

**HUERFANO COUNTY**  
**AREAS AND ACTIVITIES OF STATE**  
**INTEREST REGULATIONS**  
**SECTION 7.00**



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## 7.01 INTRODUCTION

### 7.01.01 Short Title

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

### 7.01.02 Purposes and Intent

A. The general purpose of these regulations is to facilitate the identification, designation, and regulation of areas or activities of state interest consistent with applicable statutory requirements and **criteria**<sup>1</sup> set forth in Section 24-65.1-101 et seq, C.R.S.

B. The specific purposes and intent are as follows:

- 1) To encourage planned and orderly, efficient, economical land use development;
- 2) Provide for the preservation of agriculture, forestry, industry, business, residential communities, and recreation in future growth;
- 3) Encourage uses of land and natural resources per their character and adaptability;
- 4) **Conserve** soil, **water** and forest resources;
- 5) Protect the beauty of the landscape;
- 6) Promote efficient and economical use of public resources;
- 7) Regulate projects that would otherwise cause excessive noise, **water, and/or air pollution**, or which would otherwise degrade or threaten the existing environmental quality within the County.
- 8) Ensure that **new community domestic water and sewage treatment systems**<sup>2</sup> shall be constructed in areas which will result in the proper utilization of existing treatment plants and the orderly development of domestic **water** and sewage treatment systems of adjacent communities.
- 9) Ensure that major **extensions**<sup>3</sup> of **domestic water and sewage treatment systems** shall be permitted only in those areas in which the anticipated growth and development that may occur as a result of such extension can be accommodated within the financial and environmental capacity of the area to sustain such growth and development.
- 10) Require that **water development and use projects** shall emphasize the most efficient use of **water**, including, to the extent permissible under existing law, the recycling and reuse of **water**, and preservation of associated resources impacted by such projects.

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<sup>1</sup> Per C.R.S. 24-65.1-402(3) the requirements in the County's regulations may be more stringent than the criteria contained in the statute's §§ 203 [areas of state interest] and 204 [activities of state interest].

<sup>2</sup> Scale – serving over 50 dwelling units?

<sup>3</sup> Scale – define scale. Capacity to serve 50+ units?

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- 11) Ensure that urban development, population densities, and site layout and design of **storm water and sanitation systems** shall be accomplished in a manner that will prevent the pollution of aquifer recharge areas.
- 12) Ensure that major facilities of public utilities are located to avoid direct conflict with adopted County land use plans, and otherwise serve the stated purposes of these regulations.
- 13) Provide that areas containing, or having a significant impact on, historical, natural, or archaeological resources of statewide importance are developed so as to be compatible with and not destructive to the historical, natural, and archaeological value of such resources.
- 15) Provide protection of lands within the County from activities which would cause immediate or foreseeable material impacts to significant wildlife habitat or endanger wildlife species, both flora and fauna, or adverse socio-economic impacts;
- 16) Provide preservation of areas of historical and archeological importance;
- 17) Regulate the use of land on the basis of the impact thereof on the community or surrounding areas;
- 18) Ensure that development involving all areas and activities designated hereunder is consistent with these regulations, the Huerfano County Comprehensive Plan, and any duly adopted intergovernmental agreements or comprehensive development plans between the County and another governmental entity. **[Is this too duplicative of 14), above]**
- 19) Protect the public health, safety, welfare and the **environmental integrity of the County.**

**7.01.03 Findings**

The Board of County Commissioners finds that:

- A. All applicable notice and public hearing requirements have been followed;
- B. Based on duly noticed public hearings the Board has considered the current and foreseeable development pressures, and the applicable guidelines for designation issued by applicable state agencies; and
- C. These regulations are necessary because of the current and foreseeable development pressures on and within the County; and
- D. These regulations are necessary to fulfill the purposes and intentions specified in Section 7.01.02, above.

**7.01.04 Authority**

These regulations are authorized by C.R.S. 24-65.1-101, et seq., and C.R.S. 29-20-101, et seq., These regulations are necessary for the preservation of the public health, safety and welfare.

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7.01.05            Applicability

These regulations shall apply to all proceedings concerning the identification and designation of areas and activities of state interest, and the control of development in any area of state interest or the conduct of any activity of state interest, and regulation of the associated use of land pursuant to the authorities cited herein, which has been or may hereafter be designated by the Board of County Commissioners in the unincorporated areas of Huerfano County, whether on public or private land.

7.01.06            Relationship with Other Requirements

A. Where these regulations overlap with the County's requirements for zoning ~~special~~ **conditional** use approval, Subdivision Regulations or subdivision exemption or exemption plat review, or for Comprehensive Plan location and extent review pursuant to C.R.S. 30-28-110(1) these regulations shall control<sup>5</sup>, and a separate review process under conditional use review, zoning, subdivision regulations or subdivision exemption, or location and extent review shall not be required, unless expressly stated to the contrary in these regulations. Where these regulations overlap with other applicable County requirements, including but not necessarily limited floodplain regulations, all applicable regulations shall be followed and all required County permits or approvals shall be obtained.

B. Review or approval of a project by a federal or state agency or other authority does not preclude, and will not substitute for, the need to obtain a permit for that project under these regulations for impacts ancillary to such federal or state agency or other authority approvals, and subject to these regulations. However, where in the opinion of the Board of County Commissioners, federal or state review and approval processes adequately address the impacts that these regulations are designed to address, the County may agree to rely on that review and approval, and issue the applicable permit on that basis, in the Board of County Commissioners sole and reasonable discretion.

C. 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 Section 24-65.1-202, C.R.S., the statutory criteria shall control.

D. 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 Section 24-65.1-202 and 24-65.1-240, C.R.S., these regulations shall control pursuant to the authority of Section 24-65.1-402(3), C.R.S.

E. These Guidelines and Regulations are intended to be applied in addition to, and not in lieu of, all other regulations of the County of Huerfano.

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<sup>5</sup> **Sky, your thoughts? Should 1041 control over other regs as per 7.01.06.A? This makes a lot of sense with conditional use permits. Subdivisions have certain requirements that are not articulated here, especially as pertaining to survey, dedication of land, etc. Where subdivisions are likely to be involved would most likely be with new communities – we could consider adding a reference to Section 2 stating that projects that include the subdivision of land are subject to all provisions of Section 2. This would allow for a single process that covers all bases.**

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7.01.07 Maps<sup>6</sup>

The following maps are hereby incorporated into this Article by this reference, for the purpose of specifying or aiding in the identification of the boundaries of the adopted area of state interest with which each map is associated. To the extent any map identified below has not otherwise been officially adopted, it shall be considered to be officially adopted for purposes of administering these regulations by virtue of its inclusion in this Section 7.01.07.

- A. Exhibit A: The Official flood hazard area map for unincorporated Huerfano County, Colorado. Approved and adopted on July 26, 2011, by the Board of County Commissioners. All areas of Unincorporated Huerfano County not designated on this map must meet the requirement of the Flood Damage Prevention Resolution No: 88-13 adopted by the Board of County Commissioners on 31, August 1988.
- B. A map of areas of Huerfano County presently under **irrigation (map<sup>7</sup> not available at time of adoption)**.
- C. Significant wildlife habitat areas (map not available at time of adoption)<sup>8</sup>

7.01.08 Duties of the Board of County Commissioners

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

7.01.09 Severability

If any section, clause, provision, or portion of these regulations should be found unconstitutional or otherwise invalid by a court of competent jurisdiction, the remainder of these regulations shall not be affected thereby and are hereby declared to be necessary for the public health, safety, and welfare.

**7.01.10 Definitions<sup>9</sup>**

- A. "Applicant" means any person or entity applying for a permit under these regulations.

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<sup>6</sup> **Do we have these maps?**

<sup>7</sup> **I'm aware of only one map of irrigated land. It is in the 1970s study by HCWCD' consultant. Measurement of irrigated land has been made a couple of times in the development of the Colorado Water Plan. We should check to see if those maps are available. I do have, for various years, the number of irrigated acres in the County. They are declining.** Available through DWR

<sup>8</sup> Available through CPW – maps exist for individual species, not clear if there is a map of generally significant habitat areas.

<sup>9</sup> **Do we want to define and address "Alluvial Fans" as in the Paradise Acres context?**

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B. "Aquifer Recharge Area" means any area where surface **waters** may infiltrate to a **water**-bearing stratum of permeable rock, sand, or gravel. This definition also includes wells used for disposal of **wastewater** or other toxic pollutants.<sup>10</sup>

C. "Area around a Key Facility" means an area immediately and directly affected by a key facility.

D. "Area of Special Flood Hazard" means the land in the floodplain within a community subject to a one percent (1%) or greater chance of flooding in any given year.

E. "Aspect" means the cardinal direction the land surface faces, characterized by north-facing slopes generally having heavier vegetation cover.

F. "Board of County Commissioners" or "the Board" or "BOCC" means the Board of County Commissioners of the County of Huerfano, State of Colorado.

G. "Change of **Water Rights**" means the activity of seeking administrative or judicial approval for the temporary or permanent use of **water** and **water** rights historically utilized in Huerfano County for uses or for use in other places than such **water** rights have been vested and decreed, as part of a municipal or industrial **water** project.

H. "Corrosive soil" means soil that contains soluble salts that may produce serious detrimental effects in concrete, metal, or other substances that are in contact with such soil.

I. "Debris-fan floodplain" means a floodplain that is located at the mouth of a mountain valley tributary stream as such stream enters the valley floor.

**I.1 "Desiccated water rights" mean those irrigation water rights for which the historic consumptive use has dramatically declined over the years to very little or none.<sup>11</sup>**

J. "Designation" means that legal procedure for designating areas or activities of state interest specified by 24-65.1-101, et seq., C.R.S., to be carried out by the Board of County Commissioners.

K. "Developer" means any person engaging or proposing to engage in development in an area of state interest or in conduct of an activity of state interest designated or proposed to be designated under these regulations.

L. "Development" means any construction or activity which changes the basic character or the use of the land on which the construction or activity occurs but excludes any construction, activity, or use exempted from the County's permit process pursuant to this Article or under State Law.

M. "Domestic **water** or sewage treatment system" or "system" means a major domestic **water** or sewage treatment system,<sup>12</sup> and includes **wastewater** treatment plants, **water** supply systems, and **water** treatment plants, more specifically defined as follows:

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<sup>10</sup> Are these areas defined? Do we have maps?

<sup>11</sup> **Need provision at pp 16-18 making an activity of state interest the plumping up of desiccated water rights.**

<sup>12</sup> Serving 50+ units? Processing X acre-feet per year.

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- 1) "Wastewater treatment plant" is the facility or group of units used for the 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 is discharging into state waters. "Wastewater treatment plant" specifically excludes any facility or group of units used for pretreatment, treatment, or handling of industrial water, wastewaters, reuse waters, and wastes which are not discharged into state waters.
- 2) "Water supply system" means the system of pipes, structures, and facilities through which a water supply is obtained, treated, and sold or distributed for human consumption or household use, if such system has at least **fifty service connections**.<sup>13</sup>
- 3) "Water treatment plant" means the facility or facilities within the water supply system which can alter the physical, chemical, or bacteriological quality of the water

N. "Dry Up" means that activity which removes historically irrigated acreage from irrigation and results in a cessation of application of irrigation water and a subsequent "dry-up" of said historically irrigated acreage for purposes of placing water and water rights historically utilized for irrigation to other uses, or to similar uses in other places.

O. "Dry wash channel and dry wash floodplain" means an intermittent stream or arroyo with the potential for flooding after heavy rainfall.

P. "Efficient use of water" means the employment of methods, procedures, controls, and techniques to ensure the amount of water and the purpose for which water is used in the County will yield the greatest benefit to the greatest number of people. Such benefits will include but are not limited to economic, social, aesthetic, environmental, and recreational. **[Do we want to introduce "maximum utilization?"]**<sup>14</sup>

Q. "Enclave" means an unincorporated area of land mostly or entirely surrounded by the boundaries of a municipality, or is only accessible via annexed right-of-way.

R. "Expansive soil and rock" means soil and rock which contains clay and which expands to a significant degree upon wetting and shrinks upon drying.

S. "Extension" means a major extension and is an increase in hydraulic capacity, an upgrade in treatment or transmission capability, an increase in facility size, or a replacement of an existing facility in a new or altered location.

T. "Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

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<sup>13</sup> **Sky, do you feel these values remain appropriate? – I think they could be a little higher. 15 service connections does not seem significant enough to be an issue of statewide concern. Maybe 50. Individuals is a more problematic measurement because that changes over time or by season – a household or a tap is a more objective measurement.**

<sup>14</sup> How would a maximum be determined? How many gallons of water to be used per pound of crop? Gallons per resident? It certainly is an odd definition...

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- 1) the overflow of **water** from channels and reservoir spillways;
- 2) the unusual and rapid accumulation of runoff or surface **waters** from any source; or
- 3) mudslides (i.e. mudflows) which are proximately caused by flooding as defined in Subsection (2) of this definition and which are sufficiently fluid so as to flow on and over the surface of normally dry land areas, as when earth is carried by a current of **water** and deposited along the path of the current, **such as on alluvial fans such as in Paradise Acres in 2019**.<sup>15</sup>

U. "Flood hazard area" means an area containing or directly affected by a flood.

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

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

W. "Geologic hazard" means 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:

- 1) Avalanches, landslides, rock falls, mudflows, and unstable or potentially unstable slopes;
- 2) Seismic effects;
- 3) Radioactivity; and
- 4) Ground subsidence.

X. "Geologic hazard area" means an area containing or directly affected by a geologic hazard.

Y. "Ground subsidence" means a process characterized by the downward displacement of surface material caused by natural phenomena such as removal of underground fluids, natural consolidation, or dissolution of underground minerals or by man-made phenomena such as underground mining.<sup>16</sup>

Z. "Historical or archaeological resources of statewide importance" means those resources which may have been officially included in the national register of historic places, designated by statute or included in an established list of places compiled by the state **or county**<sup>17</sup> historical society, or as may be identified by the

<sup>15</sup> I have an engineering study from the creation of Paradise Acres, and it is not described as such.

<sup>16</sup> **Sky, do we want to expand this to wood preservation (carbon sequestration)? I think this is covered under the umbrella of man-made phenomena. The term is only used once on p. 40.**

<sup>17</sup> **Need to engage or involve Huerfano County Historical Society since it has a list of historical sites in the County including GPS location, general description, and photograph. I don't think that the County can delegate the designation to a nonprofit but it could be made a referral agency and we might want to acquire the list and reference it. John VanKueren (sp?) is the contact.**



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Board regardless of whether or not such inclusion has occurred, including but not limited to those designated by the Board in accordance with C.R.S. 30-11 -107(1)(bb) as amended.

AA. "Industrial **Water** Project" means all activities, or any activity, whether phased or otherwise staged in development, related to projects involving manufacturing, mineral extraction or processing, coal and oil and gas development, commercial agricultural operations (**including marijuana cultivation**), commercial recreational services and facilities, and similar activities in which the use of **water** is an integral component<sup>18</sup>.

BB. "Key Facility" means a building, plant, development or other structure or facility which is integral to the area or activity for which a County permit under these regulations is sought.

CC. "Layman's description" means a general, non-legal description and the popular name, if any, of the tract of land on which the activity or development is to be conducted. The term "general description" means "layman's description."

DD. "Legal Description" means any description from which it is possible to locate accurately on the ground the boundaries of the land being described.

EE. "Mainstream floodplain" means an area adjacent to a perennial stream, which area is subject to periodic flooding.

FF. "Major facility of a public utility" means:

- 1) Central office buildings of telephone utilities;
- 2) Transmission lines, power generation facilities, and substations of electrical utilities; and
- 3) Pipelines and storage areas of utilities providing natural gas or other petroleum derivatives and includes extensions to those facilities.

GG. "Major publicly owned reservoir" means any body of **water** formed by an embankment or structure 10 feet in vertical height or having a surface area at high **water** line, in excess of 5 acres, or collection of smaller **water** storage structures cumulatively totaling 5 acres of surface area and utilized in concert, for which public funds have been used in the construction of all or any part of the dam or where a public entity or agency owns or administers the described property. ~~The ownership of stock in a mutual ditch or reservoir company does not constitute ownership or administration. Furthermore, any loan of funds for construction, operation, maintenance, repair, or replacement of all or any part of a dam does not constitute the use of public funds.~~

HH. "Matter of state interest" means an area of state interest or an activity of state interest or both as defined under 24-65.1-101, et seq., C.R.S.

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<sup>18</sup> Perhaps there should be a threshold of use rather than use for types of activities – or one threshold for agricultural and another for non-ag... Perhaps 4 ac-ft/yr for ag, and 1 ac-ft/yr for non-ag?

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II. "Mudflow" means the downward movement of mud in a mountain watershed because of peculiar characteristics of extremely high sediment yield and occasional high runoff. **[Do we want to be more specific, i.e. calling out the circumstances of Paradise Acres, an alluvial fan?]**

JJ. "Municipal **Water** Project" means all activities, or any activity, whether phased or otherwise staged in development, related to or associated with a system, development, or project, and all related components thereof, intended to provide **water** supply or service to persons, not necessarily part of a municipality, for uses typically associated with "municipal" use, including but not limited to, domestic, irrigation, landscape, commercial, stock**water** and augmentation uses, whether such **water** supply is derived from surface or subsurface sources, and whether or not such provision of supply involves a temporary or permanent change of **water** rights.

KK. "Municipality" means a home rule or statutory city, town, or a city and county or a territorial charter city.

LL. "Natural hazard" means a geologic hazard or a flood.

MM. "Natural hazard area" means an area containing or directly affected by a natural hazard.

NN. "Natural resources of statewide importance and/or local concern" means any material source such as timber, fresh **water**, or mineral deposit that occurs in a natural state and has economic value.

OO. "Net Effect" means the impact of an action or activity after mitigation.

PP. "New communities" means the establishment of urbanized growth centers in unincorporated areas. New communities shall not include those established through the municipal annexation of unincorporated territory. **[Sky, do we need to beef this up?]<sup>19</sup>**

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<sup>19</sup> It is a completely different definition from the one in the "Definitions" section, which is as follows:

**New community or new communities:**

1. The establishment of urbanized growth centers in the unincorporated territory of Huerfano County.
2. Any activity within the unincorporated territory of Huerfano County which falls within one or more of the following criteria is defined as "site selection and development of new communities" and requires application to the Planning Commission for a permit to conduct such activity:
  01. Is planned for a population or work force of five hundred (500) persons or two hundred and fifty (250) dwelling units within five (5) years of implementation of the activity or for an ultimate population or labor force of two thousand five hundred (2,500) persons or one thousand twelve hundred and fifty (1,250) dwelling units.
  02. Is planned for or requires the expansion and/or extension of any existing water and/or sewer district or association within any twenty-four (24) month period which is equal to or greater than fifty (50) percent of the population or land area served by the district or association at the beginning of said period.
  03. Is planned for or requires a change in existing zoning that provides for a one hundred (100) percent or greater increase in allowable density on more than six hundred and forty (640) acres of land
  04. Is planned for or requires an ultimate contiguous zoning district or special use permit for commercial, industrial and/or public use on three hundred and twenty (320) or more acres of land.

Both definitions are problematic – the one in this section because revitalization should not trigger a

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QQ. "Person" means any individual, limited liability company, partnership, corporation, association, company, or other public or corporate body, and includes without limitation any political subdivision, **district**, agency, instrumentality, or corporation of the State or the United States government.

RR. "Planning Commission" means the Huerfano County Planning Commission.

SS. "Proposed Project" means the construction and operation of a **proposed project**<sup>20</sup> regulated by this section, 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.

TT. "Public Utility" means a public utility as defined by state law, with the exception of utilities owned and operated by a municipality located within Huerfano County.

UU. "Radioactivity" means a condition related to various types of radiation emitted by natural or man-made radioactive minerals that occur in deposits of rock, soil, and **water**.

VV. "Regulations" means these regulations as finally enacted and approved, and as may be amended and supplemented in the future.

WW. "Reservoir" (except in the context of the separately defined term "major publicly owned reservoir") means an area of land where **water** is retained or an area intended for **water** retention, and which is used or proposed for use in whole or in part as part of a Municipal **Water** Project, Commercial **Water** Project, or Industrial **Water** Project or storage of **water** which is part of a domestic **water** treatment system.

XX. "Re-vegetation" means permanent re-establishment of native plant growth necessary for erosion control, soil conservation and environmental stability upon land from which historically applied irrigation **water** has been removed, such land being "dried up" from irrigation, as defined herein. Re-vegetation requirements may be either temporary or permanent, depending on the nature of the dry up and change of **water** rights applicable.

YY. "Seismic effects" means direct and indirect effects caused by an earthquake or an underground **nuclear** detonation.

AAA. "Siltation" means a process that results in an excessive rate of removal of soil and rock materials from one location and rapid deposit thereof in adjacent areas.

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1041. In some cases, annexation should trigger a 1041 (something like Cougar Canyon in Trinidad, for example). The definition from Section 17 is also problematic because it sets the bar very high. Navajo Ranch Estates, for example is only 475 acres; Pinehaven is 391 acres, the zoned area around Gardner is just over one square mile -- 658 acres. Allowing for an increase in density is meaningless in a code that does not directly regulate density. The population threshold of 500 persons or 250 houses is also very large for Huerfano County – There are approximately 122 parcels in Gardner; 153 in Pinehaven; 184 in Navajo Ranch Estates; 164 in Black Diamond.

<sup>20</sup> **What are these, "proposed special?"**

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AAA2. "Site Selection" means consideration of all possible environmental and social impacts of a project on a proposed site.

ZZ. "Shorelands" means all lands extending a minimum of 200 feet shoreward of the high **water** line, and all wetlands associated with a reservoir.

BBB. "Slope" means the gradient of the ground surface that is definable by degree or percent.

CCC. "Unstable or potentially unstable slope" means an area susceptible to a landslide, a mudflow, a rock fall, or accelerated creep of slope-forming materials.

DDD. "Urbanized growth center" means the establishment of a metro district or any residential, commercial, or mixed-use district exceeding 50 dwelling units or 40,000 square feet of commercial space.<sup>21</sup>

**EEE. "Water related activities" include a Municipal Water Project, an Industrial Water Project or a domestic water or sewage system using 10 or more acre feet per year, and any project that causes depletions of more than one acre foot to the water basin of origin within the County.<sup>22</sup>**

## 7.02 Designation of Matters of State Interest

### 7.02.01 Board of County Commissioners to Make Designations

Designations and amendments of designations may be initiated in the following ways:

- A. The Board of County Commissioners may in its discretion designate and adopt regulations for the administration of any matter of state interest.
- B. The Planning Commission may on its own motion or upon request by the Board of County Commissioners, recommend the designation of matters of state interest following public hearing before the Planning Commission. The Board of County Commissioners shall decide, in its sole discretion, and pursuant to the requirements of 24-65.1-101, et seq., C.R.S., whether or not to designate any or all of the requested matters of state interest so recommended.

### 7.02.02 Moratorium

- A. Whenever the Board of County Commissioners designates a matter of state interest, pursuant to 24-65.1-404, C.R.S., no person shall engage in any development in such area, and no activity shall be conducted, until the designation and guidelines or regulations for such an area or activity are finally determined and a permit has been issued thereunder.

### 7.02.03 Public Hearing Required

<sup>21</sup> **Why is this here? Shouldn't 1041 review be in addition to that provided elsewhere in the County LUC? I propose that we delete the highlighted language near the top of the page. – It's only reference in the section is in the definition of new communities. We might add to the definition the establishment of a metro district.**

<sup>22</sup> Needs reference to scale? Term as applied below is sometimes hyphenated and sometimes not.

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- A. The Board of County Commissioners shall hold a public hearing before designating any matter of state interest **or** ~~and~~ adopting regulations for the administration thereof. Said hearing shall be noticed and held pursuant to 24-65.1 -404 through -407, C.R.S. Said hearing shall be held not less than thirty (30) days nor more than sixty (60) days after the giving of public notice of said hearing.
- B. 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.
- C. The Board of County Commissioners shall prepare a notice of any designation hearing which shall include:
  - 1) The time and place of the hearing;
  - 2) The place at which materials relating to the matter to be designated and any guidelines and regulations for the administration thereof may be examined;
  - 3) A description of the area or activity proposed to be designated in sufficient detail to provide reasonable notice as to property and/or activities which would be included;

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

- A. The intensity of current and foreseeable development pressures;
- B. The matters and considerations set forth in any applicable guidelines for identification and designation issued by any applicable state agency;
- C. The boundaries of any area proposed for designation;
- D. 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;
- E. The extent to which other governmental entities regulate the area or activity proposed to be designated;
- F. The applicable criteria for administration of the proposed area or activity as set forth in these regulations and 24-65.1-201, et seq., C.R.S.;
- G. The legislative declarations stated in 24-65-102, 24-65.1-101, and 29-20-102, C.R.S.; and
- H. The Huerfano County Comprehensive Plan or any duly adopted intergovernmental agreements or comprehensive development plans adopted as part of, pertaining to, or affected by the area or activity under consideration.

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**7.02.05 Record of Designation Hearing**

The Board will collect and preserve the following record of the designation process, at minimum:

- A. Notice of the hearing;
- B. Certificate of publication of the notice;
- C. Written testimony presented by any persons at the public hearing;
- D. An audio recording of the hearing; and
- E. The written resolution or order making appropriate findings supporting any designation and adopting the accompanying guidelines or regulations pursuant to Section 7.03.06, below.

**7.02.06 Adoption of Designation and Regulation**

- A. At the conclusion of the hearing, or within 30 days thereafter, the Board of County Commissioners may, by resolution, adopt, adopt with modification, or reject the proposed designation and accompanying guidelines or regulations.
- B. Each designation order adopted by the Board shall, at a minimum:
  - 1) Specify the boundaries of the designated area of state interest;
  - 2) State reasons why the designation is appropriate in light of the factors considered at the public hearings pursuant to Section 7.03.04, below; and
  - 3) Specify the regulations applicable to the designated matter of state interest.

**7.02.07 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 designated and for which regulations have not been adopted, the Board of County Commissioners may hold one hearing for determination of designation and regulations as well as for granting or denying the permit, provided all applicable notice requirements are adhered to.<sup>24</sup>

**7.02.08 Specific Designations**

- A. **Activities of State Interest.** The Board of County Commissioners, having considered the intensity of current and foreseeable development pressures and applicable guidelines for identification and designation adopted and issued by applicable state agencies, as well as the other relevant factors set forth in Section 7.03.04, below, at duly noticed public hearings held in accordance with Part 4 of Article 65.1, C.R.S., does hereby **find and declare the following activities to be matters of state interest and does hereby adopt the accompanying regulations** requiring permits for these designated activities as further set forth herein:

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<sup>24</sup> This doesn't make sense. If a project is not covered by this section, at what point would Commissioners intercept the application and make it subject to this chapter? Would that even be legal?

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- 1) Site selection and construction of major<sup>25</sup> new domestic **water** and sewage treatment systems;
- 2) Major extensions of existing domestic **water** and sewage treatment systems;
- 3) Efficient utilization of municipal and industrial **water** projects;
- 4) Site selection and construction of major facilities of a public utility;
- 5) Site selection and development of new communities;
- ~~6) Activities which concern changes in reservoir operations for decreed **water** rights located within Huerfano County, and the socio-economic stability thereof, the result of which could be changes in the agricultural nature and culture of Huerfano County, and/or effects upon the retention and quality of soil and other agricultural resources, including but not limited to dry up and re-vegetation requirements.~~
- ~~7) Activities which may effect the quantity and/or quality of **water** bearing aquifers underlying lands in Huerfano County, including but not limited to, alluvial, confined and unconfined aquifers, both tributary and non tributary.~~<sup>26</sup>
- 8) Site selection of Key Facilities.

The conduct of any of these activities within the boundaries of unincorporated Huerfano County shall be subject to the foregoing designations, as further set forth in these Regulations and/or regulations to be developed pursuant to the designations herein or matters of state interest which may hereinafter be designated by the board and subject of supplemental regulations hereto.

**B. Areas of State Interest: The Board of County Commissioners, having considered the intensity of current and foreseeable development pressures and applicable guidelines for identification and designation adopted and issued by applicable state agencies, as well as the other relevant factors set forth in Section 7.03.04, below, at duly noticed public hearings held in accordance with Part 4 of Article 65.1, C.R.S., does hereby find and declare the following areas to be matters of state interest and does hereby adopt the accompanying regulations requiring permits regarding these designated areas as further set forth herein:**<sup>27</sup>

- 1) Areas around key facilities in which development may have a material effect upon the key facility or the surrounding community;
- 2) Areas containing or having significant impact upon historical or archaeological resources.
- 3) Areas containing or having significant impact upon natural resources of statewide importance; and
- 4) Natural Hazard areas, which are flood hazard areas and geologic hazard areas.

<sup>25</sup> Major needs definition.

<sup>26</sup> **These three activities, ## 6), 7) and 8), are beyond those for which the enabling act gives the power to designate and regulate. I have tried to integrate them into the criteria for selection of activities which are available for County designation.**

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- 5) Areas historically and presently irrigated, the dry-up of which or cessation of irrigation would have significant impact upon soil, air and/or **water** quality;
- 6) Areas historically and presently in agricultural production, the cessation of which would have significant economic and/or socio-economic impacts upon the citizens of Huerfano County.

Development in any of these areas within the boundaries of unincorporated Huerfano County shall be subject to the foregoing designations **and shall be protected and administered** as further set forth in these Regulations.

## 7.03 Permits Required for VARIOUS Designated Areas and Activities involving water related matters

### 7.03.01 ~~Water and Sewage Treatment Activities~~ **Water Related Projects** Requiring Permits

A permit shall be required for any proposed project<sup>28</sup>, including but not limited to major new domestic **water** or sewage treatment system, major extension to existing major domestic **water** or sewage treatment system, or Municipal or Industrial **Water** Project, which is proposed to be located in whole or in part in the unincorporated portions of Huerfano County, **and which will divert or store raw, augmentation or treated water** and meets any of the following criteria:

- A. New **water** supply systems (excluding reservoirs which are separately covered under (C), below), or new **water** treatment plants, or extensions of those systems or plants (excluding line extensions which are separately covered under (E), below), that serve **more than 25**<sup>29</sup> residences or provide **more than 3 acre-feet of annual water** and are not located entirely within an **approved** service area **approved by the County**.
- B. New wast**ewater** treatment plants, or extensions to existing plants (excluding line extensions which are separately covered under (E), below).
- C. Construction of any new reservoir where:
  - 1) 30 percent or more **[?]** of the capacity is owned, controlled, used, or intended to be used for the storage of municipal or industrial **water** supplies or of **water** which is part of a domestic **water** treatment system; or
  - 2) less than 30 percent but more than one percent **[?]** of the capacity is owned, controlled, used, or intended to be used for the storage of municipal or industrial **water** supplies or of **water** which is part of a domestic **water** treatment system, and the reservoir has not been permitted pursuant provisions of the Huerfano County Land Use Code; or

<sup>28</sup> Scale threshold needed. A project above X acre-feet?

<sup>29</sup> I'd say 50



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- 3) the reservoir is lined.
- D. Expansion of any existing reservoir for a Municipal or Industrial **Water** Project or domestic treated **water** use.
- E. Extensions to **water** supply and wastewater systems where:
- 1) Use of distribution or transmission lines **with the design capacity to serve no more than 50 dwellings or to provide no more than 10 acre-feet per year<sup>31</sup>; or**
  - 2) are not located entirely within a service area approved by the Board of County Commissioners.
- F. Systems, extensions, or projects located partly or entirely on land which is owned or managed for open space, recreation, environmental protection, or other land preservation purposes, except land which is owned by the entity proposing the system, extension, or project.
- G. Systems, extensions, or projects located partly or entirely on land that has been designated as an area of state interest.
- H. Systems, extensions, or projects partly or entirely on land which is designated in accordance with the Huerfano County Comprehensive Plan **or otherwise** as any one of the following: a historic site, archaeologically sensitive area, natural hazard area, critical wildlife habitat, critical plant association, or wetland.
- I. Any system, extension, or proposed project which relies upon or uses **water** decreed to agricultural land in the unincorporated County, and which:<sup>33</sup>
- 1) is proposed to be converted to any different type or place of use, including but not limited to industrial use, municipal use, or domestic treated **water** use as part of a Municipal **Water** Project or Industrial **Water** Project;  
  
OR
  - 2) requires total or partial dry up of the **below-described** ~~above referenced~~ agricultural land;<sup>34</sup>  
  
OR
  - 3) serves primarily a municipality or other group of users located in a county other than Huerfano County;  
  
**OR**
  - 4) **Proposes to increase the historic use of desiccated water rights, at the expense of the land use supported by junior water rights, for the purpose of increasing the value of one or more senior desiccated water right.**

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<sup>31</sup> **Sky? I think we should measure the scale by more than just diameter of supply line.**

<sup>33</sup> Not sure this is allowed. 1041 allows for regulation of major new domestic water/sewage systems or major extension of existing systems. Using water decreed agricultural seems like it might be an overreach.

<sup>34</sup> Scale – of over X acres of land?

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OR

- 5) Proposes to affect areas within Huerfano County historically and presently irrigated, the dry-up of which or cessation of irrigation would have detrimental impact upon agricultural potential, soil, air and/or water quality.

OR

- 7) Proposes to adversely affect areas within Huerfano County historically and presently in agricultural production, the cessation of which would have significant economic and/or socio-economic impacts upon the citizens of the County.

J. Any of the above which may <sup>35</sup>

- 1) Affect the agricultural nature and culture of Huerfano County, and the socio-economic stability thereof, and which may further affect the retention and quality of soil and other agricultural resources.

OR

- 2) Cause changes in reservoir operations within Huerfano County, the result of which could be changes in the agricultural nature, culture and economic stability of the County. OR
- 3) May affect the quantity and/or quality of aquifers underlying lands in Huerfano County, including but not limited to, alluvial, confined and unconfined aquifers, both tributary and non-tributary.

A 1041 permit shall **not** be required for any major new domestic **water** or sewage treatment system, major extensions to existing major domestic **water** or sewage treatment system, or municipal and industrial **water** project, which is proposed to be located in whole **or in part** in the unincorporated portions of Huerfano County, and which meets any of the following criteria:

~~A. Any system, extension, or project not covered under Section 7.03.01, above.~~

- B. Systems, extensions, or projects which are located on unincorporated land that is an enclave within the municipality proposing the activity.
- C. Upgrades to existing facilities that are required maintenance or otherwise required by federal, state, or county regulations, including repairing and/or replacing old or outdated equipment, or installing new equipment, 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.
- D. Upgrade of an existing water or wastewater project where the primary purpose of the system is to serve existing development.
- E. Construction or replacement of irrigation facilities used for agricultural purposes.

<sup>35</sup> Scale of impact needs to be described for any of these.

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~~F. Any system, extension, or project proposed as part of a County exemption plat application (i.e., a replat of an existing platted subdivision where no new density is proposed).~~

~~G. Any system, extension, or project necessary to serve any platted subdivision or other use approved under the County's Land Use Code (with the exception of uses reviewed under the County's location and extent process under 30-28-110(1), C.R.S. and Section 7.01 of this Code), provided that the service provider obtains a specific exemption from the Board, based upon a public meeting of which the service provider shall receive reasonable prior notice, that review of the proposed service facilities falls outside the purposes of these regulations, or provided that the Board specifies in its approval of the platted subdivision or other use that separate review of the system, extension, or proposal is not necessary under these regulations.<sup>37</sup>~~

### 7.03.03 Specific Public Utility Activities Requiring Permits

A permit shall be required for any major facility of a public utility, which is proposed to be located in whole ~~or in part~~ in the unincorporated portions of Huerfano County, and which meets any of the following criteria:

- A. New natural gas or other petroleum derivative transmission lines that serve more than 25 year round residents and are not located entirely within an approved service area.
- B. Extensions to natural gas or other petroleum derivative transmission lines which:
  - 1) use 12" or larger distribution or transmission lines; or
  - 2) use two or more lines of any size which are parallel to and located within 100 feet of one another, and have a total cross section equal to or greater than 120 square inches.
- C. Natural gas or other petroleum derivative storage areas.
- D. New electric transmission lines or extensions that are 115,000 volts or greater.
- E. Generation of 50 megawatts or more.<sup>38</sup>
- F. Substations of electrical utilities which control electricity in amounts of 115,000 volts or more.
- G. Central office buildings of telephone utilities.

### 7.03.04 Specific Public Utility Activities **Exempted** from the Permit

#### Process

A permit shall not be required for any major facility of a public utility, which is proposed to be located in whole or in part in the unincorporated portions of Huerfano County, and which meets any of the following criteria:

- A. ~~Any facility not covered under Section 7.03.03, above.~~

<sup>37</sup> I didn't know what the highlighted text meant so I deleted it.

<sup>38</sup> SIEA's demand for all of Huerfano County is 80MW

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- B. Facilities which are located on unincorporated land that is an enclave within the municipality proposing the activity.
- C. Any facility proposed as part of a County exemption plat application (i.e., a re-plat of an existing platted subdivision where no new density is proposed).
- D. Any facility necessary to serve any platted subdivision or other use approved under the County's Land Use Code (with the exception of uses reviewed under the County's location and extent process under 30-28-110(1), C.R.S.), provided that the service provider obtains a specific exemption from the Board, based upon a public meeting of which the service provider shall receive reasonable prior notice, that review of the proposed service facilities falls outside the purposes of these regulations, or provided that the Board specifies in its approval of the platted subdivision or other use that separate review of the system, extension, or proposal is not necessary under these regulations.

**7.03.05 Other Designated Areas and Activities Requiring a Permit**

- A. Site selection and development of new communities.
- B. Development located in areas containing or having a significant impact upon historical, archaeological or natural resources of statewide importance, and/or socio-economic impacts within the County, unless the development is otherwise regulated with full and binding effect under other Articles of this Code. The boundary of the areas regulated hereunder shall be the area which physically contains the designated historical, archaeological or natural resource, or in the specific case of significant wildlife habitats the areas shown on the maps identified in Section 7.01.07 (C) of this Article, and an area within a radius of 1,500 feet from the area containing the resource. However, the County Staff may determine that development within a larger area (up to one mile in radius) may be regulated, provided that the County Staff identifies specific land use impacts by which the larger area will be immediately and directly affected within the stated purposes of this Article.
- C. Development located in flood hazard areas and geologic hazard areas. To determine if a site is in a geologic hazard area, Department may require applicant to have site reviewed by Colorado Geologic Survey.
- D. If any proposed development is located partly within and partly out of the boundary of an area of state interest as designated in these regulations, the impacts of the entire development will be subject to review under these regulations. All construction or uses which compose or are directly associated with the development shall be considered to be part of the development, including but not necessarily limited to buildings, other associated structures, access roads or drives, utility lines, and parking areas.

**7.03.06 Determination of whether a Proposed Activity or Development must go through the Permit Process**

- A. The **Land Use Department Staff** shall determine the applicability of Section 7.04 to the conduct of any proposed activity or development. The County Staff shall make this determination within **10 calendar**

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**days** after the Department<sup>39</sup>receives a written request from the applicant stating the reasons why the proposed activity or development is or is not subject to Section 7.04. This timeline may be extended to 30 days if external agency review is required to make a determination.

- B. If any person is aggrieved by the decision of the County Staff to include an activity within or exempt it from these regulations, that person may file an appeal to the Board with the County Staff, postmarked no later than twenty days after the date of the County Staff's written decision. The appeal shall be accompanied by a statement why the County Staff's decision is incorrect.
- C. The Board shall schedule a public hearing on the appeal to be held no more than 30 days after the appeal is filed.
- D. For the purpose of deciding the appeal, the Board may require the developer to provide a description and declaration of the scope of the activity or development, including, but not necessarily limited to;
  - 1) The site of the proposed activity or development.
  - 2) The size, if proposed, of any transmission lines, storage tanks, dams and or reservoirs.
  - 3) The number of residents to be served by the activity at full buildout if multiple phases are involved, or in the case of wastewater treatment plants, the average flow, in gallons, of wastewater a day.
  - 4) The change in population and traffic patterns that is projected as a result of the activity.
  - 5) The **water** rights on which the activity relies.
  - 6) Any geologic hazards areas or flood hazard areas mapped within one mile of the site.
  - 7) Analysis of potential socio-economic impacts of the proposed activity or development including life-cycle infrastructure costs to be incurred by the County, projected cost of providing public services, projected annual tax revenues to be generated upon completion of the project. Analysis should also include impact to labor market, including long-term jobs created, average wages, distance between housing and jobs, impact on existing businesses and populations.
  - 8) Timeline and detailed description of any phases.
  - 9) Capacity analysis of unplanned potential for expansion.
- E. At the appeal hearing, the appellant will have the burden of proving that the County Staff erred in the decision to include or exclude the activity or development from these regulations.

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<sup>39</sup> **Three thoughts. We need to make this consistent with the current departmental names or position titles. Sky, I think it would be OK if the planning commission made the decision. Ten calendar days isn't very long for a complex matter or when things get busy. This process gives staff first right to interpret. If the applicant disagrees with a staff decision, it goes to the Board of Appeals. It could be rewritten to grant the applicant an audience with the Planning Commission. Added extension of timeline if case needs external agency review since some of our "Areas" are not on the map, such as historical sites or geologic hazards.**

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7.03.07 Specific Uses Exempted from the Permit Process in Areas of State Interest

- A. Operation, maintenance, repair and replacement of existing **water** and sewage collection, treatment, storage and delivery facilities and associated works. Reservoir improvement or replacement projects shall provide an analysis of potential impact on junior water rights holders, and the Planning Commission may determine whether to exempt such projects.
- B. A building site within the boundaries of the Flood Hazard Area as set forth in Section 7.01.07 (a) that evidence demonstrates to the satisfaction of the Board is not within an area of special flood hazard.

7.04 APPLICATION PROCEDURES

7.04.01 Permits Required after Designation; Receipt of Application Form

- A. Any person desiring to engage in a development in a designated area of state interest or to conduct a designated activity of state interest in whole or in part within the unincorporated area of Huerfano County must first obtain a permit pursuant to these regulations.
- B. An application shall not be accepted unless the County Staff determines that it is complete pursuant to the application submittal requirements of this Section and of Section 7.04.07, below. If the application is considered incomplete by the County Staff, the County Staff shall specify what additional information is required. When a submitted application is considered to be complete by the County Staff, the County Staff shall note upon the application the date and hour of its receipt.
- C. When an applicant seeks a permit to engage in development involving more than one area or activity of state interest regulated hereunder, the County Staff shall require that a single application be completed including all affected areas and activities.
- D. For any application to be considered complete under these Regulations, in addition to meeting the requirements of Section 7.04.07, below, the application shall include the entire development as contemplated or reasonably foreseeable for the subject property in question for at least a ten-year period. Said ten-year forecast shall in no way act as a limitation on the scope of the project or subject property which is the subject of the Application. The County shall have and maintain the absolute right to review all elements and components of the project or activity, and shall expressly be entitled to re-review all such elements and components at a later date should a component be added to the project or activity. There shall be no piece-mealing of projects for permit approval. For purposes of this Subsection, the subject property is the property on which the development is located, and any other contiguous property which is under the developer's ownership or control and is otherwise subject to regulatory jurisdiction under this Article. At a minimum, the application shall include all development which has been planned for the subject property as shown in any capital improvements plan, facilities master plan, or other acceptable master planning document which the applicant has approved as of the time of application or anticipates approving at anytime while the application is in process, including all proposed project phases. If the Applicant has not approved such a master plan covering at least a ten-

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year period, it shall approve such a plan before the application will be accepted as complete. The purpose of these requirements is to assure that development for a subject property is reviewed in a rational context of reasonably foreseeable development for the property, to avoid piecemeal analysis of applications, and to allow for a comprehensive consideration of the cumulative impacts of development under these Regulations.

- E. For any application submitted after the effective date of these regulations, the following requirements shall apply to any amendment to that approval which is submitted within a ten-year period after the date of the approval. Any such amendment shall be presumed to constitute piecemeal development which cannot be rationally or adequately reviewed under the applicable standards of Section 411 of this Article, unless the Applicant demonstrates one of the following circumstances:
- 1) The Board approved less than the complete development pursuant to Section 7.04.11 (B) (15) of this Article, and the subject amendment includes development reflected in the applicable master plan but not previously approved.
  - 2) The additional application addresses or corrects a matter of health or safety presented by the approved development.
  - 3) The amendment clearly equals or reduces the impact or scope of the approved development, in the context of the applicable criteria under Section 7.04.11 of this Article.
  - 4) The amendment implements an amendment to the Huerfano County Comprehensive Plan or a land use intergovernmental agreement to which the County is a party, and which was adopted after the County's approval of the development.

Any amendment for which the Applicant cannot demonstrate that one of the foregoing circumstances exists, shall not be approved, unless the Applicant clearly overcomes the presumption that the amendment constitutes piecemeal development which cannot be rationally or adequately reviewed under the applicable standards of Section 7.04.11 of this Article, or unless the County instead elects to re-review all elements and components of the entire project as a new application, with the costs associated therewith to be borne by the Applicant.

- F. The County Staff's determination regarding whether a permit application is complete under Subsections 7.04.01 (B) and 7.04.01 (D) and Section 7.04.07 may be appealed to the Board by any person aggrieved by the determination, provided that an appeal is filed with the Board no later than 30 days after the date of the County Staff's written determination (with three days added for mailing if the determination is mailed). The appeal shall be accompanied by a statement describing the specific reasons why the appellant alleges the determination was in error, based on the criteria listed in Subsections 7.04.01 (B) and 7.04.01 (D) and Section 7.04.07. The Board shall convene a duly noticed public hearing on the appeal, at which hearing the appellant shall have the burden of proving that the County Staff erred in the determination regarding the completeness of the application.
- G. Applicants shall be bound by and subject to reliance upon all statements and representations made by Applicant in an Application for a permit pursuant to these regulations, or subsequent regulations

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enacted pursuant to designations made herein or future designations of matters of state interest. Applicants shall be similarly bound to the contents of all reports, testimony and other evidence submitted in support of such an application, and the Board of County Commissioners may, in its sole discretion, require Applicants' strict compliance with such statements, reports, testimony, and other evidence.

7.04.02 Application Fee

For all applicants, (1) a non-refundable fee of \$300.00 [?] shall be required with each application; (2) before the application is deemed complete by the County Staff, certified funds in the amount estimated by the County to be sufficient for complete review by the County and its consultants shall be deposited with the County, and any amounts in excess of actual costs incurred in the review and processing of the permit application including all hearings conducted therefore, shall be refunded; (3) should the initial deposit prove inadequate to cover the costs for application review by the County, the Applicant shall make additional deposits to cover estimate future review costs. These components in total shall constitute the Application Fee. The fee shall be set by the Board of County Commissioners in its reasonable discretion.

7.04.03 Waiver of Submission Requirements

The County Staff may waive any part of the submission requirements which are not relevant to a decision on the application. The County Staff may not waive any requirements which are otherwise required by law, such as by Article 65.5 of Title 24, C.R.S. Any waiver by County Staff is subject to reconsideration by the Board of County Commissioners.

7.04.04 Intergovernmental Agreements

Upon request of the State of Colorado or a political subdivision of the state as defined by 29-1 -202(1), C.R.S., proposing to develop in an area of state interest or to engage in an activity of state interest, the requirements of these regulations may be met by the approval of 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 Board, no permit application to develop in the area or to conduct the activity of state interest may be required, in the discretion of the parties to such IGA, provided that all of the following conditions are met:

- A. The state or political subdivision/developer and the County must both be authorized to enter into the intergovernmental agreement.
- B. The purpose and intent of these regulations must be satisfied by the terms of the intergovernmental agreement.
- C. A public hearing must be conducted by the Board to publicly review and approve of the proposed intergovernmental agreement. Notice of the public hearing shall be published once at least 30 and not more than 60 days prior to the hearing in a newspaper of general circulation in the County.



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- D. Both the Board and the governing body of the state or political subdivision/developer must approve the agreement in the manner required of each of them by the Colorado Constitution, state statutes and any applicable charter, ordinance or resolution.
- E. Exercise of the provisions of this section by the state or political subdivision/ developer 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 anytime elect to proceed instead under this Section.

7.04.05 General Process Outline **[leave this procedural stuff to Sky]**

The following is a general outline of the steps required for any permit decision under these regulations. Specific information regarding each of the referenced steps follows this section.

- A. Pre-application conference
- B. Application
- C. Referral to adjacent and/or nearby property owners and affected agencies
- D. Staff review
- E. Public review before the Planning Commission and Board of County Commissioners
- F. Post-approval requirements

7.04.06 Pre-application Conference

- A. A pre-application conference is required of all applicants.
  - 1) The pre-application conference shall be held between the applicant the Land Use Department Staff.
    - a. This meeting is intended to provide an understanding of the applicable review procedures, requirements, and standards, and provide information pertinent to the application and the geographical area affected by the application.
    - b. The staff will explain the application procedures and the materials required for submittal.
    - c. The applicant shall bring a conceptual site plan to the conference.
  - 2) If the staff feels that the proposal raises any of the following issues, the applicant shall also meet with members of the appropriate County department to discuss the proposal.
    - a. For road, access, traffic concerns, and all vehicular movement patterns and volumes, the applicant will meet with a member of the Huerfano County Road & Bridge staff.
    - b. For **water** supply, sanitation, **water** quality or other public health concerns, the applicant will meet with members of the Environmental Health Section of the Huerfano County Health Department.

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- c. For open space or environmental concerns, the applicant will meet with a member or members of the Planning Commission to discuss any potential effects of the application on open space and environmental resources in the County.
- B. Any comments or commitments made by any member of the County's Staff 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 and/or nearby property owners and referral agencies have had an opportunity to respond.
- C. Pre-application conferences may be held individually with each department, or a joint conference for all, or some, of the departments may be scheduled.
- D. County staff will make available to the applicant any public information regarding the application which is in the County's possession.

### 7.04.07 Application Submittal Requirements

#### A. Application

- 1) Before any request for County approval under these regulations may be processed, a complete application, meeting the requirements of this Section must be filed with the Land Use Department.
  - a. The application must include a General Land Use Application Form designating all agents for the applicant and exhibiting the applicant's or agent's signature, and has all necessary information completed. The form shall be accompanied by all fees, maps, plans, and reports required by these regulations.
  - b. 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.
  - c. A written description of the proposal.
  - d. Any application which requires compliance with Article 65.5 of Title 24, C.R.S. shall not be considered to have been submitted as complete until the applicant has provided a certification signed by the applicant confirming that the applicant or its agent has examined the records of the Huerfano County Clerk and Recorder for the existence of any mineral estate owners or lessees that own less than full fee title in the property which is the subject of the application, and stating whether or not any such mineral estate owners or lessees exist.
  - e. In addition, for purposes of the County convening its initial public hearing on any application involving property for which mineral estate owners or lessees owning less than full fee title in the property have been certified by the applicant to exist, the application shall not be considered to have been submitted as complete until the applicant has provided an additional signed certification confirming that the applicant has, at least 30 days prior to the initial public hearing,

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transmitted to the County and to the affected mineral estate owners and lessees the notices required by Article 65.5 of Title 24, C.R.S.

**B. Professional Qualifications**

- 1) A professional consultant may not be necessary for all applications. Applicants shall determine in what instances professional consultation may be necessary for purposes of preparation of an Application, and Staff shall determine in its reasonable discretion whether the absence or adequacy of such professional consultation materially affects the completeness or acceptability of such application.
- 2) All data and plans submitted for review must show the qualifications of the individual in charge of the work.

**C. 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 of County Commissioners may authorize the review be performed by a consultant engaged or approved by the County Staff. Unless specifically resolved by the Board of County Commissioners to the contrary, the applicant shall pay all consultants' fees, based upon the nature and extent of consulting expertise required, and a deposit for the estimated costs thereof shall be included in the application fee, as discussed herein at Section 7.04.02.
- 2) A referral agency may impose a fee for the review of the application. No hearings will be held if any such referral agency's fee has not been paid.

**D. Application requirements – All topics discussed in this paragraph are for purposes of providing examples of issues generally addressed in an application of this nature and the likely minimum contents of such application. The contents of any particular application are at the discretion of the applicant, and to the extent that such application may be deemed complete, the County will provide a review and consideration of such application pursuant to these regulations and any subsequent regulations enacted pursuant to designations contained herein, or subsequent designations of matters of state interest.**

- 1) The following are general requirements for any map or plan required as part of the application for a County approval. Minimum requirements include:
  - a. The name of the proposed development or use and total number of acres under consideration.
  - b. Since all maps and plans may be used for public presentation, the map scale and size should be large enough for effective presentation and should accurately illustrate the application.
  - c. Name, address, and telephone number of the applicant, designer, engineer, surveyor, and any other consultants of the applicant.
  - d. Date of preparation, revision box, written scale, graphic scale, and north arrow for each map.

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- e. A copy of the capital improvements plan, facilities master plan, or other applicable master planning document covering the subject development and property, as required in Subsection 7.04.01(D) above.
- 2) The following requirements shall apply only to applications for **designated water-related matters** ~~the water and sewage treatment activities designated in Section 7.02.08(A)(1-3)~~ above.
    - a. Detailed plans for the activity or development including the proposed system capacity and service area plans and maps.
    - b. A description of all existing or approved proposed domestic **water** or sewage treatment systems within the jurisdiction of the applicant as well as adjacent communities (incorporated and unincorporated).
    - c. The design capacity of each domestic **water** or sewage treatment system and the distribution or collection network identified in (3) below.
    - d. A detailed inventory of total commitments already made for current **water** or sewage services in terms of taps or other appropriate measurement.
    - e. The source of the existing or new **water** supply for the proposed activity including applicable decreed **water** rights or plans, and information on any agricultural **water** rights decreed to land in unincorporated Huerfano County and converted **or to be converted** to provide the supply.
  - 3) The following requirements shall apply only to applications for major facilities of a public utility.
    - a. Detailed plans for the facility including, but not limited to, the associated system capacity and proposed service area plans and maps.
    - b. A description of existing and proposed service in the area to be served.
    - c. A description of the distribution network for the area proposed to be served.
  - 4) The following requirements apply only to development located in Historical and Archeological Resource Areas of statewide importance.
    - a. A state historical site survey form completed by a qualified professional, as may be acceptable to the State Historic Preservation Officer for all resources affected by the development, in the discretion of the Board of County Commissioners.
    - b. A description of the mitigating efforts to be taken to preserve the designated resource.
    - c. Plans and procedures for notification to the State Historical Society and State Archaeologist upon discovery of historical or archaeological resources, as may be required in the discretion of the Board of County Commissioners.
    - d. A report from the Huerfano County Historical Society regarding its understanding of the historical or archaeological resources at that site.**

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- 5) The following requirements apply only to development located in Natural Resource Areas of statewide importance.
  - a. A survey of habitat of applicable species, both fauna and flora, by a qualified professional.
  - b. A plan of construction and operations, which shall contain an analysis of the effects of the proposed development upon wildlife species within the designated wildlife habitat, both fauna and flora.
- 6) The following requirements apply only to development located in Natural Hazard Areas.
  - a. For development in a natural hazard area as set forth in Section 7.02.08 (B)(4):
    - i. A flood hazard impact report that addresses the criteria for developing in a flood hazard area, certified by a registered Colorado Professional Engineer.
    - ii. Maps or reports addressing flood hazard areas must be prepared by a registered Colorado Professional Engineer, a hydrologist or other professional with appropriate expertise in the issues addressed in the map or report as determined by the Land Use County Staff.
  - b. For developments located within a natural hazard area which is a geologic hazard area:
    - i. A geology report documenting and assessing the nature and extent of the applicable geologic hazard, its impact on the proposed development, and proposed mitigation measures if any, prepared by either a member of the American Institute of Professional Geologists, a member of the Association of Engineering Geologists, or an individual registered as a geologist by a state.
  - c. Noticing requirements for referral agencies in 7.04.08(C)(1)(a) do not apply to applications for development in Natural Hazard Areas.
- 7) Requirements applicable to all applications
  - a. Detailed description of the scope and need for the proposed development or activity, including but not limited to:
    - i. The present population of the area to be served and the **projected** population to be served.
    - ii. The predominant types of users or communities to be served by the proposal, over the lifecycle of the project.
    - iii. The percentage of the design capacity at which the current system is now operating.
    - iv. If the proposal is a new **water** or **wastewater** treatment system or public utility facility and that system exceeds a ten year projected increase in demand, a detailed explanation of the excess service capacity and the cost of the excess capacity.
    - v. The relationship of the proposal to the applicant's long-range planning and capital improvements programs, including specific reference to the **County** master plan.

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- 8) Environmental Impact Analysis, applicable to all applications for site selection of key facilities, water related projects, new communities, and public utilities.
  1. Land use:
    - i. Specify whether the proposal conforms to local governments planning policies and master plans.
    - ii. Detail the agricultural productivity capability of the land affected by the proposal (SCS classification).
    - iii. Specify how the proposed development will utilize existing easements or rights-of-way for any associated transmission, distribution, or collector networks.
    - iv. Specify any additional right-of-way or easements for new or expanded transportation facilities.
  2. **Water** resources:
    - i. On an appropriate map, indicate any flood hazard areas associated with the proposal. Documentation of historical flooding activity on the parcel where the activity or development will be located, and on other property affected by the activity or development, should be included. Detail potential, adverse impacts related to the associated flood hazard area.
    - ii. Map and describe all waters of natural streams, including applicable state **water** quality standards, which may be affected by the project.
    - iii. Describe the immediate and long-term impact and net effects that the activity would have on the quantity and quality of surface **water** under both average and worst case conditions.
    - iv. Map and describe all **groundwater**, including any aquifers and aquifer recharge areas. Describe the potential impacts and net effect of the activity on **groundwater**, both quantity and quality. At a minimum, the description should include:
      1. Seasonal **water** levels in each platted subdivision of the aquifer affected by the activity.
      2. Artesian pressure in aquifers.
      3. **Groundwater** flow directions and levels.
      4. Existing aquifer recharge rates and methodology used to calculate recharge to the aquifer from any recharge sources.
      5. 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.

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6. 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.
7. Existing groundwater quality and classification.
8. Location of all water wells and their uses.
9. Location of all aquifer recharge areas.
- v. Describe the impacts and net effect of the activity on wetlands and riparian areas.
  1. Map and describe wetlands, and riparian areas to be affected by the activity, including a description of each type of wetlands, species composition, and biomass, both fauna and flora.
  2. Describe the source of water interacting with the surface systems to create each wetland (i.e., side-slope runoff, over-bank flooding, groundwater seepage, etc.).
  3. Describe impacts and the net effect that the project would have on the wetlands and riparian areas.
  4. Describe impacts on quantity and quality of water in Aquifer Recharge Areas.
3. Terrestrial and Aquatic Animals and Habitat, as applicable:
  1. Map and describe 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.
  2. Map and describe critical wildlife habitat and livestock range to be affected by the activity including migration routes, calving areas, summer and winter range, and spawning beds.
  3. Describe the impacts and net effect that the activity would have on terrestrial and aquatic animals, habitat, and food chain.
4. Terrestrial and Aquatic Plant Life, as applicable:
  1. Map and describe terrestrial and aquatic plant life including the type and density, and threatened or endangered plant species and habitat.
  2. Describe the impacts and net effect that the activity would have on terrestrial and aquatic plant life, including plant life resulting from agricultural irrigation, dry up of the same, and revegetation efforts to mitigate the same.
5. Air quality, as applicable:
  1. Detail how many average daily trips will be generated by the proposal.
  2. Explain any other adverse impacts on air quality anticipated from the proposal.

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3. Describe how any state or federal air quality standards will be impacted and if the proposed transportation facility has been included in the region's air quality models to verify conformity with the air quality plan.
4. Describe the air sheds to be affected by the activity, including the seasonal pattern of air circulation and microclimates.
5. Describe the impacts and net effect that the activity would have on air quality during both construction and operation under both average and worst case conditions.
6. Significant environmentally sensitive factors, as applicable:
  1. 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 environs, and detail the potential impact of the proposal upon each feature:
    - i. Potential natural hazards
    - ii. Public outdoor recreation and open space areas.
    - iii. Unique areas of geologic, historic, and archaeological importance.
7. Visual aesthetics and nuisance factors, as applicable:
  1. Identify view sheds, scenic vistas, unique landscapes, or land formations.
  2. Identify any significant deterioration of existing natural aesthetics, creation of visual blight, noise pollution, or obnoxious odors which may stem from the proposal.
  3. Identify and describe any structures, excavations, and embankments that will be visible as a result of this project.
8. Transportation impacts, as applicable:
  1. Describe what impacts the proposal will have upon transportation patterns in the area intended to be served or affected by the proposal through the submittal of a traffic impact analysis of the proposed transportation facilities. The traffic impact analysis should include but not be limited to the following:
    - i. Identify the facilities required to support the existing and future land uses being served by the proposed transportation facility.
    - ii. Provide the existing and proposed traffic volume impacts to the adjacent road system, including local roads.
    - iii. All transportation access information as required by the CDOT State Highway Access Code, 1998 revisions or the most current edition thereof.



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- iv. Submittal of a benefit/cost analysis of the proposed transportation improvements and identify the distribution of the burden of the cost for the proposed improvements to the project as well as the adjacent state or local road system.
9. Potential Socio-Economic impacts of the proposal, including but not limited to impacts related to the historical rural-agricultural culture of the County, employment impacts/opportunities and other related socio-economic factors.
10. Less damaging alternatives, applicable to all applications:
  1. If the County Staff or Planning Commission determines that the nature or extent of the proposal involves the potential for significant environmental and/or socio-economic damage and warrants examination of specific, less damaging alternatives, the County Staff or Planning Commission may request that the Board require that the applicant evaluate and present information on such alternatives and mitigation as part of the application.
  2. 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, as well as mitigation alternative which might lessen such impacts.
11. For any application requiring compliance with Article 65.5 of Title 24, C.R.S., certification of compliance with Article 65.5 of Title 24, C.R.S., signed by the applicant confirming that the applicant or its agent has examined the records of the Huerfano County Clerk and Recorder for the existence of any mineral estate owners or lessees that own less than full fee title in the property which is the subject of the application, and stating whether or not any such mineral estate owners or lessees exist.<sup>42</sup>

**12. Any application involving a water-related matter shall describe its impact on:**

- 1. Water rights.**
  - i. In addition to the impact analysis, the application shall contain copies of decrees of the District Court or of the Water Court relating to the water rights involved.**
- 2. Water structures, including headgates, ditches, wells, dams/reservoirs, etc.**
  - i. In addition to the impact analysis, the application shall contain copies of any orders of the appropriate Water Commissioner(s), the Division Engineer or the State Engineer regarding any of the water structures related to the water rights or irrigated lands involved.**

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<sup>42</sup> Interesting requirement in that the Assessor doesn't maintain a separate schedule of severed mineral estates.

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3. All engineering, hydrological, or hydrogeological analysis related to the water rights involved.
4. Legal description and map of all ditches and irrigated acreage impacted or proposed to be dried up.

### 7.04.08 Referral Requirements

- A. Referral of Applications – nothing herein is to be deemed to define the potential impact area of any project, but rather to define only where specific referrals are to be required.
  - 1) When an application meeting the requirements of Section 7.04.07 is filed with the Land Use Department, and deemed complete by County Staff, the application materials shall be referred to interest holders in any property proposed to be **occupied** ~~physically disturbed~~ by the activity or development, property owners within **one mile** ~~1,500 feet~~ of any property proposed to be physically disturbed and appropriate referral agencies. Based on the specifics of the application, the County Staff may waive referral requirements or modify notification radius if those requirements are unnecessary.
    - a. The Land Use Department will electronically send relevant application materials to referral agencies.
- B. Referral Packets
  - 1) Each referral packet shall contain one copy of the site plan and application, and other materials as deemed appropriate by the Land Use County Staff.
  - 2) Referral notices shall be sent to agencies specified in this Section 7.04.08 and to each owner of an interest in any property proposed to be physically disturbed by the proposal, and to property owners within 1,500 feet of any property proposed to be physically disturbed, unless otherwise specified by County staff. Referral notifications may be distributed electronically.
  - 3) Referral notices shall also include the name of the proposal, name of owners of the affected property, permit number, general location, and number of acres, proposed use, and any other information deemed appropriate by the County Staff. The notice shall also include information on where to access referral packets on the County's website, and provide staff contact information in case the person receiving the notice wishes to request a hard copy of the referral packet. The complete application referral packet shall be available for public review on the County Land Use Department web page.
- C. Review of Applications by Agencies and Individuals – while this section provides for referral of applications to specific agencies and individuals for comment, such comments are advisory only, and no referral comments shall be binding upon the Board of County Commissioners.
  - 1) Referral responses from agencies and individuals.

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- a. Referral responses must be received by the County Staff within **75** ~~30~~ days<sup>45</sup> of transmittal in order to insure that recommendations and findings are considered.
  - b. Failure of any office, agency district, or individual to respond within the above-mentioned time period, or within the period of an extension which may be expressly granted by the County Staff, will be regarded as a response with no conflict.
- 2) The State Engineer may review the application to insure conformity with all applicable regulations of the Colorado Division of **Water** Resources and for comment on applicable **water** rights administration and determination concerns.
  - 3) The Colorado and County Health Departments may review the application for conformity with all applicable State and County health related regulations.
  - 4) The Colorado Geological Survey may evaluate those geologic factors which would have a significant impact on the proposed use of the land.
  - 5) The Colorado Public Utilities Commission may review all applications for major facilities of a public utility, and provide information on any decisions, orders, or findings which the Commission has made or proposes to make with respect to the facility, and any other pertinent information.
  - 6) Colorado Department of Transportation may review the application for conformity to the State Highway Access Code, STIP and the regulations relative to the administration of state and federal transportation systems.
  - 7) The Colorado Division of Wildlife may review all applications in areas affecting natural resources.
  - 8) The County Land Use Department shall evaluate the application for conformance with the Comprehensive Plan, these regulations, sound planning, and comments from the referral agencies and individuals.
  - 9) The Colorado **Water** Conservation Board may review the application for flood hazard impacts.
  - 10) The City of Walsenburg, Town of La Veta, or any other governmental jurisdictions or Special District may review the application for conformance and possible impact of their future land-use plans.
  - 11) The Huerfano County Historical Society may review the application for any impacts on identified historical or archeological sites or features within the County.**
  - 12) The Huerfano County Water Conservancy District may review the application for the proposal's impact on the County's water resources.**

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<sup>45</sup> **To get thoughtful (maybe any) responses from districts requires more than 30 days. Decisions are made by the District's board which usually meets once a month. This is covered below in noticing criteria.**

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- D. Post referral action if there are referral comments received by the Land Use Department which require a response from the applicant, the following actions shall occur:
- 1) The Land Use staff will transmit by first class mail, electronic mail, or hand delivery, the comments from referral agencies and individuals as soon as possible following the required referral response period.
  - 2) Within 30 days after transmittal of those comments, or by a later date specified by the County Staff, the applicant shall respond in writing to all issues raised during the referral process.
    - a. Such response shall be considered an amendment to the application, and shall be made part of the application to be used as a basis for a final Planning Commission and Staff recommendation.
    - b. If the County Staff or the Planning Commission finds that this new information results in a substantial change in the proposal, the County Staff may re-refer the amended application and supporting materials to those referral agencies and individuals outlined in Section 7.04.08, above. The processing schedule will be amended accordingly.
    - c. If the applicant is unable to supply responses within the 30 days allowed, then the applicant may request, in writing, a delay in processing the application for up to 90 days.
    - d. If the applicant fails to supply satisfactory responses within the specified time, the County Staff may either base the Land Use Staff recommendation on review of the file as it exists, or reject the application as a result of the failure to provide information necessary to its proper review. In the case of the latter, the County Staff shall inform the applicant in writing.
  - 3) The Land Use Staff shall make a recommendation based on its analysis of the record on the application, the referral comments, and the applicant's responses to the referral comments.

### 7.04.09 Notice of Permit Hearing<sup>46</sup>

- A. Not later than 30 days after receipt of a completed application for a permit, the County Staff shall set and publish notice of a date, time, and place for a public hearing before the Board of County Commissioners and the Planning Commission.<sup>47</sup> The notice shall be published once in a newspaper of general circulation in Huerfano County, not less than 30 nor more than 60 days before the date set for the hearing. Notice shall also be mailed to the applicant, and to any other persons or agencies requesting notice of the hearing, at the same time the notice is published. Inadvertent failure to notify every such

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<sup>46</sup> **All these notice and procedural matters should be conformed to the new simplified construct being adopted by the County Commissioners.**

**Replace with reference to Section 8?** Some of the criteria are more stringent – 30-day noticing to neighbors. 60 days to referral agencies.

<sup>47</sup> Who holds the public hearing?

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property owner, person, or agency shall not affect the validity of any hearing or any determination of the Board.

- B. Not less than thirty days before the date scheduled for the public hearing the applicant will send notice by, certified mail, return receipt requested, or by a nationally recognized overnight courier, to all property owners indentified in Section 7.04.08 (B) (2), and all mineral estate owner pursuant to CRS 24-65.5-103. Inadvertent failure to notify every such property owner, person, or agency shall not affect the validity of any hearing or and determination of the Board.
- C. The application shall be considered complete and therefore received by the Land Use Department for purposes of this Section 7.04.09, once the applicant supplies satisfactory responses to the referral comments as required by Section 7.04.08(D)(2), above, or, if no responses are required, within 60 days after the County Staff transmits information on the application to the referral agencies and individuals pursuant to Section 7.04.08(C), or at such later date as the County Staff may have approved under Section 7.04.08(C), above. Completeness of the application shall also be determined based upon the applicant's compliance with any applicable requirements of Article 65.5 of Title 24, C.R.S., as set forth in Section 7.04.07(A) (1)(D), above.
- D. Notwithstanding any other provision of this Article the Applicant shall be solely responsible for complying with any applicable requirements of Article 65.5 of Title 24, C.R.S. Therefore, if the application is one which requires compliance with Article 65.5 of Title 24, C.R.S., and if the applicant has certified as part of its application submittal that mineral estate owners or lessees owning less than full fee title in the property which is the subject of the application exist, the County's initial public hearing on the application (before the Planning Commission or the Board, as applicable) shall not be held unless the applicant provides a further signed certification confirming that the applicant has, at least 30 days prior to the initial public hearing, transmitted to the County and to the affected mineral estate owners and lessees the notices required by Article 65.5 of Title 24, CR.S.
- E. In any case where information becomes known to the Planning Commission, Board, or County Staff that an applicant has failed to provide notice of an initial public hearing on an application as required Article 65.5 of Title 24, C.R.S. at least 30 days prior to the initial County public hearing on the application, as required by Article 65.5 of Title 24, C.R.S., the Planning Commission, the Board, or the County Staff on behalf of the Planning Commission or Board may continue, may reschedule, or may vacate the initial public hearing to allow proper notice to be provided under Article 65.5 of Title 24, C.R.S.

### 7.04.10 Conduct of the Permit Hearings

- A. The Board shall conduct its public hearing in such a manner so as to solicit all relevant testimony from the applicant and members of the public.
  - 1) The Board and Planning Commission shall hear testimony and receive evidence and documents presented at the public hearing.

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- 2) The County Staff shall conduct and preserve the following record of the public hearing:
  - a. The permit application.
  - b. Any written statements or documents presented in support of or in opposition to the permit application.
  - c. The names and addresses (as available) of all persons making oral or written statements, appearing as witnesses, or offering documentary evidence.
  - d. Any recording of the hearing.
  - e. The Planning Commission's recommendation.
  - f. The resolution of the Board granting or denying the permit application.
  - g. A copy of the permit, if issued.
- B. Any application submitted by a public utility or a power authority providing electric or natural gas service, which relates to the location, construction, or improvement of a Major Facility of a Public Utility as contemplated by Section 29-20-108, C.R.S., as amended, and which is presented to the Planning Commission for review, shall be considered to be a "preliminary application" under Section 29-20-108. Final County action on any such application shall thus be required to be taken within 120 days after submission of the application, or the application under Section 29-20-108 is deemed approved. Any such application for a major electrical or natural gas facility which is presented to only the Board, shall be considered to be a "final application" under Section 29-20-108, on which final County action shall be required to be taken within 90 days after submission of the application, or the application under Section 29-20-108 is deemed approved. For purposes of this Subsection C., "submission" shall be considered to be the submission of a complete application as required by this Regulation, including but not limited with respect to compliance with any applicable notice requirements to the mineral estate owners and lessees constituting less than full fee title in the subject property as required by Article 65.5 of Title 24, C.R.S.

### 7.04.11 Standards for Approval of a Permit Application

#### 1041 Permit Approval Criteria

The board of county commissioners shall approve or approve with conditions a 1041 permit if it finds that it complies with the basic criteria in subsection A below and also complies with the additional criteria applicable to the type of area or activity of state interest applied for as listed in subsections B through M below. Collectively, these criteria implement the requirements for County development of guidelines and regulations for each of these areas contained in C.R.S. 24-65.1-202, 204, and 402. This determination shall be made based on the cumulative impacts of all phases or elements of the project. 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 satisfies the applicable approval criteria.

#### A. General Approval Requirements

- 1) A permit application for development of a matter of state interest must demonstrate that all relevant environmental impacts have been considered and mitigated. If the proposal does not mitigate all

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applicable impacts, the permit shall be denied, unless the Board determines that reasonable conditions can be imposed on the permit which will enable the activity to mitigate impacts.

- 2) If the Board determines at the public hearing that sufficient information has not been provided to it to allow it to determine if the applicable criteria have been met, the Board may continue the hearing until the specified additional information has been received. The Board shall adopt a written decision on a permit application as soon as practicable after the completion of the permit hearing.
- B. Standards for approval of all permit applications. Notwithstanding this Section 7.04.11.B., applicable standards may be waived pursuant to Section 7.04.03 of these Regulations.
- a. Prior to site disturbance associated with the project, the applicant can and will obtain all necessary surface, mineral and water rights and any additional permits and approvals from local, regional, state, and federal governmental departments and agencies necessary to engage in the proposed activity; the board of county commissioners may defer making a final decision on the application until outstanding property rights, permits and approvals are obtained, or may condition the approval of a permit on receipt;
  - b. The applicant demonstrates financial capability to develop and operate the proposal consistent with all requirements and conditions.
  - c. Adequate **water** supplies, as determined by the Board of County Commissioners, with referral comments from the State Engineer's Office, the Division Engineer's Office, **and** the Colorado Department of Health **and the Huerfano County Water Conservancy District** are available for the proposal if applicable. The proposal will not cause unreasonable loss of irrigated agricultural lands. The proposal shall not significantly degrade or pose a significant hazard to any aspect of the environment, including environmental resources and open space areas as identified in the Comprehensive Plan, and other features or elements that are deemed to be significant components of the natural environment worthy of preservation. The project design, construction, and operation minimize the likelihood of the release of any hazardous material into the environment, as evidenced by its plans for compliance with federal and state handling, storage, disposal and transportation requirements, its use of waste minimization techniques, and the adequacy of spill prevention and response plans;

For purposes of this section, the following aspects of the environment shall be considered:

- a. Air quality: The proposal shall not significantly deteriorate air quality. In determining impacts to air quality, these considerations shall apply.
  - i. Changes to seasonal ambient air quality
  - ii. Changes in visibility and microclimates

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- iii. Applicable air quality standards and impacts on odors<sup>48</sup>
- b. Visual quality. The proposal shall not significantly degrade visual quality. In determining impacts to visual quality, these considerations shall apply.
  - i. Visual changes to ground cover and vegetation, **water**falls and streams, or other natural features.
  - ii. Interference with view sheds and scenic vistas.
  - iii. Changes in appearances of forest canopies.
  - iv. Changes in landscape character types or unique land formations.
  - v. Compatibility of building and structure design and materials with surrounding land uses.
- c. Surface **water** quality. The proposal shall not significantly degrade surface **water** quality. In determining impacts to surface **water** quality, these considerations shall apply.
  - i. 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**.
  - ii. Applicable narrative and numeric **water** quality standards.<sup>49</sup>
  - iii. Increases in point and non-point source pollution loads.
  - iv. Increase in erosion.<sup>50</sup>
  - v. Increases in sediment loading to **water** bodies.<sup>51</sup>
  - vi. Changes in stream channel stability.
  - vii. Mitigation of storm water runoff.
  - viii. Discharge of nutrients likely to cause changes in trophic status or in eutrophication rates in lakes and reservoirs.
  - ix. Changes in the capacity or functioning of streams, lakes, or reservoirs.
  - x. Changes in flushing flows.
  - xi. Changes in dilution rates of mine waste, agricultural runoff and other unregulated sources of pollutants.

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<sup>48</sup> Do we want to look at odors?  
Tonnes of CO2 emissions/year?

<sup>49</sup> Narrative standards?  
Which standards are applicable – can we make a specific reference?

<sup>50</sup> How measured?

Are we asking for an engineered drainage report?

<sup>51</sup> Same comment as above.



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- d. **Groundwater** quality. The proposal shall not significantly degrade **groundwater** quality. In determining impacts to **groundwater** quality, these considerations shall apply:
  - i. Changes in aquifer recharge rates, **groundwater** levels, and aquifer capacity including seepage losses through aquifer boundaries and at aquifer-stream interfaces.
  - ii. Changes in capacity and function of wells within the impact area<sup>52</sup>.
  - iii. Changes in quality of well **water** within the **impact area**.
- e. Wetlands and riparian areas. The proposal shall not significantly degrade the quality of wetlands and riparian areas. In determining impacts to wetlands and riparian areas, these considerations shall apply:
  - i. Changes in the structure and function of wetlands.
  - ii. Changes to the filtering and pollutant uptake capacities of wetlands and riparian areas.
  - iii. Changes to aerial extent of wetlands.
  - iv. Changes in species' characteristics and diversity.
  - v. Transition from wetland to upland species.
  - vi. Changes in function and aerial extent of floodplains.
- f. Terrestrial and aquatic animal life. The proposal shall not significantly degrade the quality of terrestrial and aquatic animal life. In determining impacts to terrestrial and aquatic animal life, these considerations shall apply:
  - i. Changes that result in loss of oxygen for aquatic life.
  - ii. Reduction in surface flows.
  - iii. Changes in species composition or density.
  - iv. Reduction in number of threatened or endangered species.
  - v. 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 native species.
  - vi. Changes to habitat and critical habitat, including streambed 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.
  - vii. Changes to the aquatic and terrestrial food webs.

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<sup>52</sup> Define in terms of distance?

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- g. Terrestrial and aquatic plant life. The proposal shall not significantly degrade the quality of terrestrial and aquatic plant life, including plant life resulting from agricultural irrigation, dry up of the same, and revegetation efforts to mitigate the same. In determining impacts to terrestrial and aquatic animal life, these considerations shall apply:
  - i. Changes to habitat of threatened or endangered plant species.
  - ii. Changes to the structure and function of vegetation, including species composition, diversity, biomass, and productivity.
  - iii. Changes in advancement or succession of desirable and less desirable species, including noxious weeds.
  - iv. Changes in threatened or endangered species.
- h. Soils and geologic conditions. The proposal shall not significantly degrade soils and geologic conditions, including soil impacts resulting from agricultural irrigation, dry up of the same, and revegetation efforts to mitigate the same. In determining impacts on soils and geologic conditions, these considerations shall apply.
  - i. Changes to the topography, natural drainage patterns, soil morphology and productivity, soil erosion potential, and flood hazard areas.
  - ii. Changes to stream sedimentation, geomorphology, and channel stability.
  - iii. Changes to lake and reservoir bank stability and sedimentation, and safety of existing reservoirs.
  - iv. Changes to avalanche areas, mudflows and debris fans, and other unstable and potentially unstable slopes.
  - v. Exacerbation of seismic concerns and subsidence.
- i. The proposal will not have a significant adverse effect on the quality or quantity of recreational opportunities and experience.
- j. The proposal will not cause unreasonable loss of significant cultural resources, including but not necessarily limited to historical structures or sites and archaeological artifacts or sites, as identified in the Comprehensive Plan or identifiable on or near the site.
- k. The proposal or its associated transmission collector or distribution system will not create blight, or cause other nuisance factors such as excessive noise or obnoxious odors.
- l. The proposal will not be subject to significant risk from floods, fires, earthquakes, subsidence or other disasters or natural hazards.
- m. The proposal or its associated transmission collector or distribution system will not create an undue financial burden on existing or future residents of the County.

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- n. The proposal will not have a significant adverse effect on the capability of local government to provide services or exceed the capacity of service delivery systems.
- o. The planning, design and operation of the proposal will reflect appropriate principles of resource conservation, energy efficiency and recycling or reuse.
- p. For those applications for which the County has required information on the environmental and socio-economic impacts and costs of alternatives under Section 7.04.07(D)(8-15) above, the proposal represents the least damaging alternative of reasonable cost among the alternatives analyzed.
- q. The proposal is in accordance with the Huerfano County Comprehensive Plan and any applicable intergovernmental agreement affecting land use and development, including but not limited to any applicable land use designations. In cases where a person who is not a service provider with a County-approved service plan or service area, proposes a development within an approved service area, the Board shall not be compelled to consider the development to be in compliance with the applicable adopted comprehensive plan or intergovernmental planning agreement simply by virtue of the fact that the development is located within, or is proposed to serve, an approved service area.
- r. The proposal represents the complete, reasonably foreseeable development for the subject property as required under Section 7.04.01(D), above. The Board may approve development in phases if the review required under this section included impacts of the complete development as supported by the applicable master planning document required under Subsection 7.04.01(D), under the applicable criteria of these Regulations, and documents the relationship of such phase to future phases of the same project. Amendments to approvals of applications submitted after the effective date of February 22, 2011 shall be subject to the further requirements of Subsection 7.04.01(E), above.

**C. Additional standards for approval of ~~municipal and industrial~~ water-related projects.**

- 1) The proposal shall emphasize the most efficient use of **water**, including, to the extent permissible under existing law, the recycling and reuse of **water**. Urban development, landscaping or irrigation, and design of storm **water** and sanitation systems shall be accomplished in a manner that will prevent the pollution of aquifer recharge areas.
- 2) To promote the efficient utilization of ~~municipal and industrial~~ **water-related** projects, **proposals that would export water from the County by change of water right, by the plumping of desiccated water rights, or otherwise, shall require that applicant share its proposal with and obtain an advisory recommendation from relevant stakeholder groups, to include the Huerfano Basin Stockgrowers Association, Farm Bureau, water providers in the same basin and the Chamber of Commerce. The BOCC may identify additional stakeholder groups from which an advisory opinion shall be sought.** utilization of the following **water** sources shall be prioritized:

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- a. Utilization of existing municipal and industrial **water** supplies, for example, by lease, exchange, sale, or other disposition between persons or entities within Huerfano County, and those outside Huerfano County.
  - b. **Water** supplies from sources which do not involve the removal of **water** from irrigated agriculture or open space or preserved lands in Huerfano County, or which do not involve increased use of native flows of **water** in the streams of Huerfano County.
- D. Additional standards for approval of site selection and construction of major new domestic water and sewage treatment systems and major extensions of existing domestic water and sewage treatment systems.**
- 1) New domestic **water** and sewage treatment systems and major extensions of existing domestic **water** and sewage treatment systems shall be constructed in areas which will result in the proper utilization of existing treatment plants within the County and will ensure the orderly development of domestic **water** and sewage treatment systems of adjacent communities within the County.
  - 2) Major extensions of domestic **water** and sewage treatment systems shall be permitted in those areas in which the anticipated growth and development that may occur as a result of such extension can be accommodated within the financial and environmental capacity of the area to sustain such growth and development.
  - 3) Proposed development would place existing **water** and sewage treatment systems servicing the area at or near operational capacity.
  - 4) The scope and nature of the proposal will not compete with existing **water** and sewage services or create duplicate services.
  - 5) The age of existing domestic **water** and sewage treatment systems, operational efficiency, state of repair or level of service is such that replacement is warranted.
  - 6) Existing facilities cannot be upgraded or expanded to meet waste discharge permit conditions of the Colorado **Water** Control Division.
- E. Additional standards for major facilities of a public utility.**
- 1) Facilities shall be sited and constructed in areas which will result in the proper utilization of existing facilities and associated systems within or serving the County.
  - 2) Facilities shall be permitted in those areas in which the anticipated growth and development that may occur as a result of such facility can be accommodated within the financial and environmental capacity of the area to sustain such growth and development and are in accordance with the applicable County land use plans.
  - 3) Existing facilities and associated systems servicing the area must be at or near operational capacity.

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- 4) If a facility extension or replacement is proposed, the age of existing facilities and associated systems, their operational efficiency, and their state of repair or level of service are such that extension or replacement is warranted.
- 5) If a new facility is proposed, existing facilities cannot be feasibly upgraded or expanded.

**Additional standards for site selection of new communities.**

Each application for creation of a new community involving the development of more than 50 residential units or more than 40,000 square feet of non-residential, non-agricultural uses on land currently used for agricultural purposes, or taxed as agricultural land shall:<sup>54</sup>

Ensure adequate provision of transportation, waste disposal, schools, and other governmental services in a manner that will not overload facilities of existing communities of the region.

**Additional standards for development in natural resource areas of statewide importance.**

- 1) Development shall be designed to preserve the integrity of the resource.
- 2) Development shall be conducted in a manner which will be compatible with the preservation of the resource and minimize damage to the resource.
- 3) The proposed development will not adversely affect **either surface or subsurface water** rights.
- 4) The proposed development will not significantly deteriorate significant wildlife habitat.
- 5) The proposed development will not significantly degrade existing natural scenic characteristics, create blight, or cause other nuisance factors such as excessive noise or obnoxious odors.

**Additional standards for development in flood hazard areas.**

- 1) Development shall preserve the integrity of the flood hazard area by not altering or impacting it in any way which is likely to pose a significant threat to public health or safety or to property (including the subject property, other impacted properties, or the environment).
- 2) Development which, in time of flooding, will likely pose a significant threat to public health or safety or to property (including the subject property, other impacted properties, or the environment) shall be prohibited. In determining whether there will likely be a significant threat, the following factors shall be considered:<sup>55</sup>
  - a. creation of obstructions from the proposed development during times of flooding, and vulnerability of the proposed development to flooding;
  - b. use of flood protection devices or flood proofing methods;

<sup>54</sup> Threshold suggested in model zoning code.

<sup>55</sup> An engineering study showing no rise in flood elevation.

Not sure how all of the listed considerations would be evaluated if not by an engineering study.

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- c. nature or intensity of the proposed development;
  - d. increases in impervious surface area caused by the proposed development;
  - e. increases in surface runoff flow rate and amount caused by the proposed development;
  - f. increases in flood **water** flow rate and amount caused by the proposed development;
  - g. proximity and nature of adjacent or nearby land uses;
  - h. impacts to downstream properties or communities;
  - i. impacts on shallow wells, waste disposal sites, **water** supply systems, and sewage disposal or on-site wastew**ater** systems.
  - j. Impacts of debris flows on the development or caused by development.
- 3) Areas of Unincorporated Huerfano County not designated on the Flood Hazard Area Map must meet the requirement of the Flood Damage Prevention Resolution No: 88-13 adopted by the Board on 31, August 1988 and incorporated in the Land Use Code as Section 4.00.
- 4) Open space activities such as agriculture, passive recreation (recreation not requiring the development of playing fields, spectator stands or other significant structures), and mineral extraction, shall be presumed to be the favored form of development in the flood hazard area and shall be encouraged. Applications proposing other forms of development, which make a more intensive use of the land such as by increasing the structural coverage or impervious surface on the land, shall be presumed to generate adverse impacts on the flood hazard area and shall not be approved unless the applicant clearly demonstrates that the criteria of this Section 7.04.11(H) and of Section 7.04.11(B) have been met.

### Additional standards for development in geologic hazard areas.

Hazardous geologic conditions include avalanches, landslides, rockfall, alluvial fans, mudflow areas, undermined areas, or development over faults. Development shall not aggravate the hazardous condition or otherwise pose a significant risk to public health and safety or to property.

- 1) Development shall be conducted in a manner which does not aggravate the hazardous condition or otherwise pose a significant risk to public health and safety or to property.
- 2) Any approved development shall be designed in a manner that mitigates any significant risk posed by the geologic hazard, as confirmed by a registered professional engineer or other qualified expert in the field.
- 3) Shallow wells, solid waste disposal sites, **water** supply systems, and on-site wastew**ater** systems and sewage disposal systems shall be protected.
- 4) Development shall comply with all applicable County Building Code and Health Department regulations.

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7.04.12 Issuance of Permits

- A. The permit shall be issued on the form adopted by the Board of County Commissioners, which may be the Board's written resolution of decision on the application.
- B. The permit may be issued for an indefinite term or a specified number of years.

7.04.13 Financial Security

- A. Before any permit is issued, the Board may, in its discretion, require the applicant to file a guarantee of financial security deemed adequate by and made payable to the Board.
- B. The purpose of this financial guarantee shall be to assure that the applicant or permittee shall faithfully perform all requirements of the permit.
- C. Any requirement for a financial guarantee shall be specified in the written decision of the Board on the permit application.

## 7.05 Post Approval Requirements

7.05.01 Enforcement of Permit Requirements

- A. When it comes to the attention of the Board that the provisions of any permit have been violated by the permittee, the Board, if it determines that enforcement action is appropriate, shall give the permittee written notice of the specific violation and of a hearing on the proposed violation which the Board shall schedule no sooner than 30 days after the date of the written notice. If the Board determines that an emergency situation exists the Board may schedule the hearing sooner than 30 days, provided that the permittee receives at least five working days' prior notice of the hearing.
- B. If the permittee fails to correct the violation by the public hearing date, and the Board determines at the public hearing that the violation exists, the Board, in its discretion, may impose an appropriate sanction, including but not necessarily limited to temporary suspension of the permit for a reasonable time certain; an order to correct the violation within a reasonable time certain; the requirement for additional financial guarantees; or revocation of the permit.
- C. The Board shall have the authority to seek an injunction or other appropriate relief in the appropriate state or federal district court if the permittee fails to correct the violation or to comply with any sanction imposed at the public hearing.
- D. Any permit issued under these regulations shall be deemed to include the granting of the permittee's consent to entry and inspections by the Board and its authorized representatives as may be necessary at any time during regular County business hours, without prior notice to the permittee, to determine compliance with the terms of the permit.

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Land Use Department  
400 Main Street, Suite B  
Walsenburg, Colorado 81089  
719-738-1220 ext. 103

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- E. Any person engaging in a development in a designated area of state interest or conducting a designated activity of state interest who does not obtain a permit pursuant to these regulations may be enjoined by the Board **or any other person** 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.
- F. To the extent the Board **or any other person** may be forced to seek injunctive relief as provided in this Section 7.05.01, any permittee, applicant or other person subject of such injunctive relief as may be awarded by a court of proper jurisdiction shall be liable to the County for costs and fees incurred in securing such injunctive relief, including reasonable attorney fees.