5, and subject to all the provisions of such Section 5, as it is amended from time to time. Any expansion of a nonconforming use shall be fully subject to these Regulations.

Chapter 3 Site Selection and Construction of Major Facilities of a Public Utility

Article 1 General and Introductory Provisions

3-101 Purpose and Intent

The purpose and intent of the regulations contained in this Chapter 3 are:

(1) To encourage planned and orderly land use development;

(2) To encourage uses of land and other natural resources, which are in accordance with their character and adaptability;

(3) To conserve soil, water, forest and agricultural resources, and to protect vested water rights;

(4) To protect the integrity of the landscape;

(5) To promote the efficient and economic use of public resources;

(6) To regulate the site selection and construction of major facilities of a public utility, to prevent significant deterioration or degradation of existing air and water quality in Elbert County;

(7) To avoid or reduce direct conflicts with adopted local government, regional and state master plans; and

(8) To regulate the site selection and construction of major facilities of a public utility, to preserve the health, safety and welfare of the citizens of Elbert County.

3-102 Definitions

In addition to the terms defined in Section 1-109 of Chapter 1 of these Regulations, the following terms specific to the designation of site selection and construction of major facilities of a public utility shall be defined as follows:

(1) "Appurtenant facilities" means any buildings, structures or other property, which are clearly incidental to, and customarily found in connection with major facilities of public utilities and are operated and maintained for the benefit or convenience of the owners, occupants, employees, customers or visitors of such major facilities.

(2) "Major facilities of a public utility" means:

(a) Transmission lines, power plants, and substations of electrical utilities;

(b) Pipelines and storage areas of utilities providing natural gas or other petroleum derivatives; and

(c) Other appurtenant facilities of a public utility, which in the opinion of the Board, either by itself or in conjunction with other major facilities of a public utility, are likely to cause a major impact upon the health, welfare, or safety of the citizens of Elbert County, or upon the physical, social, or economic environment of Elbert County or this region.

(d) Pipelines and Storage tanks and Treatment Facilities for Water and Waste Water.

(3) "Pipelines" mean any pipeline and appurtenant facilities designed for, or capable of, transporting natural gas, other petroleum derivatives, or other liquids of ten (10) inches diameter or larger, which creates a hoop stress of 20 percent or more, at their specified minimum yield strength.

(4) "Power Plant" means any electrical energy generating facility with a generating capacity of fifty (50) megawatts or more, and any facilities appurtenant thereto, or any addition thereto, increasing the existing design capacity of the facility by fifty (50) megawatts or more.

(5) "Public Utilities", as used in these regulations, means the term as defined by Section 40-1-103, C.R.S.

(6) "Site Selection" means the process for determining the location of major facilities of a public utility, or the expansion of existing major facilities of a utility.

(7) "Storage Area" means any facility, including appurtenant facilities, designed to store 50 million cubic feet or more of natural gas, or 35,000 barrels or more of petroleum derivatives, storage of_____ cubic feet of water, or any expansion of any existing storage facilities, to accommodate an additional 50 million cubic feet or more of natural gas, or 35,000 barrels or more of petroleum derivatives, or _____ cubic feet of water.

(8) "Substation" means any facility designed to provide switching, voltage transformation, or voltage control, required for the transmission of electricity at 69 kilovolts or greater.

(9) "Transmission Lines" means those electrical lines and appurtenant facilities which meet all of the following criteria:

(a) Either a series of three or more structures and appurtenant facilities erected above ground, which support one or more conductors or a power line placed underground; and

(b) Which lines emanate from a power plant or a substation/transition site, and terminate at a substation/transition site; and

(c) Which are designed to transmit electrical voltages of 69kv or greater.

(10) "Treatment Facility"

3-103 Applicability

These Regulations shall apply to site selection of major facilities of any public utility, to be located wholly or partially within the unincorporated territory of Elbert County.

3-104 Relationship of Regulations to Other County, State, and Federal Requirements, Affecting Major Facilities of a Public Utility

(1) Nothing in these Regulations shall be construed as exempting an applicant for a permit from any other requirements of this County or other state, or federal laws and regulations.

(2) To the extent that the requirements of these Regulations differ from any other applicable requirements, the more restrictive requirements shall apply.

(3) Nothing in these Regulations shall be construed as enhancing or diminishing the power and authority of municipalities, counties, or the Public Utilities Commission. Any order, rule, or directive issue by any governmental agency, pursuant to these Regulations, shall not be inconsistent with, or in contravention of, any decision, order, or finding of the Public Utilities Commission, with respect to public convenience and necessity. The Public Utilities Commission and public utilities shall take into consideration and, when feasible, foster compliance with adopted master plans of local governments, regions and the state.

(4) Nothing in these Regulations shall be construed as enhancing or diminishing the rights and procedures, with respect to the power of a public utility, to

acquire property and rights-of-way by eminent domain, to serve public need, in the most economical and expedient manner.

Article 2 Designation of Site Selection and Construction of Major Facilities of a Public Utility

3-201 Designation of Site Selection and Construction of Major Facilities of a Public Utility

The Board of County Commissioners, having considered the intensity of current and foreseeable development pressures, applicable Guidelines for Identification and Designation, adopted and issued by the Colorado Land Use Commission, and the provisions and requirements of these Regulations, it is the order of this body that the designation of site selection and construction of major facilities of a public utility, as a of state interest, throughout Elbert County, made by this body on January 4, 1995, by Resolution 95-02, is hereby ratified and confirmed, and that this activity shall be regulated, pursuant to the provisions of this Chapter.

3-202 Boundaries of Area Covered by Designation

The site selection and construction of any major facility of a public utility, wholly or partially within the boundaries of this County, shall be subject to this designation and these Regulations.

3-203 Reason for Designation

Site selection and construction of any major facility of a public utility, is hereby designated as a matter of state interest, for the reasons stated in section 3-101 of this Chapter.

Article 3 Permit Program for Site Selection and Construction of a Major Facility of a Public Utility

3-301 Prohibition on Site Selection and Construction of a Major Facility of a Public Utility Without Permit:

(1) No person may locate or construct a major facility of a public utility, wholly or partially in this County, without first obtaining a permit, pursuant to these Regulations.

(2) No local authority, including Elbert County, may issue a building permit for purposes of selecting a site for, or constructing a major facility of, a public utility, wholly or partially in this County, unless the applicant has first obtained a permit, pursuant to these Regulations.

3-302 Procedural Requirements

(1) The procedures concerning permit applications, notice and conduct of permit hearings, review of Board of County Commissioners' decisions, and issuance and content of permits for selecting a site and constructing any major facility of a public utility, shall comply with the provisions set forth in Chapter 2, the Permit Regulations adopted by this County, together with the additional regulations set forth in this Chapter.

(2) Prior to the pre-application conference, applicant may meet with the Planning Director to discuss and outline the project. The purpose of the meeting is to discuss general information pertinent to the project, identify any major problems, and defines issues, in order to direct the data gathering and assessment that are to accompany the future application. Neither party shall be bound by plans, statements or positions discussed at the meeting.

(a) If, as a result of the meeting, the Planning Director determines that the nature or extent of the proposal involves the potential for significant adverse socio-economic and land-use impacts, or warrants examination of specific, less adverse alternatives, the Planning Director may request that the applicant evaluate and present information on such alternatives, as part of the application. This shall not preclude a similar request following the pre-application conference.

(b) Required information on alternatives may include, but shall not necessarily be limited to, information on the environmental impacts and cost-effectiveness of the alternatives, in relationship to the proposal presented.

(3) The requirements of these Regulations shall not be deemed to waive the requirements of Section 40-5-101, et seg., C.R.S., if applicable, that a public utility obtain a certificate of public convenience and necessity.

(4) Available documents, studies, or reviews by applicant or regulatory agencies, will be utilized whenever possible by the Board in its review, in order to minimize duplication and promote the timely review of the permit application.

3-303 Pre-application Conference

(1) Prior to formal filing of the application, the applicant shall confer with the Planning Director to obtain information and guidance. The purpose of such a conference, is to permit the applicant and the staff to review the proposal informally, before substantial commitments of time and money are made.

(2) Topics of discussion shall include, but not be limited to:

(a) Characteristics of the activity, including its location or potential locations, significant natural and man-made features, with particular attention to natural hazard, resource, or other special areas; the size and accessibility of the site; surrounding development and land uses, and its potential impact on surrounding areas, including potential adverse socio-economic and land-use impacts and planned mitigation strategies.

(b) The nature of the development proposed, including land use types and their densities; placement of proposed buildings and maintenance of common open space, or treatment of public use areas; the preservation of natural features; proposed parking areas and internal circulation system, including trails, the total ground coverage of paved areas and structures, and types of water and sewage treatment systems proposed.

(c) Community policy considerations, including the review process and likely conformity of the proposed development with the policies and requirements of these Regulations.

(d) Applicable regulations, review procedures and submission requirements.

(e) Other regulatory reviews or procedures to which the applicant is subject, the applicant's time frame for the project, whether the applicant requests waiver of the preliminary application, and other concerns of the applicant.

(3) Any comments or commitments made by any member of the County administration during this pre-application conference, are only preliminary in nature, and should not be relied upon by the applicant. All prospective applicants should be informed that formal comments cannot be made by staff, until after the application is submitted, and adjacent or nearby property owners and referral agencies have had an opportunity to respond, if applicable.

(4) County staff will make available to applicant any public information concerning the application, which is in the County's possession.

(5) If the project is not set for a preliminary application, the Planning Director shall notify the applicant either at the pre-application conference, or within 10 days thereafter, in writing, of the County's application requirements for the project, including, but not limited to, the extent of interest holders to receive notification of the project under Section 2-206 and other applicable sections, the extent of the project area to be considered, the submittal requirements that will be waived by the County, and any particular submittal requirements in addition to those specified in these Regulations.

3-304 Preliminary Application

(1) The purposes of the preliminary application are to assess the general feasibility of the application, and identify any major problems, and define issues, in order to direct the data gathering and assessment that are to accompany the final application. The procedures and submission requirements for each stage of the application are set forth in more detail below. If the applicant objects to undergoing the preliminary application process, the applicant may request a waiver from the Board of County Commissioners, which shall meet with the applicant and the Planning Director as soon as feasible thereafter, to consider the basis for the applicant's appeal, and shall then determine whether or not the preliminary application shall be waived for a good cause shown.

(2) The minimum submission requirements for the preliminary application shall include sufficient copies of the following:

(a) Completed application form in the format attached hereto as Exhibit B-1.

(b) Description of proposed facility and site.

(c) Description of the present use and zoning.

(d) Vicinity map, showing the proposed site and the surrounding area. The project area to be shown shall be defined as follows:

(i) If a power plant is proposed, the area within fifty (50) miles from the site;

(ii) If new transmission lines or pipelines are proposed, provide map showing all existing transmission lines and pipelines for a distance of two miles beyond any reasonable alternative studied.

(iii) For upgrades of existing transmission lines or gas pipelines, provide a map showing all existing transmission lines and pipelines within one mile on either side of the proposed alignment.

(iv) For all other major facilities of a public utility, the area within ten (10) miles of the site, if another major facility is proposed.

(e) Type of facility - specify where applicable:

(i) Approximate floor space of office building.

(ii) The voltages and lengths of transmission lines.

(iii) Power source and generating capacity.

(iv) The functions and sizes of substations;

(v) The diameters and lengths of pipelines;

(vi) The capacities of storage tanks and types of petroleum derivative to be stored.

(vii) Corridor locations.

(viii) Service area.

(ix) Resource area (e.g. sources of power being generated or transmitted, source of petroleum derivative being transported).

(f) Projected development schedule:

(i) Estimate maximum number of employees, number of shifts and employees per shift during the construction, operation, and maintenance phases of the project.

(ii) Specify any future phases or extensions of the facility, and relationship of the facility (if currently foreseen) to larger programs and plans.

(iii) Specify timetable for planning (e.g. Federal permits, other State permits, local zoning, etc.)

(iv) Estimate beginning and completion of construction and beginning of operation of facility.

(v) Describe support facilities (e.g. pollution control, parking areas, landscaping, etc.) to be provided.

(vi) Describe any feasible "non-structural" alternatives to meet the objectives of the proposed site selection and construction.

(g) Hazards and emergency procedures:

(i) Describe hazards, if any, of fire, explosion and other dangers to the health, safety and welfare of employees and the general public.

(ii) Describe hazards, if any, of environmental damage and contamination, due to materials used at or activities taking place at the proposed facility.

(iii) Describe emergency procedures to be used in the event of fire, explosion, or other event, which may endanger the public health, safety and welfare.

(iv) Describe any prevalent natural hazards that will affect or be affected by development, and describe mitigating measures to be taken which substantially reduce danger due to such hazards.

(3) Upon receipt of complete preliminary application submission requirements, the Planning Director shall issue a receipt indicating that preliminary application requirements have been satisfied.

(4) Within thirty (30) days of issuing receipt of the preliminary application, the Planning Director shall provide the applicant with a written response specifying the major problems, concerns, and issues. The foregoing written response is solely to assist the applicant in preparing for the application and deciding whether or not to pursue the permit process. It does not, in any way, bind the Planning Director or Board in future decisions or requests for information.

(5) If the applicant, after receiving the written review, decides to proceed with the permit application, then the applicant shall notify the Planning Director, in writing, as soon as practicable, but in no event, later than 180 days from receiving the written review. The Planning Director shall then set a time on the next available agenda of the Board, for discussion with the applicant of the proposed project, as it is described in the preliminary application. If the applicant has not so notified the Planning Director within such 180 days, the preliminary application shall be deemed withdrawn.

(6) At such meeting, the Board and Planning Director shall advise the applicant of major issues of concern and interest, which are separate and apart from technical requirements yet to be met.

3-305 Application Submittal Requirements

The applicant must submit the permit application no later than twelve months from the Preliminary Application Meeting. Failure to so proceed, shall automatically terminate the applicant's permit application process.

(1) The following application submittal requirements shall apply to all applications for a development permit for a major facility of public utility, except for requirements which have been waived, as provided in these Regulations.

(2) Requirements for applications for a development permit for a major facility of a public utility:

(a) General minimum requirements for any map plan required hereunder:

(i) The name of the proposed development or use and total number of acres under consideration.

(ii) The map scale and size shall be large enough for effective public presentation, and shall accurately illustrate the application.

(iii) Name, address, and telephone number of the applicant, designer, engineer, surveyor, and any other consultants of the applicant.

(iv) Date of preparation, revision box, written scale, graphic scale, and north arrow for each map.

(b) The following information concerning title to real estate interests along the project site, which shall be the entire proposed alignment or corridor under consideration at the time of the application for transmission line and pipeline projects:

(i) The names and addresses of all surface property owners of the project site and within 1320 feet of the boundaries of the property proposed to be physically disturbed;

(ii) The planned access to the project site or proposed route corridor, and the means the applicant intends to use to obtain a legal right to utilize such right of way, including copies of any access or right-of-way agreements entered into by the date of the application for such access.

(iii) The names and addresses of persons or entities with an interest in any real property proposed to be physically disturbed or crossed by the activity or development, which is the subject of application, excluding mineral interests, but including, without limitation, those holding mortgages, judgements, liens, easements, contract rights, rights of way, reservations, exemptions, or other encumbrances, at least to the extent shown in the records of the Clerk and Recorder of Elbert County, or of which applicant has actual knowledge; and

(iv) The names and addresses of mineral interest holders with an interest in any real property proposed to be physically disturbed or crossed by the activity or development, which is the subject of the application in the case of projects to be constructed more than ten feet below the surface, excluding foundation structures for above-ground transmission lines, at least to the extent shown in the records of the Clerk and Recorder and Assessor of Elbert County.

In addition, the applicant shall provide a statement describing the process by which the applicant compiled such information, when such information was compiled, and the steps which were taken, to ensure the accuracy of the information. The County will require that the information be compiled and verified in a manner reasonably designed to ensure the accuracy of such information, but shall not require the use of title insurance or attorney's title opinions. Applicant shall submit the most current information available. If the Planning Director deems the most current information available to be so outdated as to be irrelevant, the Planning Director may require the Applicant to cause to be generated more current information.

(c) A map or maps containing the following information:

(i) The study area and how the study area was determined.

(ii) All special districts (school, fire, water, sanitation, etc.) within the study area.

(iii) The area, within study area, where the physical and socio-economic environment is likely to be affected, beneficially or adversely, by the site selection and construction of the proposed facility. A narrative may accompany any or all of the above.

(d) The preliminary application requirements set forth at Section 3-304(2), if the preliminary application was not required.

(e) Summary of major natural and socio-economic environmental constraints, as they affect the site selection and construction of the facility, as proposed.

(f) Summary of the effects of the proposed site selection and construction upon the natural and socio-economic environment of the impact area, as applicable to submission requirements. Included, should be an analysis of impacts upon agricultural and other resources, and upon vested water rights.

(g) Analysis of the long-term effects of the proposed site selection and construction upon the physical and socio-economic environment of the impact area.

(h) Description of a program to minimize and mitigate adverse impacts and to maximize the positive impacts of the proposed selection and construction.

(i) Analysis of non-structural alternatives to the project, such as conservation of energy use, no development, or management (different scheduling, conservation programs, facility design, land trades etc.), if applicable.

(j) Analysis of structural alternatives to the project, such as alternate locations and routes, alternative types of facilities, use of existing rights-of-way, joint use of rights-of-way with other utilities, and upgrading of existing facilities.

(k) Analysis of air and water pollution impacts and control alternatives.

(l) Analysis of design alternatives concerning access, landscaping, architectural controls and so forth.

(m) Submission of a proposed development agreement to meet costs of affected political subdivisions in the project area, of providing new or upgraded services and facilities necessary to serve the proposed project.

(n) Analysis of hydrologic, atmospheric, geologic, pedologic, biotic, visual, and noise impacts.

(o) Surface and subsurface drainage analysis.

(p) Any other information required by the Board or the Planning Director and communicated to the applicant at the pre-application

Conference, or within ten days thereafter. This limitation shall not preclude the Board from requesting the applicant to provide additional information during the public hearing on the application, in order to provide which, the applicant shall be granted reasonable continuances, if the applicant so requests.

(3) Specific submittal requirements. These additional requirements shall be imposed on the applicant by the Planning Director, in such Director's sole discretion, if the Planning Director determines that the need for the additional information is warranted by the size and scope of the proposed project, in order for the Board of County Commissioners to make an informed decision on the application. It is the intention of these Regulations that the following information shall be required, only if the proposed project is of such size and scope, that it is reasonably likely to have significant environmental or social impacts on Elbert County residents or lands.

(a) Detailed description of the need for the proposed development or activity, including, but not limited to:

(i) The present population of the area to be served, and the total population to be served, when the project is operating at full capacity.

(ii) The predominant type of users or communities, including user or load patterns, to be served by the proposal.

(iii) The percentage of the design capacity at which the current system is now operating.

(iv) The relationship of the proposal to the applicant's long-range planning and capital improvements programs.

(v) A description of why public convenience and necessity require a facility of the size and nature proposed.

(vi) A description of the relationship of the project to other existing and planned utility facilities of a similar nature, other communication or energy generation and transmission facilities, local government capital improvement programs, and special district expansion programs.

(b) Environmental Assessment

(i) Land Use:

(a) Describe the relationship of the project to local land use policies and comprehensive plans, and to policies and plans adopted, or under preparation by federal, state, regional or other affected local governmental agencies.

(b) List the Soil Conservation Service or ACSC classification of the land affected by the proposal.

(c) Specify how the proposed development will utilize existing easements or rights-of-way for its proposed route and any associated distribution or collector networks.

(ii) Information regarding other utility facilities

(a) A map showing each existing major facility of a public utility within the County of the type proposed for development.

(b) The design capacity of each such facility, the excess capacity of each such facility, and the percentage of capacity at which each such facility operates.

(c) Whether present facilities can be upgraded to adequately accommodate a ten (10) year projected increase in demand for services to be offered by the proposed project.

(iii) Water resources:

(a) On the map of the base area, or another appropriate map, indicate any flood plain associated with the proposal.

(b) As applicable, describe the potential adverse effects of the proposal upon plant and animal life, dependent upon the water resources in question.

(c) As applicable, describe proposed sewage treatment facilities and non-point source controls.

(d) As applicable, describe pollutant loads (point and non-point sources) expected directly from the development. Specify seasonal variations.

(e) Describe the proposed water system, including:

i) Source of supply, volume and rate of flow at full development.

ii) Water rights owned or utilized.

iii) Proposed points of diversion and changes of points of diversion.

iv) Volume of stream flow to remain unused between points of diversion.

v) Dependability of supply (physical and legal).

vi) Effects on downstream users.

(iv) Impacts on Air quality.

(a) If applicable, detail how many average daily trips will be generated by the proposal.

(b) Describe atmospheric and meteorologic conditions in the impact area, and the background ambient air quality (TSP, SO2, HC, CO, NO x, O3, etc.).

(c) Describe pollutant outputs anticipated from the development and mitigation strategies.

(d) Prevailing wind patterns and summary of climatological conditions.

(v) Significant environmentally sensitive factors:

(a) Identify and locate, on a map of appropriate scale, the juxtaposition of any of the following features present in the proposed development or activity and its vicinity, and detail the potential impact of the proposal upon each feature.

i) Marshlands and wetlands.

ii) Ground water recharge areas. Surface H20 and run of.

iii) Potential natural hazards.

iv) Forests and woodlands.

v) Listed Endangered Species Habitat.

vi) Publicly owned outdoor recreation.

vii) Areas of geologic, historic or archeological importance.

(vi) Visual aesthetics and nuisance factors:

(a) Identify any significant deterioration of existing natural aesthetics, creation of visual blight, noise pollution or obnoxious odors, which may stem from the proposal.

(b) Where significant, map or describe area within view of project.

(c) Describe proposed mitigation strategy.

(vii) Transportation impacts:

(a) Describe what impacts the proposal will have upon transportation patterns in the area intended to be served or affected by the proposal.

(b) Describe the potential impact on roads within the County.

(c) Identify improvements required to any roads within the County, in order to serve the project adequately.

(viii) Less damaging alternatives:

(a) If the Planning Director determines that the nature or extent of the proposal involves the potential for significant adverse socio-economic or land use impacts, or warrants examination of specific, less adverse alternatives, the Planning Director may request that the Board require that the applicant evaluate and present information on such alternatives, as part of the application.

(b) Required information on alternatives may include, but shall not necessarily be limited to, information on the environmental impacts and cost-effectiveness of the alternatives, in relationship to the proposal presented, and reasons why alternatives are not feasible.

(c) Community impact analysis.

(i) Public support facilities and impacts:

(a) Describe community or public support facilities needed for the project, including, but not limited to, police and

fire protection, public road maintenance, and educational and health services, and identify needs for improvement or construction of new facilities or programs required for the success of the project.

(b) Describe how these needs are proposed to be accomplished or financed, and impacts associated with utilization of public facilities and services.

(ii) Impact on public finances:

(a) Describe capital investment in facility.

(b) Estimate anticipated revenues to local, state and federal governments, and special districts.

(d) Applicants seeking a permit for the site selection and construction of pipelines or storage areas shall submit the following additional documents and information:

(i) Description of hydrologic conditions – surface (impact area, as designated by the Planning Director).

(a) Provide map of all surface water.

(b) Describe expected monthly stream flows for typical year, wet year, dry year (include 7 day - 10 year low flows, where sufficient data exists).

(c) Describe physical stream features (gradient, velocity, depth, etc.).

(d) Provide data on water quality, reflecting chemical and biological quality, including BOD, dissolved O2, free CO2, pH, TDS, ph-th alkalinity, MO alkalinity, NH3, heavy metals and other toxic or deleterious substances, from a test within thirty days of the application submittal.

(ii) Description of hydraulic conditions - subsurface (impact area, as designated by the Planning Director).

(a) Map all aquifers that may be affected by project.

(b) Provide tables, graphs, and map showing permeability, transmissibility, thickness, volume, and depth of aquifers.

(c) Describe geology of strata overlying aquifers, including percolation rates travel time to ground water surface.

(d) Map of all wells using aquifers, including flow rates.

(e) Applicants seeking a permit for the site selection and construction of a power plant, shall submit, in addition to those requirements set forth above, a map locating and describing resource areas to be utilized as sources of energy.

(f) Applicants seeking a permit for the site selection and construction of transmission lines or substations, shall submit the following additional documents and information:

(i) Computer modeled electromagnetic field measurements within the proposed transmission line easement and within the substation or transition sites; and

(ii) Measures taken to comply with the concept of prudent avoidance, with respect to planning, siting, construction and operation of transmission lines, which may be those steps taken to comply with the Colorado Public Utilities Commission's Rule 18(i), or similar authority, for projects where other similar authority is applicable.

(4) Waiver of submittal requirements. The Planning Director may waive specific submittal requirements, pursuant to Section 2-204 of the Regulations.

(5) Completeness of Application and Referrals. The Planning Director shall determine whether or not the application is complete, pursuant to Section 2-201(2) and other applicable provisions of these Regulations. For purposes of this Chapter, the time allowed for the referrals, described in Section 2-206 and elsewhere in this Chapter, shall be minimum of forty-five days.

3-306 Planning Commission Hearing

(1) After the Planning Director has determined that the application is complete, as provided for in Section 2-201(2) of these Regulations, the Planning Director shall set a hearing date for the permit hearing, as specified in Section 2-301. The Planning Director shall also set a date for

the proposal to be reviewed at an Elbert County Planning Commission Hearing, allowing for the proper notice required by C.R.S. 30-28-110, and prior to and consistent with, the date set for hearing of the permit application by the Board of County Commissioners. The Planning Director shall then cause to be published, in a paper of general circulation in Elbert County, proper notice, including date, time and place for the permit hearing thirty days before the Planning Commission hearing. Such notice shall also include the date, time and place for the permit hearing in front of the Board, and shall be written to satisfy the statutory requirements and the requirements of these Regulations for the permit hearing. The permit hearing, in front of the Board, shall be set a minimum of fourteen (14) days following the Planning Commission hearing. The Planning Director shall also mail any required notices to applicable persons. Any approval of the proposal, given by the Planning Commission, shall be contingent upon subsequent granting of a permit for the said activity by the Board of County Commissioners, but such approval, if the subsequent permit is granted, shall satisfy the requirements of C.R.S. 30-28-110 and the County's review process for a use by special review for public utilities. In the event of Planning Commission disapproval, the applicant's appeal shall be proceeding with the permit application to the Board of County Commissioners.

3-307 Approval of Permit Application

(1) After completion of a hearing, conducted pursuant to these Regulations, the Board of County Commissioners shall approve, consistent with these Regulations, an application for permit for site selection and construction of a major facility of a public utility (with reasonable conditions, if any, in the discretion of the Board of County Commissioners), only if the proposed site selection and construction complies with the following criteria, to the extent applicable:

(a) The health, welfare and safety of the citizens of this County will be protected and served;

(b) The natural and socio-economic environment of this County will be protected and enhanced;

(c) All reasonable alternatives to the proposed action, including use of existing rights-of-way and joint use of rights-of-way, wherever uses are compatible, have been adequately assessed, and the proposed action represents the best interests of the people of this County, and represents the best utilization of resources in the impact area;

(d) A satisfactory program to mitigate, monitor and minimize adverse impacts has been presented;

(e) The nature and location or expansion of the facility complies with all applicable provisions of the Master Plan of this County, and other applicable regional, metropolitan, state, and national plans;

(f) The nature and location or expansion of the facility complements the existing and reasonably and foreseeable needs of the service area, and of the area immediately affected by the facility;

(g) The nature and location or expansion of the facility does not unduly or unreasonably impact existing community services;

(h) The nature and location or expansion of the facility will not create an expansion of the demand for government services beyond the reasonable capacity of the community or region to provide such services, as determined by the Board;

(i) The facility site or expansion area is not in an area with general meteorological and climatological conditions, which would unreasonably interfere with or obstruct normal operations and maintenance;

(j) The nature and location of the facility or expansion will not adversely affect the water rights of any upstream, downstream, or agricultural users, adjacent communities of the water users;

(k) Adequate water supplies are available for facility needs;

(l) The nature and location of the facility or expansion will not unduly interfere with any existing easements for, or rights-of-way for, other utilities, canals, mineral claims, or roads;

(m) Adequate electric, gas, telephone, water, sewage, and other utilities exist, or shall be developed to service the site;

(n) The nature and location for the expansion of the facility will not adversely affect any endangered or protected wildlife species, known natural resource, archaeologically significant resource, or historic landmark within the impact area;

(o) The nature and location or expansion of the facility, including expected growth and development related to the operation and provision of service, will not significantly deteriorate water or air quality in the impact area;

(p) The geological and topographical features of the site are adequate for all construction, clearing, grading, drainage, vegetation, and other needs of the facility construction or expansion;

(q) The existing water quality of affected state waters will not be degraded below state and federal standards or established baseline levels;

(r) The proposed project will not have a significantly adverse net effect on the capacities or functioning of drainage basins, streams, lakes and reservoirs in the impact area, nor on the permeability, volume, recharge capability, and depth of aquifers in the impact area;

(s) The benefits of the proposed developments outweigh the losses of any natural resources or reduction of productivity of agricultural lands, as a result of the proposed development;

(t) The applicant has obtained, or will obtain, all property rights, permits, and approvals necessary for the proposed project, including surface, mineral, and water rights and easements for drainage, disposal, utilities, access, etc... If the applicant has not obtained all necessary property rights, permits and approvals, applicant shall have made best efforts to have a letter of intent or option from affected property owners. The Board may, in its discretion, grant the permit, conditioned upon completion of the acquisition of such rights, prior to issuance of a building permit by the County;

(u) The proposed project will not present an unreasonable risk of exposure to, or release of, toxic or hazardous substances within the impact area. The determination of effects of the project shall include the following considerations:

(i) The means by which outdoor storage facilities for fuel, raw materials, equipment and related items are adequately enclosed by a fence or wall;

(ii) The likelihood of hazardous materials or wastes being transmitted downstream the site by natural causes or forces;

(iii) Containment of inflammable or explosive liquids, solids or gases.

(v) The scope and nature of the project will not create duplicate services within the County; and

(w) If the purpose and need for the proposed project are to meet the needs of an increasing population within the County, area and

community development and population trends clearly demonstrate a need for such development.

(x) The scope and nature of the project will not impose an undue financial burden on the residents of the County.

(2) The Board of County Commissioners shall deny the permit, if the proposed development does not comply with the applicable criteria in subsection (1) of this Section.

(3) The Board may impose additional mitigation requirements and conditions on an applicant, as follows, if it complies with each of the following steps:

(a) The Board shall make written findings that each such requirement and condition is necessary to ensure that the proposed project will not result in significant adverse net effect on the resources, values and conditions referenced above.

(b) The Board shall also find, in writing, that each such requirement and condition is necessitated by the proposed project.

(c) All such findings shall be based on material in the administrative record.

(d) The Board shall base the additional requirements and conditions on applicable design standards as adopted by the County, to the extent that such standards then exist.

(4) If the Board approved the issuance of a permit, all provisions of these Regulations, in particular, Sections 2-401 (Issuance of Permits) and 2-402 (Financial Security) shall apply.

Chapter 4 New Communities

Article 1 General and Introductory Provisions

4-101 Purpose and Intent

The purpose and intent of the regulations contained in this Chapter 4 are:

(1) Through the designation of Municipal Planning Areas and the County' s urbanization areas, pursuant to the Elbert County Master Plan, as amended, the County and the Towns have planned to accommodate growth in excess of regional and county population forecasts for a 20 year period. Therefore, in order to maximize community services and the development and extension of infrastructure, it is the general intent to encourage development in a manner which is consistent with the County's Master Plan;

(2) To provide for transportation, waste disposal, schools, and other governmental services, in a manner that will not overload facilities of existing communities of the region;

(3) To provide for the development of total communities, which provide for commercial and industrial activity, as well as residences, and for internal transportation and circulation patterns;

(4) To achieve planned and orderly land use development, while respecting private property rights;

(5) To encourage the provision of transportation, commercial, recreational, and education facilities conveniently located to housing of all types and design;

(6) To encourage innovations in residential, commercial, and industrial development and renewal, so that the growing demands of population may be met by greater variety in type, design, and layout of buildings, and by the conservation and more efficient use, of open space ancillary to said buildings;

(7) To encourage the planning and building of new communities, which incorporate the best features of design and planning;

(8) To ensure the provision of adequate water supply;

(9) To provide for the needs of agriculture, forestry, natural resources, industry, business, residential communities and recreation in future growth;

(10) To conserve soil, water, water quality, forest and agricultural resources and to protect vested water rights;

(11) To protect the integrity of the landscape;

(12) To promote the efficient and economic use of public resources; (minimize adverse social and environmental impacts, while maintaining a balance in priorities between minimizing such impacts, and encouraging economic benefits from new development);

(13) To avoid or reduce direct conflicts with adopted local government, regional and state master plans;

(14) To regulate the development of new communities, to preserve the health, safety, and welfare of citizens of Elbert County;

4-102 Definitions

In addition to the terms defined in Section 1-109 of Chapter 1 of these Regulations, the following terms, specific to the designation of site selection and development of new communities, shall be defined as follows:

(1) "Impact Area" means an area surrounding the proposed new community site, which is likely to be affected positively or negatively by development of the new community, the boundaries of which are determined by the Planning Director.

(2) "Growth Management Plan and Master Plan" (or comprehensive plan, or general plan) means a plan for the physical development of the state, a county, region or municipality, as defined by C.R.S. Sections 24-32-203(1)(e), 24-65-104(1)(a)&(b), 30-28-106(3) (a),(b), & (c), 30-28-107, and 31-23-106(1)(a), (b), (c), & (d), of by charter or ordinance of a homerule municipality.

(3) Consistent with definitions set forth in C.R.S. Section 24-65.1-104(13) "New Communities" means the major revitalization of existing municipalities, or the establishment or urbanized growth centers in unincorporated areas.

(4) a) Consistent with Elbert County Resolution 95-12, and subsequent recommendations by the New Community citizen task force, a New Community shall be any activity which falls within one or more of the following criteria:

i) is planned for a minimum population of one hundred (100) persons within five (5) years of implementation of the activity, or is planned for an ultimate population of 100 persons or more, with such population numbers determined by using dwelling unit compositions, as determined by the State demographer, for the proposed types of development and applicable at the time of application;

ii) is planned for or required municipal incorporation;

iii) is planned for, or requires, in connection with the sale of lots, the formation of either a service area, company or special district, such as: a water district, a sewer district, or a metropolitan district;

iv) is planned for, or requires expansion and/or extension of any existing water and/or sewer service district or association, within any twelve (12) month period, which is equal to, or greater than, ten percent (10%) of the population or land areas served by the district or association, at the beginning of said period;

v) is planned for, or requires a change in existing zoning, that provides for a doubling in allowable density on thirty-five (35) acres or more of land, provided that this criteria shall not apply, except for paragraph 4-307 (2) (a) of these Regulations to change in zoning, which would only result in the creation of four single family lots or less, and would not qualify as a new community, but for the first part of this subparagraph, further provided that this four lot exception shall only be available once every five (5) years for related parties or entitles, whether they be directly or indirectly, financially or otherwise related;

vi) is planned for, or requires annexation to, any incorporated areas within Elbert County, but is not in compliance with comprehensive plans adopted jointly by such incorporated areas and the County, or a County comprehensive plan.

b) Any proposed activity which falls into one or more of the categories listed above, shall then be categorized into one of the following types of "New Communities" or urban growth centers, to allow staff to determine the level of detail, and substance of submission requirements, for activities designated as a new community:

i) A **NEW TOWN** shall be a land development, located outside municipal corporate boundaries, planned for internal independence in economic, social and physical requirements, thus not dependent upon a central city and oriented toward a balanced mix of land uses and/or self-government, and including any residential development proposed, with a plan for more than 100 total dwelling units.

ii) A **GROWTH CENTER** shall be a land development, located outside the boundaries of an existing local government, planned for a variable degree of land use mix, or primarily residential, and oriented toward

relying upon the existing local governments for social, cultural and economic functions and services.

(5) "Incorporation or Annexation," any incorporation or annexation for the purpose of establishing an urban growth center in Elbert County, when located outside the Towns, as identified in Elbert County Master Plan, as amended. New Communities approval, by both the Planning Commission and the Board of County Commissioners, under these regulations, may be considered approval for amendment to the Elbert County Master Plan by the Elbert County Planning Commission.

(6) "Rezoning," any application for rezoning to Elbert County for the purpose of establishing an urban growth center, when located outside Towns, or areas of Urbanization, as identified in the Elbert County Master Plan, as amended. New Communities approval, by both the Planning Commission and the Board of County Commissioners, under these regulations, may be considered approval for amendment to the Elbert County Master Plan by the Elbert County Planning Commission.

4-103 Authority

These regulations are adopted pursuant to inter alia 24-65.1-101 et. seg. C.R.S. and 29-20-101 et. seg., C.R.S.

4-104 Applicability

These Regulations shall apply to site selection and development of any new communities, to be located wholly, or partially, within the unincorporated territory of Elbert County.

4-105 Non-Conforming Uses

(1) The provisions of this chapter shall not apply to, or affect, any development described in Section 1-105 of these Regulations, if these Regulations were adopted pursuant to only Section 24-65.1-101, et. seg., C.R.S.

(2) The provisions of this chapter shall not apply to any nonconforming use, existing on the date the area is designated or subjected to these Regulations, as such nonconforming uses are defined in the Elbert County Zoning Resolution

Part I, Section 5, and subject to all the provisions of such Section 5, as it is amended from time to time.

4-106 Relationship of Regulations to Other County, State, and Federal Requirements Affecting New Communities

(1) Nothing in these Regulations shall be construed as exempting an applicant for a permit from any other requirements of this County or other state, or federal law and regulations.

(2) To the extent that the requirements of these Regulations differ from any other applicable requirements, the more restrictive requirements shall apply.

(3) Permit requirements set forth in these Regulations, shall be in addition to all federal, state, or local laws, rules and regulations pertaining to any or all aspects of a new community.

Article 2 Designation of Site Selection and Development of New Communities

4-201 Designation of Site Selection and Development of New Communities

The Board of County Commissioners, having considered the intensity of current and foreseeable development pressures, applicable Guidelines for Identification and Designation adopted and issued by the Colorado Land Use Commission, and the provisions and requirements of these Regulations, it is the order of this body, that the designation of site selection and development of new communities, as made by the Board by Resolution 95-12, is hereby reaffirmed and designated as a matter of state interest, subject to the definitions herein, and that such activity shall be regulated pursuant to the provisions of this Chapter.

4-202 Boundaries of Area Covered by Designation

The site selection and development of any new community, wholly or partially within the boundaries of this County, shall be subject to this designation and these Regulations.

4-203 Reasons for Designation

Site selection and development of any new community, is hereby designated as a matter of state interest, for the reasons stated in Section 4-101 of this Chapter.

Article 3 Permit Program for Site Selection and Development of a New Community

4-301 Prohibition on Site Selection and Development of a New Community without Permit

(1) No person may locate or develop a New Community, wholly or partially in this County, without first obtaining a permit, pursuant to these Regulations.

(2) No local authority, including Elbert County, may issue a building permit for any site within a new community, wholly or partially in this County, or for a

site within a proposed New Community, unless the applicant has first obtained a permit, pursuant to these Regulations.

4-302 Procedural Requirements

(1) The procedures concerning permit applications, notice and conduct of permit hearings, review of Board of County Commissioners decisions, and issuance and content of permits for selecting a site and developing any new community, shall comply with the provisions set forth in Chapter 2, the Permit Regulations, adopted by this County, together with the additional regulations set forth in this Chapter.

(2) To minimize expenditures of the time and money by all concerned, an application for a permit to locate and construct a new community, must begin with a pre-application conference with the Planning Director.

(3) Available documents, studies, or reviews by applicant or regulatory agencies, will be utilized whenever possible by the Board, in its review, in order to minimize duplication and promote the timely review of the permit application.

4-303 Pre-application Conference

(1) Prior to formal filing of the application, the applicant shall confer with the Planning Director, to obtain information and guidance. The purpose of such a conference, is to permit the applicant and the staff to review the proposal informally, before substantial commitments of time and money is made.

(a) If, as a result of the meeting, the Planning Director determines that the nature or extent of the proposal involves the potential for significant adverse environmental impacts, or warrants examination of specific, less environmentally damaging alternatives, the Planning Director may request that the applicant evaluate and present information on such alternatives, as part of the application.

(b) Required information on alternatives may include, but shall not necessarily be limit to, information on the environmental impacts, mitigation and monitoring measures and cost-effectiveness of the alternatives, in relationship to the proposal presented.

(2) Topics of discussion at the pre-application conference shall include, but not be limited to:

(a) Characteristics of the activity, including its location or potential locations, significant natural and man-made features, with particular attention to natural hazard, resource, or other special areas; the size and accessibility of the site; surrounding development and land uses;

and its potential impact on surrounding areas, including potential environmental effects and planned alternatives or mitigation strategies.

(b) The nature of the development proposed, including land use types and their densities; placement of proposed buildings and maintenance of common open space or treatment of public uses areas; the preservation of natural features; proposed parking areas and internal circulation system, including trails, the total ground coverage of paved areas and structures, and types of water and sewage treatment systems proposed.

(c) Community policy considerations, including the review process and likely conformity of the proposed development, with the policies and requirements of these Regulation.

(d) Applicable regulations, review procedures and submission requirements.

(e) Other regulatory reviews or procedures, to which the applicant is subject, the applicant's time frame for the project, and other concerns of the applicant.

(3) Any comments or commitments made by any member of the County administration during this pre-application conference, are only preliminary in nature, and should not be relied upon the applicant. All prospective applicants should be informed that staff may not make any formal comments before the application is submitted, and adjacent, or nearby property owners and referral agencies have had an opportunity to respond, if applicable.

(4) County staff will make available, to applicant, any public information concerning the application, which is in the County's possession.

(5) The Planning Director shall specify the County's Concept Plan application requirements for the project, and shall notify the applicant, either at the per-application conference, or within 10 days thereafter, in writing, of such requirements, including, but not limited to, the extent of interest holders to receive notification of the project, under Section 2-206 and other applicable sections, the extent of the project area to be considered, the submittal requirements that will be waived by the County, and any particular submittal requirements, in addition to those specified in these Regulations. In addition, the Planning Director shall also notify the applicant of the applicable concept plan submittal requirements, for the applicant to proceed with a public concept plan meeting with the Board.

4-304 Concept Plan Application

(1) Within ten days of submittal of the concept plan materials, the Planning Director shall review the materials, and determine whether or not they are complete. After the concept plan materials are deemed complete, the Planning Director shall set a time on the Planning Commission's agenda within 14 days of receipt of the complete concept plan materials, and on the Board's agenda within 14 days of the Planning Commission's meeting.

(2) The Concept Plan shall be required for all new communities proposed. It is utilized to discuss a conceptual plan, to obtain the Planning Commission and County Commissioners' reaction to the appropriateness of an intended use, and to raise reasonable concerns prior to more detailed work being done. At such concept plan meeting, the Board and Planning Director, shall advise the applicant of major issues of concern and interest, which are separate and apart from technical requirements yet to be met.

(3) Within 10 days of the Concept Plan hearing in front of the Board, the Planning Director shall confirm, to the applicant, the application requirements set forth, as required in paragraph (5) of this section, and any other requirements arising out of the concept plan discussion.

(4) The applicant shall then have a maximum of 180 days, from the date of the Concept Plan hearing in front of the Board, to submit the formal application. Failure to submit the formal application within 180 days of the date of the concept plan hearing in front of the Board, shall be considered a withdrawal of the application.

(5) The minimum submission requirements for the concept plan application shall be five copies of the following:

(a) Completed application form, in the format attached hereto, as Exhibit B.

(b) Description of proposed new community and site.

(c) Description of the present use and zoning.

(d) Vicinity map showing the proposed site and the surrounding area. The project area to be shown shall be defined as follows:

(e) All requirements listed in Section VII (B) of the County Subdivision Regulations.

(6) Upon receipt of a Concept Plan application, the Planning Director shall issue a receipt, indicating that Concept Plan application requirements have been satisfied.

4-305 Application Submittal Requirements

(1) The following application submittal requirements shall apply to all applications for a development permit for a new community, except for requirements which have been waived, as provided in these Regulations. If the preliminary plat process, rezoning, or a PUD process are singly or jointly required, pursuant to Elbert County Zoning or Subdivision Regulations, they shall be presented concurrently with the application process herein defined. If there appears to be duplication in materials required, the Planning Director shall waive the requirement for one of the processes, as seems most practical.

(2) Submittal requirements for all applications for a development permit for a site selection of a development for a new community, where applicable:

(a) All permit applications shall contain a narrative, providing the following general information:

(1) Name, address and phone numbers of the applicant, their representative, and of their design engineer, surveyor and any other consultant,

(2) Statement of intent, including the scope and timing of development, including:

A) Proposed total dwelling units and square feet of commercial/office business space,

B) Provision, if any, for low income housing,

C) Provision for water and wastewater treatment and waste disposal and solid waste disposal,

D) Proximity to nearest primary and secondary schools, current capacity, and facilities, and projected enrollment, planned capital construction program and new facilities required by the development, as well as transportation,

E) Proximity and provision for fire protection and health care services, and impact thereon,

F) Applicant's financial capability to completely plan and develop the new community and the anticipated costs of development, the intent to use district financing, and the outstanding general obligation bond indebtedness within the impact area.

G) Proximity and provision for gas, electric and communication utilities,

(3) Statement of compatibility with the goals, policies, guidelines and intent of the Elbert County Master Plan, and applicable regulations,

(4) Consistency with the maps contained in the Master Plan,

(5) Compatibility with surrounding land uses and zoning,

(6) Environmental constraints and hazards existing on the site, and analysis of impacts and proposed mitigation of adverse impacts,

(7) Integration of the transportation system into the Elbert County System,

(8) Traffic Impact on the existing road network and proposed mitigation,

(9) If applicable, compliance with the Best Management Practices of the applicable basin authority and the corresponding basin water quality master plan, including letter from Basin Authority attending to phosphorus allocation,

(10) Impact on wild life and proposed mitigation,

(11) Feasibility analysis,

(12) If located outside the urbanized areas designated on the Elbert County Master Plan, as amended, the following additional information shall be submitted:

A) Water supply needed for full build out (in acre feet), source of water supply, acre feet adjudicated, percentage of tributary supply;
B) Percentage of build out of approved residential and industrial/commercial/business in the urbanized areas

as identified in the Elbert County Master Plan, as amended;

C) Change in the compatibility with economic or land use conditions on the County.

(13) Fiscal impact (in five year increments to build out) on government institutions, service districts, etc. and proposed mitigation.

(b) The application shall also be accompanied by a map, prepared on a 24" X 36" sheet, at a scale of 1"=100' or 1"=200' (unless otherwise approved by the Planning Director) which includes the following information:

1) USGS
2) Depict trees and major strands of vegetation
3) Shadow all areas having slopes greater than 20%
4) Delineate all 100-year flood plains, major drainages and other natural hazard areas
5) Label adjacent zoning and uses
6) North arrow and date of preparation
7) A vicinity map drawn at a scale of 1"=2,000' superimposed on a current Elbert County Subdivision map, showing the relationship of the site to the surrounding area within a minimum 1 mile radius
8) Identify County or State designated scenic areas
9) Identify historic or archaeological sites
10) Major roads on, or adjacent to, the site and their existing and proposed functional classification

(c) List of mineral and water rights owners and their rights affected by the project site

(d) List of names and addresses of all surface property owners of the site and within 500 feet of the exterior boundaries of the property proposed to be disturbed.

(e) Completed permit application (see Exhibit B-1)

(f) Names and addresses of persons or entities with an interest in any real property proposed to be physically disturbed or crossed by the development of the new community, excluding mineral interest, but including, without limitation, those holding mortgages, judgments, liens, easements, contract rights, rights-of-way, reservations, exceptions or other encumbrances, at least to the extent shown in the records of the Clerk and Recorder in Elbert County, or of which applicant has actual knowledge.

(g) In addition to the submittal requirements above on a 24" X 36" sheet, identify the proposed location of residential, commercial/office/industrial, parks and trails, open space and school sites, as applicable, and identify all parks, trails, open space and schools within two miles of the proposed development.

In addition, the applicant shall provide a statement describing the process by which the applicant compiled such information, when such information was compiled, and the steps which were taken to ensure the accuracy of the information. The County will require that the information be compiled and verified in a manner reasonably designed to ensure the accuracy of such information, but shall not require the use of title insurance or attorney's title opinions. Applicant shall submit the most current information available.

(h) A map or maps shall be prepared containing the following information:

1) study area and description of how the study area was determined,

2) all the special districts (school, fire, water, sanitation, etc.) within the study area,

3) The area, within the study area, where the physical and socio-economic environment is likely to be affected, beneficially or adversely, by the site selection and construction of the proposed new community (may be a narrative).

(i) Summary of the effects of the proposed site selection and construction of the new community upon the natural and socio-economic environment of the impact area, as applicable to submission requirements. Include, should be an analysis of impacts upon agricultural use and agricultural resources and upon vested water rights.

(j) Analysis by an independent consultant, as prescribed by Section 2-203, of impacts of individual septic systems and wells on water quality and quantity, and soil percolation tests, and any other impact analysis studies. If adverse impacts are indicated, the Board of County Commissioners may require central water and sewer as a condition for the permit.

(k) Submission of a proposed development agreement to meet costs of affected political subdivisions in the project area, of providing new or upgraded services and facilities necessary to serve the proposed project.

(l) Surface and subsurface drainage analysis.

(m) Any other information required by the Board or the Planning Director and communicated to the applicant, at the pre-application conference, or

within ten days thereafter. This limitation shall not preclude the Board from requesting the applicant to provide additional information during the public hearing on the application, in order to provide which, the applicant shall be granted reasonable continuances, if the applicant so requests.

(3) Specific submittal requirements. The Planning Director may impose the following additional requirements on the applicant, if the Planning Director determines in such Director's sole discretion, that the size and scope of the proposed project, warrants the need for the additional information, in order for the Board of County Commissioners to make an informed decision on the application. It is the intention of these Regulations that the following information shall be required, only if the proposed project is of such size and scope, that it is reasonably likely to have significant environmental or social impacts on Elbert County residents or lands. Generally, in the absence of exceptional density, or an exceptionally sensitive site, the following will only be required for a **NEW TOWN** proposal.

(a) Environmental impact assessment, analyzing the following in greater detail then set forth elsewhere in the application.

(i) Land Use:

(A) Describe the relationship of the project to local land use policies and comprehensive plans and to policies and plans adopted or under preparation by federal, state, regional or other affected local governmental agencies, approved or proposed projects, and capital improvements programs of surrounding governmental jurisdictions (including special districts) in the identified impact area.

(B) Detail the agricultural productivity capability of the land affected by the proposal (SCS classification).

(ii) Water Resources:

(A) On the map of the base area, or another appropriate map, indicate any flood plain associated with the proposal. Documentation of the historical flooding activity should be included. Detail potential, adverse impacts related to the associated flood plain.

(B) Describe proposed sewage treatment facilities and non-point source controls.

(C) Describe pollutant loads (point and non-point sources) expected directly from the development. Specify seasonal variations.

(D) Describe the proposed water system, including:

I) Source of supply, volume and rate of low at full development.
II) Water rights owned or utilized.
III) Proposed points of diversion and changes points of diversion.
IV) Volume of stream flow to remain unused between points of diversion.
V) Dependability of supply (physical and legal).
VI) Effects on downstream users.

iii) Air Quality

(A) Describe pollutant outputs anticipated from the development and mitigation strategies.

iv) Significant environmentally sensitive factors:

(A) Identify and locate, on a map of appropriate scale, the juxtaposition of any of the following features present in the proposed development or activity and its vicinity, and detail the potential impact of the proposal upon each feature.

I) Marshlands and Wetlands.
II) Ground water recharge areas.
III) Potential natural hazards.
IV) Forests and woodlands.
V) Critical wildlife habitat. Federal or state endangered or protected species.
VI) Public owned outdoor recreation areas.
VII) Unique areas of geologic, historic or archaeological importance.

v) Visual aesthetics and nuisance factors:

(A) Identify any significant deterioration of existing natural aesthetics, creation of visual blight, noise pollution or obnoxious odors, which may stem from the proposal.

(B) Where significant, map or describe area within view of project.

(C) Describe proposed mitigation strategy.

vi) Transportation impacts:

(A) Describe what impacts the proposal will have upon transportation patterns in the area intended to be served or affected by the proposal.

(B) Describe the potential impact on roads within the County.

(C) Identify improvements required to any roads within the County in order to serve the project adequately.

(vii) Less Damaging Alternatives:

(A) If the Planning Director determines that the nature or extent of the proposal involves the potential for significant adverse environmental impact, or warrants examination of specific, less environmentally damaging alternatives, the Planning Director may request that the Board require that the applicant evaluate and present information on such alternatives, as part of the application.

(B) Required information on alternatives may include, but shall not necessarily be limited to, information on the environmental impacts and cost-effectiveness of the alternatives in relationship to the proposal presented.

(b) Community Impact Assessment

(i) Public support facilities and impacts:

(A) Describe community or public support facilities needed for the project, including but not limited to, police and fire protection, public road maintenance, and educational and health services, and identify needs for improvement or construction of new facilities, or programs required for the success of the project.

(B) Describe how these needs are proposed to be accomplished or financed.

(ii) Impact on public finances:

(A) Describe capital investment in new communities.

(B) Estimate anticipated revenues to local, state and federal governments, and special districts.

(c) Timing: description of development schedule:

(i) Define development schedule and describe the plan of the schedule;

(ii) Proposed phasing, if any of development and improvements;

(iii) Relate timing of construction and operation of public facilities to expected population.

(d) Financial Ability: provide evidence demonstrating:

(i) The technical and administrative capability if the applicant to plan and develop a new community, including experience, success and/or failures on other new community projects, and expertise and experience of personnel.

(ii) The financial capability of the applicant including:

A) all the anticipated costs of developing public and publicly financed services and facilities;
B) the manner by which and the sources from which development costs will be met, including

anticipated revenues from the development, financial resources of the developer, borrowing and special districts if any;

C) a procedure allowing for periodic updating of the financial plan or program to take into consideration changes in costs, revenues, market conditions, and other relevant changes affecting the development;

D) marketing strategy for residential, commercial and industrial property.

(5) Waiver of submittal requirements.

The Planning Director may waive specific submittal requirements provided in Subsection 2-204 above.

(6) Within 10 days of submission of the formal application, and consistent with the provisions of Chapter Two of these Regulations, the Planning Director shall review the application for completeness.

(7) The Planning Director shall then conform to the referral procedures set forth in Chapter Two and elsewhere of these Regulations, provided that for referrals pursuant to this Chapter Four, the referral period shall be 35 days.

4-306 Hearings in Front of the Planning Commission and Coordination with Re-Zoning and Subdivision Approval Process

(1) In order to coordinate with the zoning and subdivision processes applicable to a proposed new community, the new community permit application shall first be heard for recommendation by the Planning Commission. The Planning Commission's recommendation shall not be binding on the Board, but shall fulfill the applicable zoning or subdivision requirements for Planning Commission review, to avoid causing undue delay to the applicant. Reference is made to the chart attached hereto, and hereby incorporated, by reference, as Exhibit 2, which sets forth the relationship between the new community permit process and the County's zoning and subdivision requirements. As indicated on the chart, the process for minor development/rezones, and A-1 rezoning applications, may run currently with this permit process. For the major subdivision and PUD rezoning applications, the permit hearing may be concurrent with the preliminary plat approval.

(2) Any re-zoning approval, or subdivision approval shall be contingent on granting of a new communities permit for the proposed project, and any new

communities permit, shall be effective only on approval of the relevant re-zoning or subdivision applications.

(3) Consistent with the procedures for receipt of the application, and referral procedures as specified in Chapter Two and otherwise, the Planning Director shall set a date for hearing of the permit application before the Planning Commission, and then before the Board of County Commissioners, a minimum of fourteen days following the Planning Commission hearing date. The Planning Director shall cause to be published in a newspaper of general circulation in Elbert County, a notice of both meetings, stating the time, date, place and subject matter of each, thirty (30) days before the Planning Commission Hearing.

4-307 Approval of Permit Application

(1) The board of County Commissioners shall approve an application for a permit for site selection and development of a new community (with reasonable conditions, if any, in the discretion of the Board of County Commissioners) only of the proposed site selection and development complies with the following criteria, to the extent applicable:

(a) The health, welfare and safety of the citizens of this County will be protected and served;

(b) The natural and socio-economic environment of this County will be protected and enhanced;

(c) The applicant has presented and committed to a satisfactory program to mitigate, and minimize adverse impacts;

(d) The nature and location or expansion of the new community complies with the intent of all applicable provisions of the Master Plan of this County, and other applicable regional, metropolitan, state, and national plans;

(e) The nature and location or expansion of the new community will not create an expansion of the demand for government services, beyond the reasonable capacity of the community or region to provide such services, as determined by the Board, or the plan contains adequate mitigation of such demands; in particular, the new community design shall, at a minimum, provide for transportation, waste disposal, schools, and other governmental services in a manner that will not overload facilities of existing communities in the impact area;

(f) Priority is given to the development of a total community, which provides for commercial and industrial activity, as well as residences, and for internal transportation and circulation patterns;

(g) (i) The nature and location of the new community or expansion will not adversely affect the water quality or water rights of any upstream, downstream, or agricultural users, adjacent communities or other water users;

(ii) Adequate water supplies are available for new community needs;

(iii) The existing water quality of affected state waters will not be degraded below state and federal standards or established baseline levels, and

(iv) The proposed project will not have a significantly adverse net effect on the capacities or functioning of streams, lakes and reservoirs in the impact area, nor on the permeability, volume, recharge capability and depth of the aquifers in the impact area.

(h) Adequate electric, gas, telephone, water, sewage, and other utilities exist or shall be developed to service the site;

(i) The applicant has obtained, or will obtain, all property rights, permits and approvals necessary for the proposed project, including surface, mineral, and water rights and easements for drainage, disposal, utilities, access, etc. If the applicant has not obtained all necessary property rights, permits and approvals, the Board may, in its discretion, grant the permit, conditioned upon completion of the acquisition of such rights, prior to issuance of a zoning or building permit by the County.

(j) Compliance with the applicable Elbert County Zoning and Subdivision Regulations and all the provisions of the permit application procedure.

(k) Compatibility with existing and surrounding land uses, and existing natural environmental conditions of the site.

(l) The applicant has made provisions to preserve such natural features as water bodies and steep slopes and to establish and maintain an accessible open-space network for conservation, natural beauty, and recreation, as well as to prevent environmental pollution, reduce potential natural hazards, and minimize noise problems.

(m) The proposal will not result in detrimental impacts to the existing or planned transportation system, and that it has been demonstrated that

adequate access has or will be constructed, including any external roadways, interchanges, and railroad crossings necessitated by the build-out of the development. Rural and urban classifications are determined by the Colorado Department of Transportation (state roads) and by the Elbert County Master Plan (all other roadways) and the land use and transportation circulation plans, and population density and distributions are planned in such a way as to promote adequate, internal accessibility.

(n) The proposed development is in compliance with the best management practices of the applicable basin authority and the corresponding basin water quality master plan.

(o) The nature and location of the development will not interfere with threatened or endangered wildlife habitats, or adversely affect any threatened wildlife species, unique natural resource or historic or archaeological landmark, within the development area, unless it can be demonstrated that adequate mitigation measures will be taken.

(p) The development plan utilizes current design and technology for energy conservation with respect to land utilization;

(q) The applicant has the technical and financial capability to completely plan and develop the new community within a reasonable time, and the proposed new community is economically feasible. This is demonstrated by providing evidence of:

i) The technical and administrative capability of the applicant to plan and develop a new community, including experience, success and/or failures on other new community projects, and expertise and experience of personnel.

ii) The financial capability of the applicant, including:

A) all anticipated costs of developing public and publicly financed services and facilities;

B) the extent to which the development costs will be met by, financial resources of the developer, borrowing, and/or special districts, if any.

iii) Before any permit is issued, the Board of County Commissioners may require the applicant to file a guarantee of financial security deemed adequate by the Board of County Commissioners. The required

financial security to be in a form acceptable to the Board of County Commissioners in the amount of one hundred fifteen percent (115%) of the estimated cost of the anticipated infrastructure for the proposed new community.

A) The Board of County Commissioners may require that the financial feasibility of the project be reviewed by an independent CPA, if there is reason to doubt the accuracy of the financial information submitted, or the estimated costs of completing the new community.

(r) The project is in proximity to primary and secondary schools of adequate capacity, has the ability to provide for adequate educational facilities, or has proposed an acceptable plan for mitigating the impact on schools with inadequate capacity.

(s) Applicant has compiled with all of the provisions of the permit application procedure.

(2) Additional criteria for developments outside the urbanized areas designed on the Elbert County Master Plan, as amended.

(a) In order to assure a long term water supply, and given the concern with dependence on bedrock ground water, and the difficulty in supplying future surface sources outside the urbanized areas, the following additional criteria apply:

i) Total water supply for full project build out has been demonstrated, to the satisfaction of the Board of County Commissioners, based on the following factors: Such supply shall be based on a factor of .4 acre feet for residential, and the single family equivalent for non-residential. The factor of .4 acre feet for residential, applies to the residential portion of use of a residence, and does not include domestic or agricultural stock watering and other associated uses of rural residential uses. An additional appropriate factor would be required for such uses.

ii) If greater than 50% of the water supply is a renewable source of water, then a 100 aquifer year life will be applied.

iii) If less than 50% of the water supply, but greater than 25% of the water supply, is a renewable source of water, then a 200 year life will be applied.

iv) If less than 25% of the water supply is a renewable source of water, then a 300 year life will be applied.

(b) To efficiently utilize public and private investments in infrastructure and urban service areas, moderate build out must be demonstrated in the urbanized areas and within municipal planning areas; moderate shall be defined as 40% build out of residential, and 20% build out of industrial/commercial/ business. This particular requirement will be waived, if it can be demonstrated that there is a particular benefit which accrues to the County, and all other criteria are met.

(c) The applicant has demonstrated that the socio-economic, or land use conditions of the County, either have changed, or are in the process of change, in such a manner to warrant approval.

(d) If negative fiscal impacts to Elbert County or other units of government occur as a result of the project, either mitigation and monitoring of such negative fiscal impacts or particular benefits to Elbert County, must be demonstrated to the satisfaction of the Board of County Commissioners, to offset such impacts.

(3) The Board of County Commissioners shall deny the permit, if the proposed development does not comply with the applicable criteria in subsections (1) and (2) of this Section.

(a) If specific submittal requirements have been waived, pursuant to these Regulations, then the appropriate criteria may also be waived.

(b) Permit approval for any of these areas or activities designated herein as matters of State Interest, does not constitute approval of any other permit or application required by the County or any other agency, except as provided herein.

(4) The board may impose additional mitigation requirements and conditions on an applicant as follows, if it complies with each of the following steps.

(a) The Board shall make written findings, that each such requirements and condition is necessary to ensure that the proposed project will not result in significant adverse net

effect on the resources, values, and conditions referenced above.

(b) The Board shall also find, in writing, that each such requirement and condition, is necessitated by the proposed project.

(c) All such findings shall be based on material in the administrative record.

(d) The Board shall base the additional requirements and conditions on applicable design standards as adopted by the County, to the extent that such standards then exist.

(5) If the Board approves the issuance of a permit, all other sections of these Regulations shall apply, in particular, Sections 2-401 (Issuance of a Permit) and 2-402 (Financial Security).

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NEW COMMUNITIES PERMIT PROCESS FLOW CHART

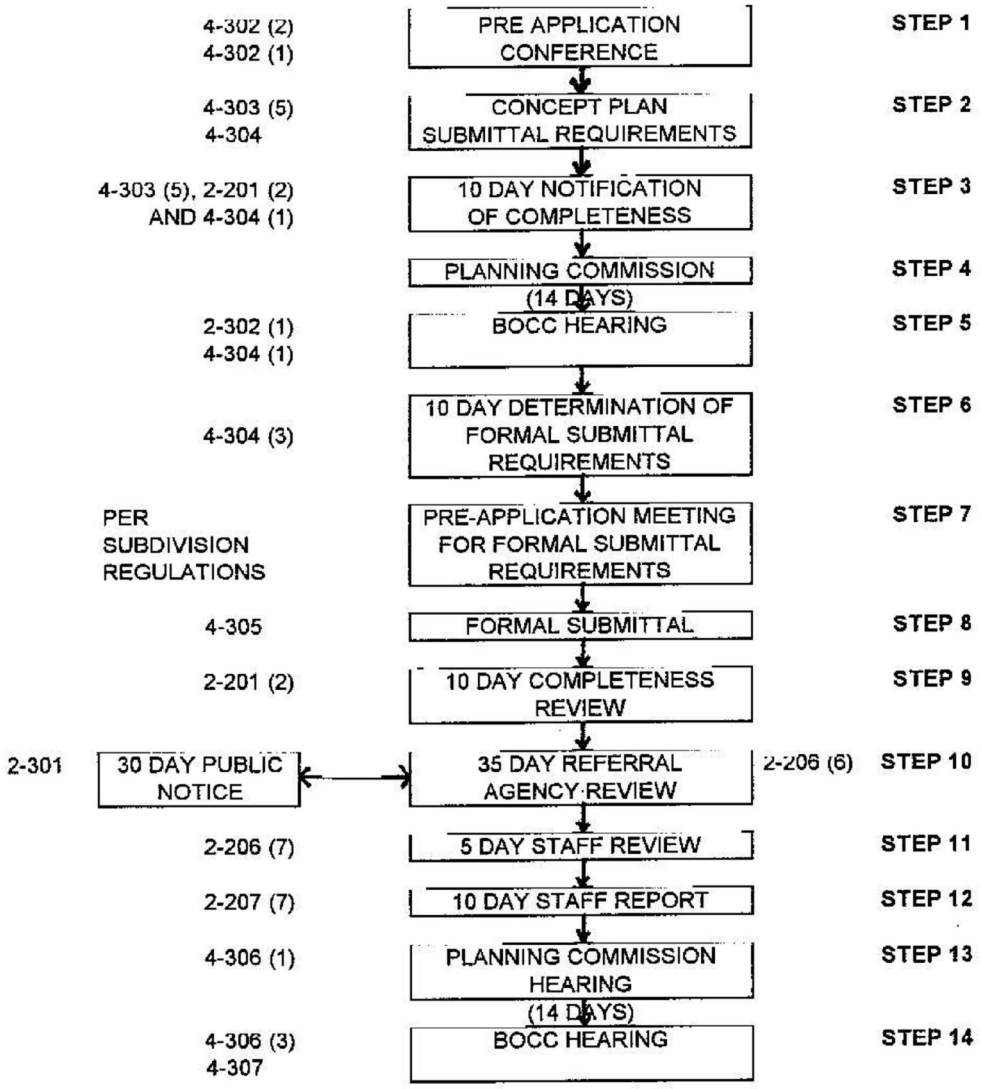

EXHIBIT #1

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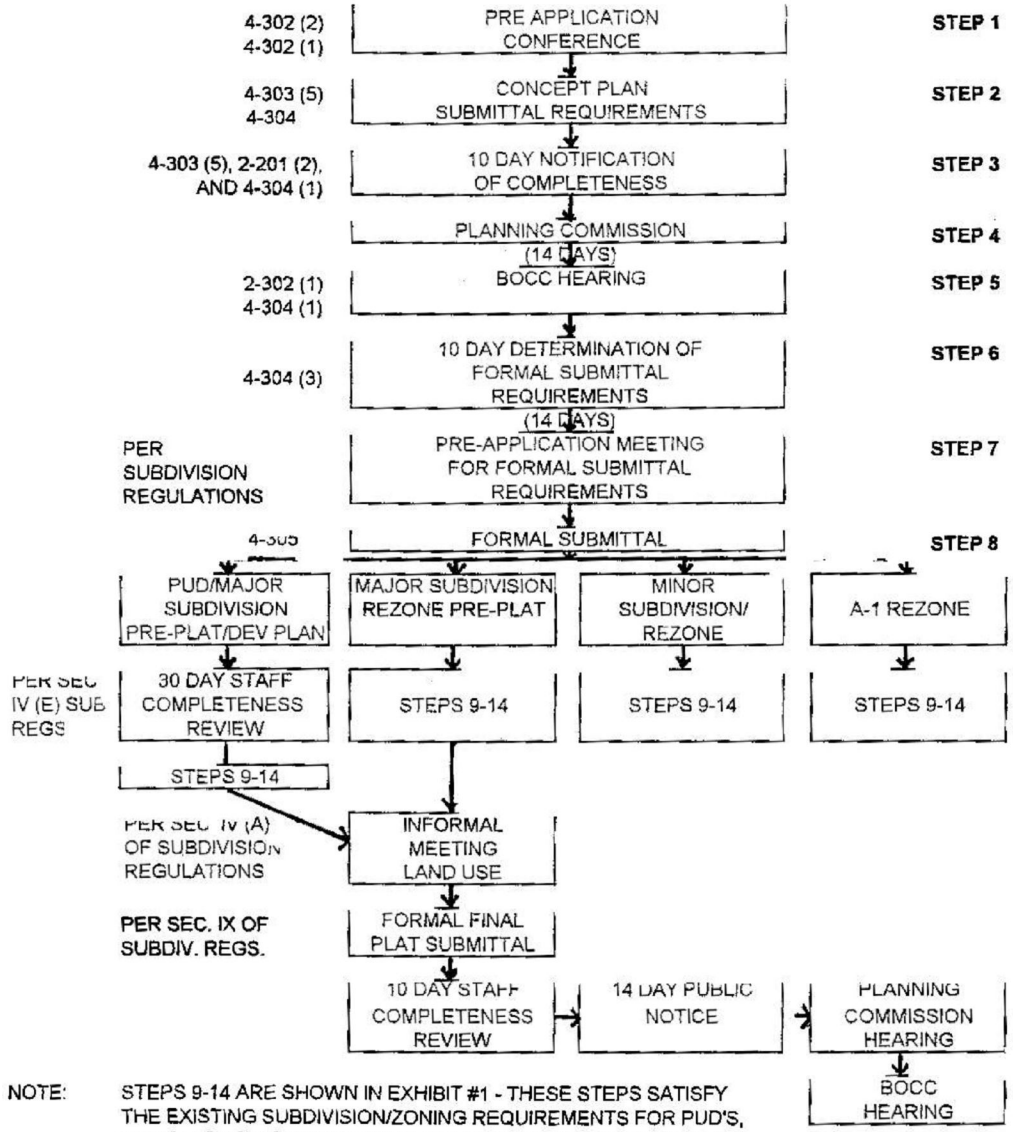
NEW COMMUNITIES PERMIT PROCESS CONCURRENT WITH SUBDIVISION/REZONE PROCESS



NOTE: STEPS 9-14 ARE SHOWN IN EXHIBIT #1 - THESE STEPS SATISFY THE EXISTING SUBDIVISION/ZONING REQUIREMENTS FOR PUD'S, MINOR DEVELOPMENTS AND A-1 REZONES. IT ALSO SATISFIES REQUIRMENTS FOR THE PRELIMINARY PLAT STAGE OF MAJOR DEVELOPMENTS

EXHIBIT #2

EXHIBIT A-1
ELBERT COUNTY, COLORADO

DESIGNATION OF AREAS OF STATE INTEREST

Pursuant Section 24-65.1-101, et seg., C.R.S. on January 4, 1995 the Board of County Commissioners of Elbert County designated the Site Selection and Development of Key Facilities and the Site Selection and Construction of Major Facilities of a Public Utility as activities of state interest. Such activities may not be conducted within the unincorporated area of Elbert County without a permit. Procedures for obtaining such a permit are available at the Elbert County Planning (Land Use Department), which is located in Elbert County Administration building, 221 Comanche Street, Kiowa, Colorado 80117.

Date: May 24, 1995

ATTEST:

Clerk to the Board

Chair
Board of County
Commissioners
Elbert County,
Colorado

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EXHIBIT A-2
ELBERT COUNTY, COLORADO

DESIGNATION OF ACTIVITY OF STATE INTEREST

Pursuant Section 24-65.1-101, et seg., C.R.S. on January 4, 1995 the Board of County Commissioners of Elbert County designated the Site Selection and Development of Key Facilities and the Site Selection and Construction of Major Facilities of a Public Utility as activities of state interest. Such activities may not be conducted within the unincorporated area of Elbert County without a permit. Procedures for obtaining such a permit are available at the Elbert County Planning (Land Use Department), which is located in Elbert County Administration building, 221 Comanche Street, Kiowa, Colorado 80117.

Date: May 24, 1995

ATTEST:

_____
Clerk to the Board

_____
Chair
Board of County
Commissioners
Elbert County,
Colorado

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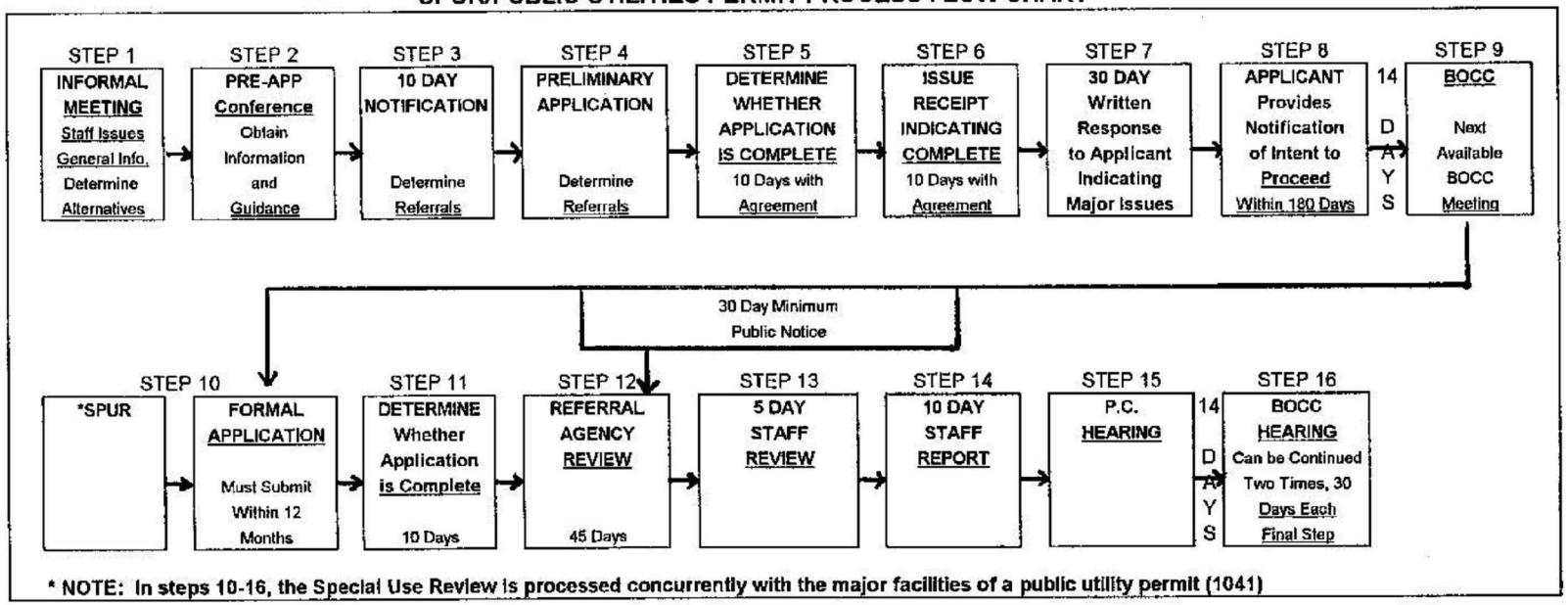
EXHIBIT #3

SPUR/PUBLIC UTILITIES PERMIT PROCESS FLOW CHART



* NOTE: In steps 10-16, the Special Use Review is processed concurrently with the major facilities of a public utility permit (1041)

EXHIBIT B-1
ELBERT COUNTY, COLORADO

APPLICATION FOR A PERMIT TO CONDUCT A DESIGNATED ACTIVITY OF STATE INTEREST OR TO ENGAGE IN DEVELOPMENT IN A DESIGNATED AREA OF STATE INTEREST

To: Permit Authority, Elbert County

Re: _____, as a matter of state interest.

From: _____
(Applicant's Name)

_____
(Address)

_____
(Telephone)

Date Submitted: _____

Date Received and Accepted as Complete: _____

1. Matter of State Interest

The applicant requests that a permit be issued for each of the items checked below:

A permit to conduct one or more of the following activities of state interest:

____ Site selection and construction of a major facility of a public utility.

____ Other

2. Proposed Activity or Development

General Description of the specific activity or development proposed:

_____

_____

3. General Description

A general, non-legal description and the popular name, if any, of the tract of land upon which the activity or development is to be conducted:

4. Legal Description

The legal description, including the acreage, of the tract land upon which the development or the activity is to be conducted, by metes and bounds or by government survey description: (attach additional sheets if necessary):

5. Owners and Interests

Set out below, or on separate sheets, the names and addresses of those persons holding recorded legal, equitable, contractual and option interests, and any other person known to the applicant, having an interest in the property described in paragraph 4 above, as well as the nature and extent of those interests for each person, as required in the Guidelines and Regulations for Areas and Activities of State Interest of Elbert County, for each of the activities or areas checked in paragraph 1 above.

6. Submission Requirements

Submission requirements described in the Guidelines and Regulations for Areas and Activities of State Interest of Elbert County, for each of the activities or areas checked in paragraph 1 above, are attached to this application. Those attachments are identified, by letter or number, and described by the title below:

7. Design and Performance Standards

The attached analyses show that each of the design and performance standards set forth in the regulations for each of the activities or areas checked in paragraph 1 above, will be met. The individual analyses are identified by reference to the appropriate paragraph or section numbers corresponding to each standard in the Regulations.

8. Additional Information Required

Attached any additional information required by the Guidelines and Regulations.

9. Duration of Permit

The Applicant requests a permit for a period of _____years.

10. Application Fee

An application fee accompanies this application. Note: This initial application fee is nonrefundable. The applicant may also be required to pay Elbert County's reasonable costs of processing this application in excess of such fee, including but not limited to costs of consultants, attorneys, copies, long distance telephone, and facsimile transmission expenses. Reimbursement of the County's costs of processing shall be made within 30 days of invoice by the County to the applicant therefor. The Planning Director may also require deposit, in advance, of expenditure for expenditures deemed significant and reasonably likely to be incurred. If the applicant fails to pay the initial application fee or to reimburse or deposit expenses to the County in a timely manner, the County may refuse to process or suspend processing of an application, including refusal to hold hearings or issue permits.

APPLICANT:

By: _____
(Name)

_____
(Title)

EXHIBIT C-1

PERMIT ISSUED TO CONDUCT A DESIGNATED ACTIVITY OF STATE INTEREST OR TO ENGAGE IN DEVELOPMENT IN A DESIGNATED AREA OF STATE INTEREST IN ELBERT COUNTY, COLORADO

Pursuant to Guidelines and Regulations for Areas and Activities of State Interest of Elbert County heretofore adopted by the Board of County Commissioners, the County has received an application from _____(hereinafter "Applicant") for a permit to conduct the following matter(s) of state interest: _____

_____

_____

and has approved that application.

This permit authorizes the Applicant:

1. To conduct the following activities:

2. On the following-described tract of land:

3. For the following period:

4. In accordance with the application, approved by the Board of County Commissioners on _____, 20___, as well as the guidelines for administration, adopted by Elbert County for [insert category of matter of state interest involved] adopted by Elbert County on [date].

5. On the condition that the Applicant proceeds in conformity with all applicable federal and state statutes and regulations, as well as all applicable local land use controls including, but not limited to, applicable comprehensive or master plans, subdivision regulations, zoning and building codes, and the following additional conditions:

6. Financial security shall be posted under and this permit, and this permit shall not be effective until the Applicant has filed the proper security with the Board of County Commissioners, in form and content acceptable to them, pursuant to provisions of the Administrative and Permit Regulations. Such security shall be in the amount of _____ ($_____) and shall be subject to the following additional conditions:

   This permit is valid for use only by the Applicant, and may not be transferred. In the event that the Applicant fails to take substantial steps to initiate the above development or activity within twenty-

four (24) months from the date of this permit or, if such steps are taken, in the event the applicant fails to complete the development or activity with reasonable diligence, this permit may be revoked by the Permit Authority.

Date:_____

ATTEST:

_____
Clerk to the Board

_____
Chair
Board of County Commissioners
Elbert County, Colorado

[S E A L]

ELBERT COUNTY REGULATIONS FOR AREAS AND ACTIVITIES OF STATE INTEREST

10000: INTRODUCTORY AND GENERAL PROVISIONS

A. Purpose and Intent

The purpose of these Regulations is to designate certain activities of state interest and to enact guidelines for their administration. The intent of these Regulations is to ensure that development in Elbert County is carried out in a manner that furthers the public health, safety and welfare of the residents of the County and is protective of the environment.

B. Authority

These Regulations are authorized by, inter alia, Section 24-65.1-101, et. seq.; Section 30-28-101, et. seq.; Section 30-28-201, et. seq.; Section 29-20-101, et. seq.; and Section 24-32-111, C.RS.

C. Definitions

Administrator: The County Administrator.

Adverse: Unfavorable, harmful.

Affected Party: Any person with an interest in the outcome of the permit decision for the Proposed Project.

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

Alteration: A change or rearrangement in the structural parts or in the existing facilities of a building or structure or an enlargement, whether by extending on a side or increasing in height, or the moving from one location or position to another.

Applicant: Any person applying for a permit under these Regulations.

Aquifer Recharge Area: Any area where surface water may infiltrate to a water-bearing stratum of permeable rock, sand or gravel. This definition will also include wells used for disposal of wastewater or toxic pollutants.

Board: The Elbert County Board of County Commissioners.

Board of County Commissioners: The Elbert County Board of County Commissioners.

Building: Any structure having a roof supported by columns or walls.

Building Permit: A permit which is issued by the Building Inspector prior to the erection, construction, alteration, moving, relocation or change of use of any building or structure.

CLUC: Colorado Land Use Commission.

Collection System: A network of pipes and conduits through which sewage flows to a sewage treatment plant.

Commission: The Elbert County Planning Commission.

Cost: The total monetary amount to be paid, including all amounts to be paid for land acquisition, capital improvements, construction, fixtures, equipment, labor, materials, operation, financing, debt service, planning, permitting and similar purposes.

County: Elbert County.

Dedication: The conveyance or setting aside of land to the Board or its designee.

Designation: That legal procedure specified by §§ 24-65.1-401, -402, -406, C.R.S., for designating matters of State interest. It also includes the revocation and amendment of such designations.

Determination: Determination of Level of Permit Review or amendment by the Planning Director.

Development: Any construction, activity and/or ongoing operation that changes the basic character or the use of the environment in which the construction, activity or operation occurs.

Development Area: Those geographic areas within the County that will be developed or altered directly by construction or operation of the project.

Development Permit: Any Elbert County land use permits or approvals of any kind including building permits, conditional use permits, plat approvals, grading permits or land use permits.

Distribution System: Network of pipes and conduits through which water is piped to the public for human consumption or a network of pipes and conduits through which water is piped to the public in exchange or trade for water for human consumption.

Domestic Water and Wastewater Treatment System: A wastewater treatment plant, water treatment plant, or water supply system.

(a) "Wastewater treatment plant" means the facility or group of units, including any system of pipes, structures, and facilities through which wastewater is collected for treatment, that is used for treatment of industrial or domestic wastewater from sewer systems and for the reduction and handling of solids and gases removed from such wastes, whether or not such facility or group of units discharges into state waters.

(b) "Water supply system" means the system of wells, diversions, pipes, structures, and facilities, including impoundments and their associated structures, through which a water supply is obtained, stored, and sold or distributed for domestic uses; or the system of wells, diversions, pipes, structures, and facilities, including impoundments, through which a water supply is obtained which will be used directly or exchanged for water which will be used for human consumption or household use. In determining whether a project is a domestic water supply system the Board will consider water rights decrees, pending water rights applications, intergovernmental agreements, water supply contracts, and any other evidence of the ultimate use of the water.

(c) "Water treatment plant" means the facilities within the water supply system which regulate the physical, chemical, or bacteriological quality of the water.

Dwelling: Any building or part thereof designed or used for private residential purposes.

Dwelling Unit: A single unit providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

Efficient Use of Water: The employment of methods, procedures, techniques, and controls to encourage use of water for purposes, and in amounts, which will yield the greatest possible benefit to the greatest number of people, while promoting, where feasible and appropriate, the conservation of water in particular uses. Such benefits will include economic, social, aesthetic, ecological, agricultural and recreational benefits.

Environment: All natural physical and biological attributes and systems including the atmosphere, climate, geology, soils, groundwater, surface water, wetlands, vegetation, animal life, physical features, natural hazards, topography and aesthetics.

Floodplain: An area adjacent to the stream, 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:

(a) Mainstream floodplains;

(b) Debris-fan floodplains; and

(c) Dry wash channels and dry wash floodplains.

Geologic Hazard: A geologic phenomenon 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:

(a) Avalanches, landslides, rockfalls, mudflows, and unstable or potentially unstable slopes;

(b) Seismic effects;

(c) Radioactivity; and

(d) Ground subsidence.

Geologic Hazard Area: An area which contains or is directly affected by a geologic hazard.

Hazard: A significant source of risk, danger or peril resulting from natural phenomena or conditions including those precipitated or caused by activities of man.

Hearing: Public hearing

Impact: The direct or indirect cumulative effect or consequence resulting from development. The term shall include physical, environmental, economic, visual, auditory or social consequences or effects.

Impact Area: Those geographic areas, including the Development Area, in which any impacts are likely to be caused by the project.

Include: Including without limitation.

Industrial: Any development of natural resources, business or trade, commercial activity, processing, fabrication, alteration or manufacture of raw or semi-processed materials, manufactured goods or any components thereof.

Major Extension of Domestic Sewage Treatment System: Any modification of an existing Wastewater Treatment Plant designed to serve an additional five (5) single family dwelling units or the equivalent thereof. See **Major Water and Sewer Project.**

Major Extension of Existing Domestic Water Treatment System: The expansion of existing Water Treatment Plants, or any extension of existing Water Supply Systems to service an additional population equivalent of five (5) single family dwelling units or the equivalent thereof. See **Major Water and Sewer Project.**

Major New Domestic Sewage Treatment System: Any new Wastewater Treatment Plant designed to serve a population of twenty or more persons, unless exempt. See **Major Water and Sewer Project.**

Major New Domestic Water Treatment Systems: Any new Water Treatment Plant or Water Supply System designed to serve a population of twenty or more persons, unless exempt. See **Major Water and Sewer Project**

Major Water and Sewer Project: Major New Domestic Water and Sewage Treatment Systems; Major Extensions of Existing Water and Sewage Treatment Systems; and Municipal and Industrial Water Projects.

Master Plan: A comprehensive land use plan adopted by the County or a municipality within the County.

Matter of State Interest: An area of or an activity of State interest or both as listed in §§ 24-65.1-201(1), -203(1), C.R.S.

Mineral: Any inanimate constituent of the earth in either solid, liquid or gaseous state including, but not limited to, coal, oil, natural gas, oil shale, sand, gravel, quarry aggregate, limestone and metals which, when extracted from the earth, are usable in their natural form or are capable of conversion into usable forms as metals, metallic compounds, chemicals, energy sources or raw materials for manufacturing or construction. This term does not include surface or ground water subject to appropriation under the laws of the State of Colorado.

Mitigation means:

(a) Avoiding an impact by not taking a certain action or parts of an action;

(b) Minimizing impacts by limiting the degree or magnitude of the action or its implementation;

(c) Rectifying the impact by repairing, rehabilitating, or restoring the impact area, facility or service;

(d) Reducing or eliminating the impact over time by preservation and maintenance operations; and

(e) Compensating for the impact by replacing or providing suitable biological and physical conditions; and by replacing or providing suitable services and facilities.

Municipal or Industrial Water Project: Systems and all related components thereof that provide or may provide in the future, water supply, either directly or by exchange, for municipal or industrial uses as those uses are defined by the Office of the State Engineer, Division of Water Resources. See **Major Water and Sewer Project.**

Municipality: An incorporated city or town.

Natural Hazard: A natural phenomenon which so conflicts with construction or land use as to constitute a significant hazard to public health and safety or to property including, without limitation, geologic hazards, flood hazards, and wildfire hazards.

Net Effect: The impact of an action after mitigation.

Permit Authority: The Board of County Commissioners, or its designee.

Person: Any individual, limited liability company, partnership, corporation, association, company, or other public or corporate body including the federal government, and includes any political subdivision, agency, instrumentality, or corporation of the State or the United States.

Planning Department: Any person who has been designated by the Board to implement, administer and enforce the provisions of these Regulations.

Planning Director: The Director of the Elbert County Planning Department or his designee.

Project or Proposed Project: The construction and operation of an activity or other Development proposed under these Regulations throughout its life cycle including all ancillary structures, facilities, improvements, and activities, and all integrated components thereof, and any proposed land use directly related to such project if such project is to be located wholly or partially within the County. A project cannot be segmented to avoid the requirements of these Regulations. If a project is to be phased over time or is composed of distinguishable elements, the impacts of all phases or elements of the development must be considered together when determining whether the project constitutes a special development project and whether it satisfies these Regulations.

Public Services and Facilities: Those services and facilities provided by a political subdivision of the State or by a federal agency.

Recycling: The treatment and use of wastewater or water in a manner that will make it available for reuse.

Significant: Deserving to be considered; important; notable.

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.

Stream Segment: An identifiable lake or reservoir or a stretch of a stream or tributary defined on the basis of common classified uses and similar physical, chemical and biological characteristics, up to the point at which the use or characteristic changes to another.

Unit: A dwelling unit, a part of a building or a separate building providing complete independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

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

Water Diversion: Removing water from its natural course or location, or controlling water in its natural course or location, by means of a ditch, canal, flume, reservoir, bypass, pipeline, conduit, well, pump, or other structure or device.

Wildlife: Native or introduced wild vertebrates.

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

D. Designation and Applicability

1. Specific Designations.

The Board of County Commissioners, having considered the intensity of current and foreseeable development pressures, the reasons why the activity is of state interest, the dangers that would result from uncontrolled conduct of such activity, and the advantages of conduct of such activity in a coordinated manner, as well as the other relevant factors set forth herein at a duly notice public hearing held in accordance with Part 4 of Article 65.1, C.R.S., does hereby find and declare the following activities to be activities of state interest and does hereby adopt the accompanying Regulations requiring permits for these designated activities.

a. Site selection and construction of major new domestic water and sewage treatment systems.

b. Major extensions of existing domestic water and sewage treatment systems.

c. Efficient utilization of municipal and industrial water projects.

2. Public and Private Lands. These Regulations shall apply to all Matters of State Interest regulated by the County whether located on private or public lands within the unincorporated areas of the County.

E. Exemptions

1. Statutory Exemptions. The portions of these Regulations authorized exclusively under Section 24-65.1-107, C.R.S. shall not apply to any development in an area of State interest or any activity of State interest if any one of the following is true:

   a. As of May 17, 1974,

      i. The specific development or activity was covered by a current building permit issued by the County; or

      ii. The specific development or activity was directly approved by the electorate of the State or the County, provided that approval by the electorate of any bond issue by itself shall not be construed as approval of the specific development or activity; or

      iii. The specific development or activity is on land which has been finally approved, with or without conditions, for planned unit development or land use similar to a planned unit development; or

      iv. The specific development or activity is on land which was either zoned or rezoned in response to an application which specifically contemplated said specific development or activity.

2. Specific Exemptions.

   a. Replacement of an existing water diversion structure without change in the point of diversion or point of use of the water.

   b. Upgrade of an existing Major Water or Sewer Project in an area designated by the Master Plan for urban level of service and where the primary purpose of the system is to serve existing development.

   c. Replacement of an existing component of a Major Water and Sewer Project in the same location as the existing component that does not result in an increase in capacity of the system.

F. Relationship to Other Regulations

1. Inconsistencies or Conflict with Other County Regulations. If any of the provisions of these Regulations is deemed to be inconsistent or in conflict with

provisions of any other County regulations or requirements, then the more stringent regulation or requirement shall apply.

2. Compliance with Other Regulations. Compliance with these Regulations does not waive the requirement to comply with any other applicable State, local or federal law or regulation.

3. Coordinated Review and Permitting. Any applicant for a permit under these Regulations that is also subject to the regulations of other State or federal agencies may request that the County application and review process be coordinated with that of the other agency. The County will attempt to eliminate redundant application submittal requirements and will coordinate its review of the application with that of other agencies as appropriate.

4. Coordinated Permit Conditions. The County will coordinate its approval of the application, including the terms and conditions of such approval, with that of other agencies as appropriate.

G. Severability

If any section, subsection, sentence, clause, or phrase of these Regulations is, for any reason, held to be invalid or unconstitutional by a court of law, such decision shall not affect the validity of these Regulations as a whole or any part other than the part declared invalid.

10100: MORATORIUM FOLLOWING DESIGNATION AND CLUC REVIEW

A. Moratorium

No person shall conduct the activities specifically described in the request until the Board of County Commissioner has held its hearing and issued an order adopting these Regulations.

B. Review by CLUC

Upon adoption of a resolution by the Board designating and adopting guidelines for these Activities of State Interest, a copy of the resolution and guidelines shall be forwarded to the CLUC for review. If, upon receipt of comments from the CLUC, the Board determines that modification of the designation or guidelines is appropriate, then it shall hold a public hearing and consider the modification. Upon adoption or rejection of the modification, the Board shall notify the CLUC.

10200: PERMIT APPLICATION PROCESS.

A. Permit Required

1. Activity Requires a Permit. No person may engage in a designated Activity of State Interest without either first obtaining a permit or a finding of no significant impact under these Regulations. No permit shall be issued for any activity that does not comply with these Regulations.

2. No Building Permit Issued Unless Compliance with These Regulations. No Building Permit shall be issued by the County for a designated Activity of State Interest without the applicant having first obtained a finding of no significant impact or a permit under these Regulations.

B. Pre-application Meeting and Pre-application Submittal

1. Pre-application Meeting. Before submitting an application to the County for a permit under these Regulations, any person seeking to engage in an activity subject to these Regulations shall meet with the Planning Director. At that meeting, the applicant shall submit the preapplication materials described below and the Planning Director shall explain the regulatory process and requirements, the application fee, and begin to evaluate the level of permit review that will be required.

2. Pre-application Submittal. At or before the pre-application meeting, any person seeking to engage in an activity subject to these Regulations shall submit a brief explanation of the Proposed Project including:

   a. The applicant's name, address and phone number.

   b. Map prepared at an easily readable scale showing:

      i. Boundary of the proposed activity.

      ii. Relationship of the proposed activity to surrounding topographic and cultural features such as roads, streams and existing structures.

      iii. Proposed building, improvements and infrastructure.

   c. Written summary of the project that is sufficient for determining the Level of Permit Review that will be required for the application.

C. Determination of Level of Permit Review

1. Three Possible Levels of Permit Review. There are three possible levels of permit review for a Proposed Project: a finding of no significant impact; a minor permit review; and a major permit review. The Planning Director shall make the initial determination of the appropriate level of permit review based upon the preapplication meeting and submittals.

    a. The Determination of Level of Permit Review shall be made by the Planning Director within a reasonable time following the preapplication meeting.

    b. Within five (5) days of the Determination of Level of Permit Review, the Planning Director shall notify the applicant, the Board, and the County Attorney of the determination by email or phone.

    c. A notice of the Determination of the Level of Permit Review shall be published in the legal notice section of the local daily paper as soon as practicable following the Determination.

2. Finding of No Significant Impact. Based upon review of the preapplication submittals and the information obtained at the preapplication meeting, the Planning Director may determine that no significant impacts are likely to occur from the Proposed Project and that therefore, a permit under these Regulations will not be necessary. The Planning Director may make a finding of no significant impact if the construction and operation of the activity, without mitigation, in its proposed location is unlikely to have any significant adverse impact to the County in consideration of the approval standards in these Regulations.

3. Major and Minor Permit Review. If the Planning Director determines that a finding of no significant impact is not appropriate based upon review of the preapplication submittals and the information obtained at the preapplication meeting, then the Director shall determine whether the Proposed Project should be subject to the Major Permit Review or Minor Permit Review provisions of these Regulations.

    a. Major Permit Review. The Planning Director shall determine that Major Permit Review is required if:

        i. The Proposed Project is likely to have a significant adverse impact in two or more categories of the approval standards in these Regulations; or

ii. The Proposed Project is likely to have a severe adverse impact in any one category of the approval standards contained in these Regulations.

b. Minor Permit Review. The Planning Director shall determine that Minor Permit Review is required unless the Proposed Project is determined to warrant Major Permit Review.

4. Reconsideration of Planning Director's Determination of Level of Permit Review.

a. Call-up by the Board. The Board may, at its discretion, review and amend the Determination at the next regularly scheduled meeting of the Board for which proper notice can be accomplished following receipt of notice of the Determination.

b. Request for Reconsideration. Any affected party within seven days of the Determination may request that the Board reconsider the Determination at its next regularly scheduled meeting for which proper notice can be accomplished following the request. The Board may review and/or amend the Determination at its discretion.

5. Change in Level of Permit Review. At any time prior to the final decision by the Board on the application for a permit under these Regulations, the County may decide that information received since the preapplication process indicates that the nature and scope of the impacts of the Proposed Project are such that a different Level of Permit Review is required.

a. If a different level of permit review is required, the Planning Director shall:

i. Notify the applicant immediately.

ii. Notify the Board, and the County Attorney.

b. The Planning Director's decision to change the Level of Review shall be subject to the reconsideration provisions in paragraph 4, above.

D. Application Submittal Requirements

Permit application requirements are the same for major and minor Permit Review, except where "major only" is indicated. The Planning Director may waive one or more of the submittal requirements when the submittal information would not be relevant to a determination as to whether the Project complies with the approval criteria.

1. Application Fee.

   a. The application shall be accompanied by an application fee in the amount(s) set forth in these Regulations or in such lesser amount as maybe determined by the County.

   b. The application fee will be set by the County and shall reflect the cost of reviewing and processing the application package, including costs of copying, mailings, publications, labor and overhead, all hearings and meetings on the application package, and the retention of such consultants, experts and attorneys as the County deems advisable to aid the County during the permit application and approval process.

   c. The application package must be accompanied by an initial payment of twenty-five thousand dollars ($25,000) for a Major Permit Review and ten thousand dollars ($10,000) for a Minor Permit Review toward the application fee. The County will establish and administer a schedule for the payment of subsequent installments of the application fee. The installments will be structured so that, throughout the application process, the County retains a minimum balance of at least ten thousand dollars ($10,000) for a Major Permit Review and five thousand dollars ($5,000) for a Minor Permit Review covering future processing costs and expenses. If the balance falls below the minimum balance, the County may cease processing the application package pending receipt of additional installments bringing the balance to at least the minimum amount. The amount of the initial payment and the minimum balance required may be reduced upon a finding by the Planning Director that the application processing and costs are likely to be less than the minimum amount set by these Regulations.

   d. The County will deposit that portion of the application fee which is not necessary to cover current costs and expenses in an interest-bearing account. The County will obligate, encumber or use such funds, from time to time, at its discretion, when necessary to cover the cost of processing the application. Interest earned on the account will belong to the applicant and will be applied by the County toward subsequent installments of the application fee.

   e. The County will maintain accurate records of the manner in which the application fee is used and will make such records available for inspection by the applicant and the public at reasonable times as determined by the County.

f. Any portion of the application fee submitted by the applicant, or any interest earned on such fee pursuant to paragraph (d) of this section, which is not necessary to cover the cost of processing the application package will be reimbursed to the applicant after the hearing process has been completed.

g. The County will take no action on the application package until all fees and expenses related to the application review process have been paid.

2. Information Describing the Applicant.

a. The names, addresses, email address, fax number, organization form, and business of the applicant, and if different, the owner of the project.

b. The names, addresses and qualifications, including those areas of expertise and experience with projects directly related or similar to that proposed in the application package, of individuals who are or will be responsible for constructing and operating the project.

c. Authorization of the application by the project owner, if different than the applicant.

d. Documentation of the applicant's financial and technical capability to develop and operate the project, including a description of the applicant's experience developing and operating similar projects.

3. Information Describing the Project.

a. Detailed plans and specifications of the project.

b. Descriptions of alternatives to the project that were considered by the applicant.

c. Schedules for designing, permitting, constructing and operating the project, including the estimated life of the project.

d The need for the project, including existing/proposed facilities that perform the same or related function; and population projections or growth trends that form the basis of demand projections justifying the project.

e. Description of all conservation techniques to be used in the construction and operation of the project.

4. Property Rights, Permits and Other Approvals.

   a. A list and copies of all other federal, State and local permits and approvals that have been or will be required for the project, together with any proposal for coordinating these approvals with the County permitting process.

   b. Copies of all official federal and State consultation correspondence prepared for the project; a description of all mitigation required by federal, State and local authorities; and copies of any draft or final environmental assessments or impact statement required for the project.

   c. Description of the water to be used by the project and alternatives, including the source, amount, the quality of such water, the applicant's right to use the water, including adjudicated decrees, applications for decrees, proposed points of diversion, and the existing uses of water. If an augmentation plan has been filed in court, the applicant must submit a copy of that plan.

5. Regional Water Quality Management Plan. Provisions of the applicable regional water quality management plan that apply to the project and assessment of whether the project would comply with those provisions.

6. Technical and financial feasibility of the project. *(Applicable to major review only)*

   a. The estimated construction costs and period of construction for each development component.

   b. Revenues and operating expenses for the project.

   c. The amount of any proposed debt and the method and estimated cost of debt service.

   d. Details of any contract or agreement for revenues or services in connection with the project.

   e. Description of the persons or entity(ies) who will pay for or use the project and/or services produced by the development and those who will benefit from any and all revenues generated by it.

   f. Cost of all mitigation measures proposed for the project.

7. Land Use.

a. Description of existing land uses within and adjacent to the Project Impact Area.

b. Description of provisions from local land use plans that are applicable to the project and an assessment of whether the Project will comply with those provisions.

c. Description of impacts and net effect that the project would have on land use patterns.

8. Local Government Services.

a. Description of existing capacity of and demand for local government services including roads, schools, water and wastewater treatment, water supply, emergency services, transportation, infrastructure, housing, and other services necessary to accommodate development.

b. Description of the impacts and net effect of the project on the capability of local governments to provide services.

9. Financial Burden on County Residents. *(Applicable to major review only)*

a. Description of the existing tax burden and fee structure for government services including but not limited to assessed valuation, mill levy, rates for water and wastewater treatment, and costs of water supply.

b. Description of impacts and net effect of the project on existing tax burden and fee structure for government services applicable to County residents.

10. Local Economy. *(Applicable to major review only)*

a. Description of the local economy including but not limited to revenues generated by the different economic sectors, and the value or productivity of different lands.

b. Description of impacts and net effect of the project on the local economy, use of land for agricultural purposes, and opportunities for economic diversification.

11. Recreational Opportunities. *(Applicable to major review only)*

a. Description of present and potential recreational uses, including the number of recreational visitor days for different recreational uses and the revenue generated by types of recreational uses.

b. Map depicting the location of recreational uses such as fishery stream segments, access points to recreational resources, hiking and biking trails, and wilderness areas.

c. Description of the impacts and net effect of the project on present and potential recreational opportunities and revenues to the local economy derived from those uses.

12. Environmental Impact Analysis. Description of the existing natural environment and an analysis of the impacts of the project to the natural environment. Descriptions in this section shall be limited to the Impact Area, and shall include an analysis of existing conditions, supported with data, and a projection of the impacts of the project in comparison to existing conditions. The analysis shall include a description of how the applicant will comply with the applicable Permit Approval Criteria.

a. Air quality.

i. Description of the airsheds to be affected by the project, including the seasonal pattern of air circulation and microclimates.

ii. Map and description of the ambient air quality and State air quality standards of the airsheds to be affected by the project, including particulate matter and aerosols, oxides, hydrocarbons, oxidants and other chemicals, temperature effects and atmospheric interactions.

iii. Descriptions of the impacts and net effect that the project would have on air quality during both construction and operation under both average and worst case conditions.

b. Visual Quality.

i. Map and description of ground cover and vegetation, forest canopies, waterfalls and streams or other natural features.

ii. Description of viewsheds, scenic vistas, unique landscapes or land formations.

iii. Map and description of buildings and structure design and materials to be used for the project.

iv. Descriptions of the impacts and net effect that the project would have on visual quality.

c. Surface Water Quality.

i. Map and description of all surface waters, including applicable State water quality standards, to be affected by the project.

ii. Descriptions of the immediate and long-term impact and net effects that the project would have on the quantity and quality of surface water under both average and worst case conditions.

d. Groundwater Quality and Quantity.

i. Map and description of all groundwater, including any aquifers. At a minimum, the description should include:

a) Seasonal water levels in each subdivision of the aquifer affected by the project.

b) Artesian pressure in aquifers and a description of how project may affect adjacent communities and users on wells.

c) Groundwater flow directions and levels.

d) Existing aquifer recharge rates and methodology used to calculate recharge to the aquifer from any recharge sources.

e) For aquifers to be used as part of a water storage system, methodology and results of tests used to determine the ability of aquifer to impound groundwater and aquifer storage capacity.

f) Seepage losses expected at any subsurface dam and at stream-aquifer interfaces and methodology used to calculate seepage losses in the affected streams, including description and location of measuring devices.

g) Existing groundwater quality and classification.

h) Location of all water wells and their uses.

ii. Description of the impacts and net effect of the project on groundwater.

e. Wetlands and Riparian Areas.

i. Map and description of all floodplains, wetlands, and riparian areas to be affected by the project, including a description of each type of wetlands, species composition, and biomass.

ii. Description of the source of water interacting with the surface systems to create each wetland (i.e., side-slope runoff, over-bank flooding, groundwater seepage, etc.).

iii. Description of the impacts and net effect that the project would have on the floodplains, wetlands and riparian areas.

f. Terrestrial and Aquatic Animals and Habitat.

i. Map and description of terrestrial and aquatic animals including the status and relative importance of game and non-game wildlife, livestock and other animals; a description of stream flows and lake levels needed to protect the aquatic environment; description of threatened or endangered animal species and their habitat.

ii. Map and description of critical wildlife habitat and livestock range to be affected by the project including migration routes, calving areas, summer and winter range, and spawning beds.

iii. Description of the impacts and net effect that the project would have on terrestrial and aquatic animals, habitat and food chain.

g. Terrestrial and Aquatic Plant Life.

i. Map and description of terrestrial and aquatic plant life including the type and density, and threatened or endangered plant species and habitat.

ii. Descriptions of the impacts and net effect that the project would have on terrestrial and aquatic plant life.

h. Soils, Geologic Conditions and Natural Hazards.

i. Map and description of soil, geologic conditions, and natural hazards including but not limited to soil types, drainage areas, slopes, avalanche areas, debris fans, mud flows, rock slide areas, faults and fissures, seismic history, and wildfire hazard areas.

ii. Descriptions of the risks to the project from natural hazards.

iii. Descriptions of the impact and net effect of the project on soil and geologic conditions in the area.

13. Nuisance. Descriptions of noise, glare, dust, fumes, vibration, and odor levels caused by the project.

14. Areas of Paleontological, Historic or Archaeological Importance.

a. Map and description of all sites of paleontological, historic or archaeological interest.

b. Description of the impacts and net effect of the project on groundwater sites of paleontological, historic or archaeological interest.

15. Hazardous Materials Description.

a. Description of all hazardous, toxic, and explosive substances to be used, stored, transported, disturbed or produced in connection with the project, including the type and amount of such substances, their location, and the practices and procedures to be implemented to avoid accidental release and exposure, and any foreseeable impacts to the environment of such substances.

b. Location of storage areas designated for equipment, fuel, lubricants, chemical and waste storage with an explanation of spill containment measures.

16. Balance Between Benefits and Losses. *(Applicable to Major Review Only)*

a. Description of foreseeable benefits to the County created by the project.

b. Description of foreseeable losses of natural, agricultural, recreational, range or industrial resources within the County and loss of opportunities to develop those resources in the future.

17. Monitoring and Mitigation Plan.

a. Description of all mitigation for the Project.

i. Describe how and when mitigation will be implemented and financed.

ii. Describe impacts that are unavoidable that cannot be mitigated.

b. Description of methodology used to measure impacts of the project and effectiveness of proposed mitigation measures.

c. Description, location and intervals of proposed monitoring to ensure that mitigation will be effective.

18. Existing Water and Sewer Projects. Description of existing domestic water and wastewater treatment facilities in the vicinity of the project, including their capacity and existing service levels, location of intake and discharge points, service fees and rates, debt structure and service plan boundaries and reasons for and against hooking on to those facilities.

E. Completeness Determination

An application shall not be accepted unless it is complete. If the Planning Director determines that the application is incomplete, the Planning Director shall specify in writing the additional information that is required. When the application is complete, the Planning Director shall note upon the application the date and hour of receipt.

10300: APPROVAL STANDARDS

A permit may be approved if the proposed activity complies with the following criteria and standards. In determining whether the proposed activity complies with criteria, the Board shall take into consideration the construction, operation and cumulative impacts of the proposed activity.

A. General Approval Criteria

1. **Documentation that prior to site disturbance of the Proposed Project, the applicant can and will obtain all necessary property rights, permits and approvals.** The Board may, at its discretion, defer making a

final decision on the application until outstanding property rights, permits and approvals are obtained.

2. **The Proposed Project is consistent with relevant provisions of the Master Plan and any regional water quality plans.**

3. *Applicable to Major Review only.* **The applicant has the necessary expertise and financial capability to develop and operate the Proposed Project consistent with all requirements and conditions.**

4. *Applicable to Major Review only.* **The Proposed Project is technically and financially feasible.**

5. **The Proposed Project is not subject to significant risk from natural hazards.**

6. **The Proposed Project will not have a significant adverse effect on land uses described in the Master Plan.**

7. **The Proposed Project will not have a significant adverse effect on the capability of local government to provide services or exceed the capacity of service delivery systems.**

8. *Applicable to Major Review only.* **The Proposed Project will not create an undue financial burden on existing or future residents of the County.**

9. *Applicable to Major Review only.* **The Proposed Project will not significantly degrade any sector of the local economy.**

10. *Applicable to Major Review only.* **The Proposed Project will not have a significant adverse effect on the quality or quantity of recreational opportunities and experience.**

11. **The planning, design and operation of the Proposed Project will reflect principals of resource conservation, energy efficiency and recycling or reuse.**

12. **The Proposed Project will not significantly degrade the environment.** Appendix "A" includes the considerations that will be used to determine whether there will be significant degradation of the environment. For purposes of this section, the term environment shall include:

    a. Air quality.

    b. Visual quality.

c. Surface water quality.

d. Groundwater quality.

e. Wetlands and riparian areas.

f. Terrestrial and aquatic animal life.

g. Terrestrial and aquatic plant life.

h. Soils and geologic conditions.

13. **The Proposed Project will not cause a nuisance as defined by Elbert County.**

14. **The Proposed Project will not significantly degrade areas of paleontological, historic, or archaeological importance.**

15. **The Proposed Project will not result in unreasonable risk of releases of hazardous materials.**

16. *Applicable to Major Review only.* **The benefits accruing to the County and its citizens from the proposed activity outweigh the losses of any resources within the County, or the losses of opportunities to develop such resources.**

17. **The Proposed Project represents the alternative that best complies with these Regulations.**

18. **The Proposed Project is needed within the County and/or area to be served.**

B. <u>Additional Criteria Applicable to New Major Water and Sewer Projects and Extensions of Existing Major Water and Sewer Projects</u>

1. **To the extent practicable, Domestic Water and Wastewater Treatment Systems shall be consolidated with existing facilities within the area.** The determination of whether consolidation is practicable shall include but not be limited to the following considerations:

   a. Distance to and capacity of nearest Domestic Water or Wastewater Treatment System.

   b. Technical and financial feasibility of connecting to existing Domestic Water or Wastewater Treatment System.

c. Scope of the Service Area for existing Domestic Water or Wastewater Treatment System.

d. Projected growth and development in the Service Area of existing Domestic Water or Wastewater Treatment System.

2. **The Proposed Project will not result in duplicative services within the County.**

3. **The Proposed Project will be constructed in areas that will result in the proper utilization of existing treatment plants and the orderly development of domestic water and sewage treatment systems of adjacent communities.**

4. **If the Proposed Project is designed to serve areas within the County, the Proposed Project is necessary to meet community development and population demands in those areas.**

5. **The Proposed Project shall emphasize the most efficient use of water, including the recycling, reuse and conservation of water.**

10400: APPROVING AND ISSUING A PERMIT

A. Permit Review and Hearing Procedures

1. Major Permit Review Procedures.

a. Staff Review and Staff Report. The Planning Department shall review the application and prepare a report recommending approval, conditional approval or denial of the permit.

b. Set Hearing Date. The Planning Director shall set the hearing date not less than thirty (30) days nor more than sixty (60) days after receipt of a complete application.

c. Hearing Notice. No later than thirty (30) days after receipt of a complete application, the County shall publish notice of the hearing. Notice shall be published once in a newspaper of general circulation in the County, not less than thirty (30) days nor more than sixty (60) days before the date set for hearing, and notice shall be given to the CLUC.

d. Notice to Property Owners. Written notice of the public hearing shall be delivered or mailed, first-class postage prepaid, to adjoining landowners within 300 feet of the entire boundary of the

proposed activity, except that the Planning Director may extend the radius used for noticing based on the nature of the Proposed Project, its potential impacts and the general character of the area.

e. Planning Commission Hearing and Recommendation. Major permit applications shall be reviewed by the Planning Commission.

i. The Planning Commission shall conduct a hearing to determine whether the Proposed Project complies with the Permit Approval Standards and any other applicable provisions of these Regulations.

ii. If the Planning Commission determines that the Proposed Project complies with all the applicable provisions of these Regulations, then it shall recommend that the Board approve the application. If the Planning Commission determines that the proposed activity does not comply with all the applicable provisions of these Regulations, then it shall recommend that the Board deny the application or approve the application with conditions to ensure compliance with the Regulations.

f. Board of County Commissioners Hearing and Decision.

i. The Board shall conduct the hearing in accordance with Section B, below.

ii. If at the end of the hearing, after considering all information on the record, the Board finds that additional information is necessary for it to determine whether the Proposed Project will satisfy all of the Permit Approval Standards and any other applicable provision of these Regulations, the Board may deny the permit or continue the hearing, to accept additional information, for not more than sixty (60) days unless the applicant agrees to a longer period.

iii. The Board may approve the application if it determines that the applicant has proven that the Proposed Project complies with all applicable provisions of these Regulations. If the Board determines that the applicant has failed to prove that the Proposed Project complies with any one of the Permit Approval Standards, the Board, at its sole discretion, may either approve the permit application with reasonable

conditions necessary to ensure compliance with the Regulations or deny the application.

iv. If the Board decides to approve the permit with conditions, the Board shall make written findings that each condition is necessary to ensure that the Proposed Project will comply with the Permit Approval Standards.

2. Minor Permit Review.

a. Staff Review and Staff Report. The Planning Department shall review the application and prepare a report making a recommendation of approval, conditional approval or denial of the permit.

b. Set Hearing Date. The Planning Director shall set the hearing date not less than thirty (30) days nor more than sixty (60) days after receipt of a complete application.

c. Hearing Notice. No later than thirty (30) days after receipt of a complete application, the County shall publish notice of a hearing on the application. Notice shall be published once in a newspaper of general circulation in the County, not less than thirty (30) days nor more than sixty (60) days before the date set for hearing, and notice shall be given to the CLUC.

d. Notice to Adjacent Property Owners. Written notice to adjacent property owners does not have to be provided unless the Planning Director determines that adjacent property owners need to be notified based on the nature of the Proposed Project.

e. Planning Commission Referral. The application shall be referred to the Planning Commission. The Planning Commission may, at its discretion, review the application and submit comments on the Proposed Project for the Board's consideration prior to the Board of County Commissioners hearing. The Planning Commission is not required to hold a formal public hearing for a minor permit review application.

f. Board of County Commissioners Hearing and Decision.

i. The Board shall conduct the hearing in accordance with Section B, below.

ii. If at the end of the hearing, after considering all information on the record, the Board finds that additional

information is necessary for it to determine whether the Proposed Project will satisfy all of the Permit Approval Standards and any other applicable provision of these Regulations, the Board may deny the permit or continue the hearing, to accept additional information, for not more than sixty (60) days unless the applicant agrees to a longer period.

iii. The Board may approve the application if it determines that the applicant has proven that the Proposed Project complies with all applicable provisions of these Regulations. If the Board determines that the applicant has failed to prove that the Proposed Project complies with any one of the Approval Standards, the Board, at its sole discretion, shall deny the permit or approve the permit application with reasonable conditions necessary to ensure compliance with the Regulations.

iv. If the Board decides to approve the permit with conditions, the Board shall make written findings that each condition is necessary to ensure that the Proposed Project will comply with the Permit Approval Standards or any other applicable provision of these Regulations.

B. <u>Conduct of Hearings and Hearing Record</u>

1. Hearings shall be conducted in a manner to afford procedural due process to the applicant and any affected person. The rules of civil procedure do not apply to public hearings held pursuant to these Regulations.

2. The burden of proof is on the applicant to demonstrate with evidence on the record that the Proposed Project complies with all of these Regulations.

3. Any person may, at his own expense, provide for the recording of the hearing and transcription thereof, provided, however, that a copy of the transcript shall be furnished free of charge to the Board and become part of the record.

4. The hearing record shall include the following:

   a. The application.

   b. Written statements or documents in support of or in opposition to the permit application.

c. Any recording and transcript of the hearing.

d. Written minutes of the hearing.

e. A copy of the resolution of the Board granting or denying the permit application.

5. A copy of the resolution shall be certified by the Board and presented to the County Clerk and Recorder for recording in the same manner as any document relating to real property.

C. Term of Permit

Approval of a permit shall lapse after twelve (12) months, unless:

1. Development permits for the Proposed Project for construction are obtained for commencement of construction if such permits are required; or

2. Activities described in the permit have commenced; or

3. The Board specifies in its resolution granting or denying the permit a different time period in which building permits must be obtained or activities must commence in its action.

D. Renewal

Permits issued under these Regulations may be renewed following the same procedure for approval of new permits. The Board may impose additional conditions at the time of renewal if necessary to ensure that the Project will comply with these Regulations.

E. Permit Amendments and Technical Revisions

Any change in the construction or operation of the Project from that approved by the Board shall require either a "permit amendment" or a "technical revision." A proposed change will be considered a technical revision if the Planning Director determines that there will be no increase in the size of the area affected by the Project or the intensity of impacts of the Project. Changes other than technical revisions are considered permit amendments.

1. Process for Permit Amendments.

a. A permit amendment will be reviewed and approved as if it were a new permit application.

b. The Planning Director may, at his discretion, determine that even though the changes will increase the size of the area affected or the intensity of the impacts, the impact is insignificant so as to warrant a "technical revision" as described in Section 2, below.

2. Technical Revisions.

a. To obtain a technical revision, the applicant shall submit the following to the Planning Director:

i. A copy of the current permit.

ii. As-built drawings of the project.

iii. Drawings and plans of proposed changes to the project.

iv. Additional mitigation plans.

b. The Planning Director shall approve the technical revision to the permit if staff does not foresee changes in the intensity of the impacts caused by the proposed activity within thirty (30) days of receipt of request for a technical revision.

3. Reconsideration of Planning Director's Determination of whether Change is a Permit Amendment or a Technical Revision.

a. Call-up by the Board of County Commissioners. The Board may, at its discretion, review and amend the Planning Director's determination of whether the change is a permit amendment or a technical revision at the next regularly scheduled meeting for which proper notice can be accomplished following receipt of notice of the determination.

b. Request for Reconsideration. Any Affected Party may within seven (7) days request that the Board reconsider the Planning Director's determination of whether the change is a permit amendment or a technical revision at its next regularly scheduled meeting for which notice can be accomplished following the request. The Board may review and/or amend the Planning Director's decision at its discretion.

10500: ADMINISTRATION, ENFORCEMENT AND PENALTIES

A. Financial Guarantee Required

Before any permit is issued under these Regulations, the Board shall require the applicant to file a guarantee of financial security deemed adequate by the Board and payable to the County. The purpose of the financial guarantee is to assure the following:

1. That the Proposed Project is completed and, if applicable, that the Development Area is properly reclaimed.

2. That the applicant performs all mitigation requirements and permit conditions in connection with the construction, operation and termination of the Proposed Project.

3. That increases in public facilities and services necessitated by the construction, operation and termination of the Proposed Project are borne by the permittee.

4. That shortfalls to County revenues are offset in the event that the Proposed Project is suspended, curtailed or abandoned.

B. Amount of Financial Guarantee

In determining the amount of the financial guarantee, the County shall consider the following factors:

1. The estimated cost of completing the Proposed Project and, if applicable, of returning the Development Area to its original condition or to a condition acceptable to the County.

2. The estimated cost of performing all mitigation requirements and permit conditions in connection with the construction, operation, and termination of the Proposed Project, including:

    a. The estimated cost of providing all public services necessitated by the proposed activity until two (2) years after the proposed activity ceases to operate; and

    b. The estimated cost of providing all public facilities necessitated by the proposed activity until all such costs are fully paid.

C. Estimate

Estimated cost shall be based on the applicant's submitted cost estimate plus the Board's estimate of the additional cost to the County of bringing in personnel and equipment to accomplish any unperformed purpose of the financial guarantee. The Board shall consider the duration of the development or activity and compute a reasonable projection of increases due to inflation. The Board may require, as a condition of the permit, that the financial security be adjusted upon receipt of bids to perform the requirements of the permit and Regulations.

D. Form of Financial Guarantee

1. The financial guarantee may be in the form of cash, federally-insured certificates of deposit, irrevocable letters of credit issued by a bank, surety bonds issued by a company authorized to do business in Colorado, written guarantees backed by collateral, or any other form, or combination of forms acceptable to the Board.

2. At least ten percent (10%) of the amount of the financial guarantee must be in cash deposited with the County's treasurer and placed in an earmarked escrow account mutually agreeable to the Board and applicant.

E. Release of Guarantee

The financial guarantee may be released only when:

1. The permit has been surrendered to the Board before commencement of any physical activity on the site of the permitted Project; or

2. The Project has been abandoned and the site has been returned to its original condition or to a condition acceptable to the County; or

3. The Project has been satisfactorily completed; or

4. 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 determined appropriate by the Board; or

5. The applicable guaranteed conditions have been satisfied.

F. Cancellation of the Financial Guarantee

Any financial guarantee may be canceled only upon the Board's written consent, which may be granted only when such cancellation will not detract from the purposes of the security.

G. Forfeiture of Financial Guarantee

1. If the Board determines that a financial guarantee should be forfeited because of any violation of the permit, mitigation requirements, conditions or any applicable Regulations adopted by the Board, it shall provide written notice to the surety and the permittee that the financial guarantee will be forfeited unless the permittee makes written demand to the Board, within thirty (30) days after permittee's receipt of notice, requesting a hearing before the Board. If no demand is made by the permittee within said period, then the Board shall order the financial guarantee forfeited.

2. The Board shall hold a hearing within thirty (30) days after the receipt of the demand by the permittee. At the hearing, the permittee may present for the consideration of the Board statements, documents, and other information with respect to the alleged violation. At the conclusion of the hearing, the Board shall either withdraw the notice of violation or enter an order forfeiting the financial guarantee.

3. The deposit described above may be used by the Board in the event of the default or allowed default of the permit holder, only for the purposes of recovering on the surety or fulfilling the permit obligation of the permit holder. In the event that the ultimate reviewing court determines that there has been a default by the permit holder, that portion of any moneys expended by the County from the escrow funds relating to such default shall be replaced in the escrow account by the Board immediately following such determination. The County may arrange with a lending institution, which provides money for the permit holder, that said institution may hold in escrow any funds required for said deposit. Funds shall be disbursed out of escrow by the institution to the County upon County's demand for the purpose specified in this section.

4. 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.

H. Substitute of Financial Guarantee

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 permittee to make substitution within the time allowed, the Board shall suspend the permit until proper substitution has been made.

10600: PERMIT ADMINISTRATION AND ENFORCEMENT

A. Enforcement and Penalties

1. Any person engaging in a development in the designated Area of State Interest or conducting a designated Activity of State Interest who does not obtain a permit pursuant to these Regulations, who does not comply with permit requirements, or who acts outside the jurisdiction of the permit may be enjoined by the County or the CLUC from engaging in such development, and may be subject to such other criminal or civil liability as may be prescribed by law.

2. If the County determines at any time that there are material changes in the construction or operation of the Project from that approved by the County, the permit may be immediately suspended and a hearing shall be held to determine whether new conditions are necessary to ensure compliance with the Approval Standards or if the permit should be revoked.

B. Permit Suspension or Revocation

1. The Board may temporarily suspend the permit for a period of thirty (30) days for any violation of the permit or the applicable Regulations. The permit holder shall be given written notice of the violation and will have a minimum of fifteen (15) days to correct the violation. If the violation is not corrected, the permit shall be temporarily suspended for thirty (30) days.

2. The County may revoke a permit granted pursuant to these Regulations if any of the activities conducted by the permittee violates the conditions of the permit or these Regulations, or the County determines that the project as constructed or operated has impacts not disclosed in the application. Prior to revocation, the permittee shall receive written notice and be given an opportunity for a hearing before the Board. The Board may revoke the permit or may specify a time by which action shall be taken to correct any violations for the permit to be retained.

C. Transfer of Permits

A permit may be transferred only with the written consent of the Board. Consent shall be in the sole discretion of the Board. The Board shall ensure, in approving any transfer, that the proposed transferee can and will comply with all the requirements, terms, and conditions contained in the permit and County Regulations; that such requirements, terms, and conditions remain sufficient to protect the health, welfare, and safety of the public; and that an adequate guarantee of financial security can be made.

D. Inspection

The Board may enter and inspect any property subject to these Regulations at reasonable hours for the purpose of determining whether the activity is in violation of the provisions of these Regulations.

E. Judicial Review

Any action seeking judicial review of a final decision of the Board shall be initiated within thirty (30) days after the decision is made, in the District Court in and for the County of Elbert, pursuant to Rule 106 of the Colorado Rules of Civil Procedure.

APPENDIX A

This Appendix provides examples of the types of concerns that the Board of County Commissioners will take into consideration in determining whether an application for a permit has complied with the Permit Approval Criteria contained in these Regulations.

GENERAL CONSIDERATIONS

A.1 The determination of technical and financial feasibility may include but is not limited to the following considerations:

a. Amount of debt associated with the proposed activity.

b. Debt retirement schedule and sources of funding to retire the debt.

c. Estimated construction costs and construction schedule.

d. Estimated annual operation, maintenance and monitoring costs.

e. Market conditions.

A.2 The determination of risk from natural hazards may include but is not limited to the following considerations:

a. Faults and fissures.

b. Unstable slopes including landslides, rock slides and avalanche areas.

c. Expansive or evaporative soils and risk of subsidence.

d. Wildfire hazard areas.

e. Floodplains.

A.3 The determination of the effects of the proposed activity on capability of local government to provide services or exceed the capacity of service delivery systems may include but is not limited to the following considerations:

a. Existing and potential financial capability of local governments to accommodate development related to the proposed activity.

b. Current and projected capacity of roads, schools, infrastructure, housing, and other services and impact of the proposed activity upon the capacity.

c. Changes caused by the proposed activity in the cost of providing education, transportation networks, water treatment and wastewater treatment, emergency services, or other governmental services or facilities.

d. Changes in short or long term housing availability, location, cost or condition.

e. Need for temporary roads to access the construction of the proposed activity.

f. Change in demand for public transportation.

g. Change in the amount of water available for future water supply in the County.

A.4 The determination of the effects of the proposed activity on the financial burden of existing or future residents of the County may include but is not limited to the following considerations:

a. Changes in assessed valuation.

b. Tax revenues and fees to local governments that will be generated by the proposed activity.

c. Changes in tax revenues caused by agricultural lands being removed from production.

d. Changes in costs to water users to exercise their water rights.

e. Changes in costs of water treatment or wastewater treatment.

f. Effects on wastewater discharge permits.

g. Inability of water users to get water into their diversion structures.

h. Changes in total property tax burden.

A.5 The determination of the effects of the proposed activity on any sector of the local economy may include but is not limited to the following considerations:

a. Changes to projected revenues generated from each economic sector.

b. Changes in the value or productivity of any lands.

c. Changes in opportunities for economic diversification.

A.6 The determination of effects of the proposed activity on recreational opportunities and experience may include but is not limited to the following considerations:

a. Changes to existing and projected visitor days.

b. Changes to duration of kayaking and rafting seasons.

c. Changes in quality and quantity of fisheries.

d. Changes in access to recreational resources.

e. Changes to quality and quantity of hiking trails.

f. Changes to the wilderness experience or other opportunity for solitude in the natural environment.

g. Changes to hunting.

h. Changes to the quality of the skiing experience.

ENVIRONMENTAL CONSIDERATIONS

A.7 The determination of effects of the proposed activity on air quality may include but is not limited to the following considerations:

a. Changes to seasonal ambient air quality.

b. Changes in visibility and microclimates.

c. Applicable air quality standards.

A.8 The determination of visual effects of the proposed activity may include but is not limited to the following considerations:

a. Visual changes to ground cover and vegetation, waterfalls and streams, or other natural features.

b. Interference with viewsheds and scenic vistas.

c. Changes in appearances of forest canopies.

d. Changes in landscape character types or unique land formations.

e. Compatibility of building and structure design and materials with surrounding land uses.

A.9 The determination of effects of the proposed activity on surface water quality may include but is not limited to the following considerations:

a. Changes to existing water quality, including patterns of water circulation, temperature, conditions of the substrate, extent and persistence of suspended particulates and clarity, odor, color or taste of water.

b. Applicable narrative and numeric water quality standards.

c. Changes in point and nonpoint source pollution loads.

d. Increase in erosion.

e. Changes in sediment loading to waterbodies.

f. Changes in stream channel or shoreline stability.

g. Changes in stormwater runoff flows.

h. Changes in trophic status or in eutrophication rates in lakes and reservoirs.

i. Changes in the capacity or functioning of streams, lakes or reservoirs.

j. Changes in flushing flows.

k. Changes in dilution rates of mine waste, agricultural runoff and other unregulated sources of pollutants.

A.10 The determination of effects of the proposed activity on groundwater quality may include but is not limited to the following considerations:

a. Changes in aquifer recharge rates, groundwater levels and aquifer capacity including seepage losses through aquifer boundaries and at aquifer-stream interfaces.

b. Changes in capacity and function of wells within the impact area.

c. Changes in quality of well water within the impact area.

A.11 The determination of effects of the proposed activity on wetlands and riparian areas may include but is not limited to the following considerations:

a. Changes in the structure and function of wetlands.

b. Changes to the filtering and pollutant uptake capacities of wetlands and riparian areas.

c. Changes to aerial extent of wetlands.

d. Changes in species' characteristics and diversity.

e. Transition from wetland to upland species.

f. Changes in function and aerial extent of floodplains.

A.12 The determination of effects of the proposed activity on terrestrial or aquatic life may include but is not limited to the following considerations:

a. Changes that result in loss of oxygen for aquatic life.

b. Changes in flushing flows.

c. Changes in species composition or density.

d. Changes in number of threatened or endangered species.

e. Changes to habitat and critical habitat, including calving grounds, mating grounds, nesting grounds, summer or winter range, migration routes, or any other habitat features necessary for the protection and propagation of any terrestrial animals.

f. Changes to habitat and critical habitat, including stream bed and banks, spawning grounds, riffle and side pool areas, flushing flows, nutrient accumulation and cycling, water temperature, depth and circulation, stratification and any other conditions necessary for the protection and propagation of aquatic species.

g. Changes to the aquatic and terrestrial food webs.

A.13 The determination of effects of the proposed activity on terrestrial plant life or habitat may include but is not limited to the following considerations:

a. Changes to habitat of threatened or endangered plant species.

b. Changes to the structure and function of vegetation, including species composition, diversity, biomass, and productivity.

c. Changes in advancement or succession of desirable and less desirable species, including noxious weeds.

d. Changes in threatened or endangered species.

A.14 The determination of effects of the proposed activity on soils and geologic conditions may include but is not limited to the following considerations:

a. Changes to the topography, natural drainage patterns, soil morphology and productivity, soil erosion potential, and floodplains.

b. Changes to stream sedimentation, geomorphology, and channel stability.

c. Changes to lake and reservoir bank stability and sedimentation, and safety of existing reservoirs.

d. Changes to avalanche areas, mudflows and debris fans, and other unstable and potentially unstable slopes.

e. Exacerbation of seismic concerns and subsidence.

A.15 The determination of the risks of a release of hazardous materials from the proposed activity may include but is not limited to the following considerations:

a. Plans for compliance with federal and State handling, storage, disposal and transportation requirements.

b. Use of waste minimization techniques.

c. Adequacy of spill prevention and response plans.