

AGENDA
OURAY COUNTY PLANNING COMMISSION
REGULAR MEETING & WORKSHOP

April 19, 2016, 6 – 8:00 p.m.
Meeting to be held at the Ouray County Land Use Office
111 Mall Road, Ridgway, Colorado

*If all agenda items are not covered in this time frame they may be continued until the next regular meeting. ***Times are approximate and subject to change***. If an item is finished early the Planning Commission will move directly to the next agenda item. If not a Public Hearing, public comment may or may not be taken during the meeting. Action may be taken at the conclusion of public hearings.*

I. Call to Order – Workshop of the Ouray County Planning Commission

1. Review of a potentially new Land Use Code Section pertaining to communication facilities.

II. Call to Order - Regular Meeting of the Ouray County Planning Commission

1. Election of Officers (only if the BOCC has appointed members)
2. Request for approval of minutes; 3/15/2016
3. New business
4. Public Hearing (7:00 PM); The purpose of the hearing is to review and make a recommendation to the Board of County Commissioners on an application by Hockersmith Law P.C., authorized agent for Porter & Chessie, LLC, for approval of an amendment to an existing Special Use Permit. The purpose of the amendment is to allow the use of a drive-thru window at the coffee shop located at 12 Hotchkiss Ave. (corner of Highway 550 and County Road 1) in Colona, CO.
5. Adjourn Regular Meeting

Copies of land use applications or workshop materials can be obtained at the Land Use Office at 111 Mall Road, Ridgway, CO; by calling 970.626.9775 or e-mailing mcastrodale@ouraycountyco.gov. Comments on the agenda items may be sent to Mark Castrodale, County Planner, P.O. Box 28, Ridgway, CO 81432

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COMMUNICATIONS FACILITIES

STAFF'S

COVER

MEMO

MEMO

TO: Planning Commission
FROM: Mark Castrodale – Planning Director
DATE: April 11, 2016
SUBJ: New Code Section – Communications Facilities

Attached are the current red-line and clean drafts of the “Communications Facilities” code section. All changes from the last Planning Commission work session (**April 5th**) have been incorporated into the draft. Also included are the current drafts of Sections 2 and 3 which will be reviewed along with the Communications Facilities section in public hearing.

Draft permit applications are also attached to show the complete picture of the application/permitting process. These documents will not be included or approved as part of the public hearing process as codification is not required.

Barring any unforeseen delays, this item will go to public hearing on: **May 17, 2016**

Please contact myself or Bryan if you have any questions.

Thank you.

COMMUNICATIONS FACILITIES

DRAFT

CODE

SECTION

- REDLINE -

SECTION 23

COMMUNICATIONS FACILITIES

23.1 PURPOSE AND LEGISLATIVE INTENT:

The purpose of this Code section is to establish guidelines for the siting of wireless, broadcast, wireless internet, digital television, and amateur (ie. *ham*) radio towers, antennas, ground equipment, and related structures.

Specifically, the purpose of this Code section is to:

- A. Allow sufficient and ~~current up-to-date~~ communication in the County.
- B. Encourage co-location of facilities and avoid a proliferation of towers where possible.
- C. Locate communication towers, antennas, and related equipment and shelters, ~~whereby minimizing~~ adverse impacts on the County. ~~are minimized.~~
- D. Encourage design and construction of towers, antennas, and related facilities to minimize adverse visual impacts.
- E. Encourage communications providers to deliver services ~~to in~~ the County effectively and efficiently.
- F. Promote the health, safety, and general welfare of the public by regulating the siting of wireless communications facilities.
- G. Establish predictable and balanced regulations governing the construction and location of wireless communications facilities, within the confines of permissible local regulations consistent with Federal law and regulations.
- H. Protect the character of the County while meeting the needs of its citizens to enjoy the benefits of communications services.
- I. To complete County permitting within the time frames established by Federal law and regulation.

23.2 PERMITTING AND ZONING:

- A. Communications facilities are permitted in all zoning districts, subject to the provisions of this Section with a Communications Facility ~~ies~~ Permit (CFP) as provided for in this Section.
- B. All new communications facilities and modifications to existing facilities shall obtain approval and/or permitting as provided for in this Section. Approval shall be initiated by submittal to the Land Use Department of a Communications Facility Permit Application.
- C. A separate Special Use Permit is not required.

- D. The County may approve permits for new communications towers and facilities for a period of up to 20 years.
- E. Applications will be processed within the timeframes established by Federal law and regulation.

23.3 **DEFINITIONS:**

Words not defined herein shall be construed to have the meaning given by common and ordinary use, and shall be interpreted within the context of the sentence, Section, and Subsection in which they occur.

The word(s) “**map**” or “**zoning map**” means the Zoning Map of Ouray County.

ABANDONED. No longer in use and has not been in use for more than 365 days.

ALTERNATIVE TOWER STRUCTURE. Light/power poles, electric transmission towers, and similar natural or man-made alternative design mounting structures that camouflage or conceal the presence of antennas or towers.

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BLEND. That which does not stand in stark contrast to the immediate surroundings.

CO-LOCATION. The placement of the antennas of two or more service providers upon a single tower or alternative tower structure.

C.O.W. Acronym for “*Carrier On Wheels*”. Communications equipment mounted on a vehicle, trailer, or other similar apparatus, intended to provide temporary service during maintenance or outage.

DEPARTMENT. The Ouray County Land Use Department.

EQUIPMENT SHELTER. A permitted structure, built to house communications and associated equipment, that supports a communications installation.

EXISTING STRUCTURES. Those communications related structures which were in place prior to the adoption of this Code section.

F.A.A. The Federal Aviation Administration.

F.C.C. The Federal Communications Commission.

FACILITIES / SUPPORT STRUCTURES. Something designed, built, installed, etc. related to a communications equipment installation.

GOVERNING AUTHORITY. The Board of County Commissioners of Ouray County.

HEIGHT. When referring to a tower or other structure, the term *height* shall mean the distance measured from the ground level to the highest point on the tower structure or appurtenance.

MONOPINE TOWER. See “Stealth Tower”.

MONOPOLE TOWER. Any structure designed to support antennae and which consists solely of a stand-alone ground mounted support pole or pipe, without guy or other supporting wires.

NON-SUBSTANTIAL (change). As defined in §4225 of the Middle Class Tax Relief and Job Creation Act of 2012 as may be amended or superseded.

PHOTO-SIMULATION. A facsimile of a building or structure, superimposed on to an actual photo of a proposed site, area, or location, typically produced in a software package such as Adobe Photoshop.

PUBLIC OFFICER. Shall mean the Planning Director or other representative of the Land Use Department.

R.F. Electromagnetic wave frequencies that lie in the range extending from around 3khz to 300Ghz.

REPLACEMENT. A substitution of an existing item for a new, different, or revised item.

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TEMPORARY EQUIPMENT. Items installed at or in a communications facility for a particular purpose, but not intended or approved by the County to be part of the permanent structure or overall facility installation.

TOWER. Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telecommunication towers, man-made trees (with accessory buildings/structures) and other similar structures.

23.4 REQUIREMENTS FOR COMMUNICATIONS FACILITIES APPLICATIONS:

A. Federal Requirements:

All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the Federal government with the authority to regulate towers and antennas. If these Federal laws and regulations are changed, the owners of the towers and antennas governed by these regulations shall bring such towers and antennas into compliance with such revised Federal laws and regulations, as provided by the controlling Federal agency.

B. Planned Unit Developments/Subdivisions:

New communications towers and their associated support facilities are prohibited in County-approved PUD's and subdivisions. New tower structures to be located within 1 mile of a

PUD or subdivision are limited to a maximum height of 50 feet. Amateur Radio (HAM) towers and facilities are allowed in PUDs/Subdivisions, as provided for in this Section.

C. Inventory of Existing Sites:

To facilitate the co-location of antennas, each applicant seeking to locate a new tower, alternative tower structure/antenna, or proposing a substantial modification of any such existing structure, shall provide to the Department an inventory of any existing towers or alternative tower structures within the same functional RF area or region.

- (1) The inventory shall include all such structures that are within the jurisdiction of the County; ~~and within one (1) mile beyond the County border;~~ within a municipality located, in whole or in part, within the County; and shall include specific information about the location (latitude and longitude coordinates), height, design, tower type and general suitability for antenna co-location of each tower, and other pertinent information as may be required by the Department.
- (2) The Department may share such information with other applicants for a cellular communications structure under this regulation or other organizations seeking to locate towers or antennas within the jurisdiction of the governing authority; provided, however that the Department is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

D. Co-location; Design Requirements:

In addition to all applicable County building and Land Use regulations, all towers, except amateur radio towers, shall be designed and installed to accommodate the co-location of additional cellular communications equipment.

E. Co-location; Availability of Suitable Existing Structures:

No new tower, except amateur radio towers, shall be permitted unless the applicant demonstrates to the satisfaction of the Department that no existing tower or existing alternative tower structure can accommodate the applicant's proposed communications equipment/antenna(s). All evidence submitted shall be signed by appropriate licensed professionals or qualified industry experts. Evidence submitted to demonstrate that no existing tower or structure can accommodate the proposed equipment/antenna(s) shall consist of one or more of the following:

- (1) Existing towers or suitable alternative tower structures are not located within the area required to meet the applicant's technical requirements.
- (2) Existing towers or structures are not of sufficient height to meet the applicant's technical requirements.
- (3) Existing towers or structures do not have sufficient structural strength to support the applicant's antenna and related equipment.
- (4) The applicant's proposed equipment/antenna(s) would cause electromagnetic interference with equipment/antenna(s) on the existing towers or structures, or the equipment/antenna(s) on the existing towers or structures would cause interference with the applicant's proposed equipment/antenna(s).

- (5) The cost or contractual provisions that would be imposed on the applicant to share an existing tower or structure or to adapt an existing tower or structure exceed the costs of new tower development.
- (6) The applicant adequately demonstrates that there are other limiting factors that render existing towers and structures unsuitable.

F. Tower Height Restrictions:

- (1) Communications towers and related facilities are presumed to have a maximum height of 50 feet.
- (2) Proposals for towers at a height of greater than 50 feet must include RF analysis or other technical data that supports the requirement for an extended tower height.
- (3) Applicants must also demonstrate that a multi-tower approach is not technically feasible; cost alone is not determinative of feasibility.
- (4) Applicants proposing towers at a height of greater than 50 feet may be required to reimburse the County for additional costs related to review by a qualified engineer.
- (5) No towers shall be allowed at a height greater than 180 feet.

G. Aesthetics:

The guidelines set forth in this Section shall govern the design and construction of all towers, and the installation of all antennas:

- (1) All new or total replacement tower/antenna structures shall be designed as alternative tower structures or stealth towers unless otherwise approved by the County. Proposed tower stealth or camouflage design and elements must be approved by the BOCC.
- (2) All towers or antennas other than those designed as stealth, or amateur radio towers, shall be a matte, dark, durable finish to reduce visual obtrusiveness.
- (3) For tower sites, the design of all buildings and related structures shall use materials, colors, textures, screening, and landscaping that will blend the tower facilities to the natural setting and building environment.
- (4) For antennas installed on a structure other than a tower, the antenna and supporting electrical and mechanical ground equipment shall be of a dark color so as to make the antenna and related equipment visually unobtrusive.
- (5) Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the governing authority shall review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.
- (6) No signage or other identifying markings of a commercial nature shall be permitted upon any tower or alternative tower structure within the County, unless otherwise required by a governmental authority.
- (7) For alternative tower structures, the co-location design requirement may be waived by Staff.

- (8) In addition to approval as set forth in this Section, all wireless concealment structures require issuance of a building permit.

H. Setbacks:

The following setbacks shall apply to all communication towers:

- (1) Tower setbacks from property lines shall be a distance equal to the height of the tower, or, must meet the minimum setback requirement for the zoning district, whichever is greater.
- (2) Guywires, accessory buildings and facilities shall meet the minimum building setback requirements as set forth in this Code.
- (3) All structures shall meet the setback, screening, and buffer requirements contained herein.
- (4) Structures and towers shall be located a minimum distance of two (2) times the height of the tower from any residential, or commercial structure, including homes, businesses, garages, and greenhouses.

I. Fencing:

Fencing proposed by Applicant and approved by the County shall be of materials that blend with the surroundings. Any installed fencing shall be properly maintained.

J. Landscaping:

- (1) The BOCC shall have the authority to impose landscaping requirements related to any proposed antenna/tower site, with the exception of amateur radio installations.
- (2) Required landscaping shall be consistent with surrounding vegetation and shall be properly maintained by the facility owner or leased tenant.
- (3) The BOCC may choose to not require landscaping for sites that are not visible from the public right-of-way or adjacent property or in instances where in the judgement of the BOCC landscaping is not appropriate or necessary.
- (4) The BOCC shall consider wildfire implications when imposing requirements for landscaping.

K. Additional Requirements:

- (1) Applicant must submit evidence that demonstrates the proposed facility or facility modification does not create undue impacts to surrounding areas. Potential impacts include, but are not limited to: water pollution, offensive noise, vibration, smoke, dust, odors, heat, glare, or other objectionable impacts beyond the boundaries of the property where the facility is located.
- (2) Applicant must submit evidence that demonstrates that legal access and all utilities required to serve the proposed use are available.
- (3) Applicant must submit evidence that demonstrates the proposed facility will not unreasonably impact wildlife or significant wildlife habitat.

- (4) Applicant must submit evidence that demonstrates the proposed facility will not alter, restrict, inhibit, or interfere with historic irrigation practices, headgates, ditches, and ditch rights-of-way.
- (5) Applicant must submit a geo-hazard mitigation report for any proposed facility located within evidence that demonstrates the proposed facility is not located within any area subject to potential geo-hazards, including, but not limited to: rockfall areas, avalanches, landslide, potential unstable slopes, slopes greater than 30%, alluvial/colluvial fans, talus slopes, shale, faults, expansive soils, or ground subsidence. Such report must be prepared by a Colorado Licensed Geo-Technical Engineer and approved by the County.
- (6) Applicant must submit evidence that demonstrates the proposed facility has no chemical or other contamination. If the property is contaminated, a mitigation plan must be presented that would satisfactorily resolve the contamination.
- (7) Applicant must submit evidence that demonstrates the proposed facility would not have a material adverse effect on the surrounding area.
- (8) Applicant must submit evidence that demonstrates the proposed facility will not create impacts on existing infrastructure beyond what would be created by a use-by-right, or, evidence that such impacts will be sufficiently mitigated.
- (9) Applicant must submit a weed management/mitigation plan if required by the County Weed Manager.

Note: The County may require qualified professional geologic or engineering certification that the proposed tower facility and associated structures can be located and developed in a safe manner.

L. Pre-Existing Towers and Facilities:

(1) Towers and facilities in existence prior to the adoption of this Section may be allowed to continue in their current state; provided, however, that any modification to a pre-existing communications tower and/or facility must be in substantial conformance with this Code.

~~(1)~~(2) Pre-existing towers and facilities are allowed to conduct typical maintenance and upkeep of such facilities.

M. Change of Ownership Notification:

Upon the transfer of ownership of any tower, alternative tower structure, or lot upon which such a structure has been erected, the tower permittee shall notify the Department of the transaction in writing within 30 days.

N. Written Notification of Denial:

- (1) Within thirty (30) days of the receipt of an application, the Department shall either:
 - (a) send written notice to the Applicant that the application is complete and shall be processed according to this Section; or

- (b) send written notice informing the Applicant that the application does not meet submittal requirements, stating the specific deficiencies.
- (2) If the Department informs an Applicant of an incomplete application within thirty (30) days of submittal, the overall timeframe for review is suspended until such time that the Applicant provides the requested information.

23.5 HEARINGS, NOTICE, AND SCHEDULING:

- A. If the request for a Communications Facility Permit is located within an Urban Growth Management Area or an Area of Influence, the request shall also be submitted to the adjacent municipality for review and comment. Any such comments shall be provided to the Department within thirty (30) days of transmittal of the application to the municipality.
- B. After the receipt of a complete application for a Communications Facility Permit by the Land Use Department, the permit application shall be considered at the next available Planning Commission agenda or, if the request is located within an Urban Growth Management Area or Area of Influence the appropriate Joint Planning Board shall review the request.
 - (1) The Planning Commission or Joint Planning Board shall review the application and shall recommend approval, recommend approval with conditions, or recommend denial of the application if it does not meet the requirements of this Code and the action shall be in the form of a motion as noted in the minutes.
 - (2) Staff shall forward such recommendation to the BOCC.
 - (3) If the Planning Commission or the Joint Planning Board is unable to make a recommendation on the Permit application within 14 days of the scheduled public hearing, the application shall be forwarded to the BOCC for a public hearing.
- C. Before granting a Communications Facility Permit, the BOCC shall hold a public hearing on the matter.
 - (1) Notice of such hearing shall be published at the expense of the Applicant, in a newspaper of general circulation within the County at least fourteen (14) days prior to the hearing date.
 - (2) Written notice of the hearing shall be provided by the Applicant at least fourteen (14) days prior to the hearing date to all properties within 1-mile ~~500-feet~~ of the subject lot or parcel.
 - (3) On-site notice of any pending Communications Facility Permit application, in a form approved by the Department, shall be posted on the property where the use is proposed at least thirty (30) days prior to the BOCC hearing date.

Note: Such notice shall be maintained on the property by the Applicant until final action on the application has been made and the notice shall be visible from each road frontage of the property. Proof of proper posting of the notice shall be verified as determined by Staff.
 - (4) At the public hearing, the BOCC shall review the Communications Facility Permit application and any supporting materials or referrals from the Planning Commission or the Joint Planning Board, in accordance with this Section. The BOCC shall, by resolution, approve, approve with conditions or modifications, or deny the application.

23.6 EXCEPTIONS / VARIANCE / APPEALS:

- A. For applications proposing a new tower/facility, rather than co-location on an existing tower, see Section 12 for additional information regarding a variance or exception.
- B. ~~An Applicant has the right to appeal a denial by Staff per Section 12 of this Code. For an Applicant seeking to appeal an exception or variance based upon Staff's denial of an application to the Board of Adjustment, due to Land Use/Zoning issues, refer to Section 12 X.X for process and requirements.~~

23.7 FEES FOR COMMUNICATION FACILITY APPLICATIONS:

Application fees for Communications Facility ~~ies~~ Permits, or renewal fees of Communications Facility ~~ies~~ Permits, will be in accordance with the County's current fee schedule.

Note: If it is determined by the County that it is necessary to consult with a third-party in considering the factors listed in this Section, all reasonable costs and expenses associated with such consultation shall be borne by the Applicant.

23.8 PERMIT TERMS AND RENEWAL:

- A. After a Communications Facility Permit has been issued, it shall be effective for a term of up to twenty (20) years, as determined by the BOCC. The Applicant shall be responsible for contacting the Department regarding the renewal of the Communications Facility Permit.
- B. In the event that the Applicant shall fail to contact the Department for renewal of a Special Use Permit within one-hundred eighty (180) days of the expiration of the permit, such permit may be revoked or suspended. If the permit is revoked, the Applicant shall be allowed to re-apply for a new permit according to the then existing requirements of this Code.

23.9 EVALUATION – SUBSTANTIAL VS. NON-SUBSTANTIAL MODIFICATIONS:

Staff may administratively approve tower modifications that are deemed to be non-substantial under Federal guidelines (Federal Statutes, Regulations, and FCC Interpretation). ~~Modifications deemed substantial shall require approval of a Communications Facility Permit.~~

23.10 BUILDING PERMIT REQUIRED:

~~All~~ All new towers, new structures, new support facilities, and new equipment shelters require issuance of a building permit prior to commencing construction. ~~Refer to application form for specific submittal requirements.~~

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~~B. In addition to a completed Building Permit Application form, all submittals for building permits must include at a minimum, the following elements:~~

- ~~(1) Scaled Site Plan—Showing location and dimensions of all improvements including:~~
- ~~(2) Topography (minimum 2 foot contours)~~
- ~~(3) Tower or structure height~~
- ~~(4) Setbacks, access driveways, related easements~~
- ~~(5) Parking~~
- ~~(6) Fencing~~
- ~~(7) Landscaping~~
- ~~(8) Adjacent uses (including any residential structures)~~
- ~~(9) Scaled elevation view and supporting drawings~~
- ~~(10) Calculations including wind and pole calculations~~
- ~~(11) Warranty deed and lease agreement~~
- ~~(12) Footing design stamped by a licensed professional engineer~~

~~Notes: Modifications to existing communications facilities deemed to be non-substantial by Staff do not require issuance of a building permit.~~

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23.11 MAINTENANCE AND TEMPORARY EQUIPMENT:

- A. Owners, manager, and lessee of communications facilities may conduct maintenance of such facility with ~~prior notification to Staff, approval from Staff.~~
- B. Typical maintenance may include the repair of a tower, antenna, communications equipment, or other repair of any existing facility component(s).
- C. Maintenance may also include the replacement of tower or facility equipment or components, providing the replacement is the same number of components and of equal or smaller dimensions of the item being replaced.
- D. Maintenance of communications facilities may also include the temporary use of COWs or other temporary equipment for a period not to exceed 90 days.

Notes: The use of temporary equipment for a period exceeding 90-days requires prior approval by Staff. The use of equipment for emergency repairs requires notification to Staff within 72 hours of implementation.

23.12 AMATEUR RADIO (HAM) TOWERS AND FACILITIES:

- A. Amateur radio towers and antennas are limited to a maximum height of 35 feet except as otherwise provided by Federal law or regulation, and do not require prior approval from the County.
- B. All amateur radio towers must be set back from any property line, at a minimum, a distance equal to the height of the tower, or a minimum of 25 feet, whichever is greater.
- C. Amateur radio operators wishing to erect a tower at a height greater than 35 feet may apply to the Department for approval prior to erecting such tower. Applications for variance in amateur radio tower height restrictions must include sufficient justification. Variance applications must show proof of notification to any applicable home owners association(s).
- D. Modifications to existing amateur radio towers require prior approval by Staff.

Notes: Staff may at their discretion forward any such requests to the BOCC for final approval. Also, amateur radio operators are strongly encouraged to research possible homeowners association covenants and regulations that may affect the installation of radio equipment and towers in their area.

23.13 REMOVAL OF ABANDONED ANTENNAS OR TOWERS:

- A. Any tower or antenna that is not operated for twelve (12) consecutive months shall be considered abandoned, and the owner of such antenna or tower shall remove the structure within ninety (90) days of receipt of notice from the Department notifying the owner of such abandonment.
- B. If said tower or antenna is not removed within ninety (90) days, it may be subject to enforcement action.

23.14 CONFLICT WITH OTHER LAWS:

If the Ouray County codes or regulations are in conflict with Federal law or regulations, Federal law or regulations shall control.

Note: Where HOA covenants/CCRs are more restrictive, they may control to the extent they are not inconsistent with State law or Federal laws or regulations, but such covenants may be enforced by an HOA. The County does not enforce HOA covenants.

23.15 SEVERABILITY:

- A. In the event any article, section, sentence, clause or phrase of this Section shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other articles, sections, sentences, clauses or phrases of this Section, which shall remain in full force and effect, as if the article, section, sentence, clause, or phrase so declared or adjudged invalid or unconstitutional were not originally a part thereof.

- B.** The BOCC hereby declares that it would have adopted the remaining parts of this Section if it had known that such part or parts thereof would be declared or adjudged invalid or unconstitutional.

COMMUNICATIONS FACILITIES

DRAFT

CODE

SECTION

- CLEAN -

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A. Federal Requirements:

All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the Federal government with the authority to regulate towers and antennas. If these Federal laws and regulations are changed, the owners of the towers and antennas governed by these regulations shall bring such towers and antennas into compliance with such revised Federal laws and regulations, as provided by the controlling Federal agency.

B. Planned Unit Developments/Subdivisions:

New communications towers and their associated support facilities are prohibited in County-approved PUDs and subdivisions. New tower structures to be located within 1 mile of a

PUD or subdivision are limited to a maximum height of 50 feet. Amateur Radio (HAM) towers and facilities are allowed in PUDs/Subdivisions, as provided for in this Section.

C. Inventory of Existing Sites:

To facilitate the co-location of antennas, each applicant seeking to locate a new tower, alternative tower structure/antenna, or proposing a substantial modification of any such existing structure, shall provide to the Department an inventory of any existing towers or alternative tower structures within the same functional RF area or region.

- (1) The inventory shall include all such structures that are within the jurisdiction of the County; and within one (1) mile beyond the County border; within a municipality located, in whole or in part, within the County; and shall include specific information about the location (latitude and longitude coordinates), height, design, tower type and general suitability for antenna co-location of each tower, and other pertinent information as may be required by the Department.
- (2) The Department may share such information with other applicants for a cellular communications structure under this regulation or other organizations seeking to locate towers or antennas within the jurisdiction of the governing authority; provided, however that the Department is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

D. Co-location; Design Requirements:

In addition to all applicable County building and Land Use regulations, all towers, except amateur radio towers, shall be designed and installed to accommodate the co-location of additional cellular communications equipment.

E. Co-location; Availability of Suitable Existing Structures:

No new tower, except amateur radio towers, shall be permitted unless the applicant demonstrates to the satisfaction of the Department that no existing tower or existing alternative tower structure can accommodate the applicant's proposed communications equipment/antenna(s). All evidence submitted shall be signed by appropriate licensed professionals or qualified industry experts. Evidence submitted to demonstrate that no existing tower or structure can accommodate the proposed equipment/antenna(s) shall consist of one or more of the following:

- (1) Existing towers or suitable alternative tower structures are not located within the area required to meet the applicant's technical requirements.
- (2) Existing towers or structures are not of sufficient height to meet the applicant's technical requirements.
- (3) Existing towers or structures do not have sufficient structural strength to support the applicant's antenna and related equipment.
- (4) The applicant's proposed equipment/antenna(s) would cause electromagnetic interference with equipment/antenna(s) on the existing towers or structures, or the equipment/antenna(s) on the existing towers or structures would cause interference with the applicant's proposed equipment/antenna(s).

- (5) The cost or contractual provisions that would be imposed on the applicant to share an existing tower or structure or to adapt an existing tower or structure exceed the costs of new tower development.
- (6) The applicant adequately demonstrates that there are other limiting factors that render existing towers and structures unsuitable.

F. Tower Height Restrictions:

- (1) Communications towers and related facilities are presumed to have a maximum height of **50 feet**.
- (2) Proposals for towers at a height of greater than 50 feet must include RF analysis or other technical data that supports the requirement for an extended tower height.
- (3) Applicants must also demonstrate that a multi-tower approach is not technically feasible; cost alone is not determinative of feasibility.
- (4) Applicants proposing towers at a height of greater than 50 feet may be required to reimburse the County for additional costs related to review by a qualified engineer.
- (5) No towers shall be allowed at a height greater than 180 feet.

G. Aesthetics:

The guidelines set forth in this Section shall govern the design and construction of all towers, and the installation of all antennas:

- (1) All new or total replacement tower/antenna structures shall be designed as alternative tower structures or stealth towers unless otherwise approved by the County. Proposed tower stealth or camouflage design and elements must be approved by the BOCC.
- (2) All towers or antennas other than those designed as stealth, or amateur radio towers, shall be a matte, dark, durable finish to reduce visual obtrusiveness.
- (3) For tower sites, the design of all buildings and related structures shall use materials, colors, textures, screening, and landscaping that will blend the tower facilities to the natural setting and building environment.
- (4) For antennas installed on a structure other than a tower, the antenna and supporting electrical and mechanical ground equipment shall be of a dark color so as to make the antenna and related equipment visually unobtrusive.
- (5) Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the governing authority shall review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.
- (6) No signage or other identifying markings of a commercial nature shall be permitted upon any tower or alternative tower structure within the County, unless otherwise required by a governmental authority.
- (7) For alternative tower structures, the co-location design requirement may be waived by Staff.

- (8) In addition to approval as set forth in this Section, all wireless concealment structures require issuance of a building permit.

H. Setbacks:

The following setbacks shall apply to all communication towers:

- (1) Tower setbacks from property lines shall be a distance equal to the height of the tower, or, must meet the minimum setback requirement for the zoning district, whichever is greater.
- (2) Guywires, accessory buildings and facilities shall meet the minimum building setback requirements as set forth in this Code.
- (3) All structures shall meet the setback, screening, and buffer requirements contained herein.
- (4) Structures and towers shall be located a minimum distance of two (2) times the height of the tower from any residential, or commercial structure, including homes, businesses, garages, and greenhouses.

I. Fencing:

Fencing proposed by Applicant and approved by the County shall be of materials that blend with the surroundings. Any installed fencing shall be properly maintained.

J. Landscaping:

- (1) The BOCC shall have the authority to impose landscaping requirements related to any proposed antenna/tower site, with the exception of amateur radio installations.
- (2) Required landscaping shall be consistent with surrounding vegetation and shall be properly maintained by the facility owner or leased tenant.
- (3) The BOCC may choose to not require landscaping for sites that are not visible from the public right-of-way or adjacent property or in instances where in the judgement of the BOCC landscaping is not appropriate or necessary.
- (4) The BOCC shall consider wildfire implications when imposing requirements for landscaping.

K. Additional Requirements:

- (1) Applicant must submit evidence that demonstrates the proposed facility or facility modification does not create undue impacts to surrounding areas. Potential impacts include, but are not limited to: water pollution, offensive noise, vibration, smoke, dust, odors, heat, glare, or other objectionable impacts beyond the boundaries of the property where the facility is located.
- (2) Applicant must submit evidence that demonstrates that legal access and all utilities required to serve the proposed use are available.
- (3) Applicant must submit evidence that demonstrates the proposed facility will not unreasonably impact wildlife or significant wildlife habitat.

- (4) Applicant must submit evidence that demonstrates the proposed facility will not alter, restrict, inhibit, or interfere with historic irrigation practices, headgates, ditches, and ditch rights-of-way.
- (5) Applicant must submit a geo-hazard mitigation report for any proposed facility located within any area subject to potential geo-hazards, including, but not limited to: rockfall areas, avalanches, landslide, potential unstable slopes, slopes greater than 30%, alluvial/colluvial fans, talus slopes, shale, faults, expansive soils, or ground subsidence. Such report must be prepared by a Colorado Licensed Geo-Technical Engineer and approved by the County.
- (6) Applicant must submit evidence that demonstrates the proposed facility has no chemical or other contamination. If the property is contaminated, a mitigation plan must be presented that would satisfactorily resolve the contamination.
- (7) Applicant must submit evidence that demonstrates the proposed facility would not have a material adverse effect on the surrounding area.
- (8) Applicant must submit evidence that demonstrates the proposed facility will not create impacts on existing infrastructure beyond what would be created by a use-by-right, or, evidence that such impacts will be sufficiently mitigated.
- (9) Applicant must submit a weed management/mitigation plan if required by the County Weed Manager.

Note: The County may require qualified professional geologic or engineering certification that the proposed tower facility and associated structures can be located and developed in a safe manner.

L. Pre-Existing Towers and Facilities:

- (1) Towers and facilities in existence prior to the adoption of this Section may be allowed to continue in their current state; provided, however, that any modification to a pre-existing communications tower and/or facility must be in substantial conformance with this Code.
- (2) Pre-existing towers and facilities are allowed to conduct typical maintenance and upkeep of such facilities.

M. Change of Ownership Notification:

Upon the transfer of ownership of any tower, alternative tower structure, or lot upon which such a structure has been erected, the tower permittee shall notify the Department of the transaction in writing within 30 days.

N. Written Notification of Denial:

- (1) Within thirty (30) days of the receipt of an application, the Department shall either:
 - (a) send written notice to the Applicant that the application is complete and shall be processed according to this Section; **or**

- (b) send written notice informing the Applicant that the application does not meet submittal requirements, stating the specific deficiencies.
- (2) If the Department informs an Applicant of an incomplete application within thirty (30) days of submittal, the overall timeframe for review is suspended until such time that the Applicant provides the requested information.

23.5 HEARINGS, NOTICE, AND SCHEDULING:

- A. If the request for a Communications Facility Permit is located within an Urban Growth Management Area or an Area of Influence, the request shall also be submitted to the adjacent municipality for review and comment. Any such comments shall be provided to the Department within thirty (30) days of transmittal of the application to the municipality.
- B. After the receipt of a complete application for a Communications Facility Permit by the Land Use Department, the permit application shall be considered at the next available Planning Commission agenda or, if the request is located within an Urban Growth Management Area or Area of Influence the appropriate Joint Planning Board shall review the request.
 - (1) The Planning Commission or Joint Planning Board shall review the application and shall recommend approval, recommend approval with conditions, or recommend denial of the application if it does not meet the requirements of this Code and the action shall be in the form of a motion as noted in the minutes.
 - (2) Staff shall forward such recommendation to the BOCC.
 - (3) If the Planning Commission or the Joint Planning Board is unable to make a recommendation on the Permit application within 14 days of the scheduled public hearing, the application shall be forwarded to the BOCC for a public hearing.
- C. Before granting a Communications Facility Permit, the BOCC shall hold a public hearing on the matter.
 - (1) Notice of such hearing shall be published at the expense of the Applicant, in a newspaper of general circulation within the County at least fourteen (14) days prior to the hearing date.
 - (2) Written notice of the hearing shall be provided by the Applicant at least fourteen (14) days prior to the hearing date to all properties within 1-mile of the subject lot or parcel.
 - (3) On-site notice of any pending Communications Facility Permit application, in a form approved by the Department, shall be posted on the property where the use is proposed at least thirty (30) days prior to the BOCC hearing date.

Note: Such notice shall be maintained on the property by the Applicant until final action on the application has been made and the notice shall be visible from each road frontage of the property. Proof of proper posting of the notice shall be verified as determined by Staff.
 - (4) At the public hearing, the BOCC shall review the Communications Facility Permit application and any supporting materials or referrals from the Planning Commission or the Joint Planning Board, in accordance with this Section. The BOCC shall, by resolution, approve, approve with conditions or modifications, or deny the application.

23.6 EXCEPTIONS / VARIANCE / APPEALS:

- A. For applications proposing a new tower/facility, rather than co-location on an existing tower, see Section 12 for additional information regarding a variance or exception.
- B. An Applicant has the right to appeal a denial by Staff per Section 12 of this Code.

23.7 FEES FOR COMMUNICATION FACILITY APPLICATIONS:

Application fees for Communications Facility Permits, or renewal fees of Communications Facility Permits, will be in accordance with the County's current fee schedule.

Note: If it is determined by the County that it is necessary to consult with a third-party in considering the factors listed in this Section, all reasonable costs and expenses associated with such consultation shall be borne by the Applicant.

23.8 PERMIT TERMS AND RENEWAL:

- A. After a Communications Facility Permit has been issued, it shall be effective for a term of up to twenty (20) years, as determined by the BOCC. The Applicant shall be responsible for contacting the Department regarding the renewal of the Communications Facility Permit.
- B. In the event that the Applicant shall fail to contact the Department for renewal of a Special Use Permit within one-hundred eighty (180) days of the expiration of the permit, such permit may be revoked or suspended. If the permit is revoked, the Applicant shall be allowed to re-apply for a new permit according to the then existing requirements of this Code.

23.9 EVALUATION – SUBSTANTIAL VS. NON-SUBSTANTIAL MODIFICATIONS:

Staff may administratively approve tower modifications that are deemed to be non-substantial under Federal guidelines (Federal Statutes, Regulations, and FCC Interpretation). Modifications deemed substantial shall require approval of a Communications Facility Permit.

23.10 BUILDING PERMIT REQUIRED:

All new towers, new structures, new support facilities, and new equipment shelters require issuance of a building permit prior to commencing construction. Refer to application form for specific submittal requirements.

23.11 MAINTENANCE AND TEMPORARY EQUIPMENT:

- A. Owners, manager, and lessee of communications facilities may conduct maintenance of such facility with notification to Staff.

- B. Typical maintenance may include the repair of a tower, antenna, communications equipment, or other repair of any existing facility component(s).
- C. Maintenance may also include the replacement of tower or facility equipment or components, providing the replacement is the same number of components and of equal or smaller dimensions of the item being replaced.
- D. Maintenance of communications facilities may also include the temporary use of COWs or other temporary equipment for a period not to exceed 90 days.

Notes: The use of temporary equipment for a period exceeding 90-days requires prior approval by Staff. The use of equipment for emergency repairs requires notification to Staff within 72 hours of implementation.

23.12 AMATEUR RADIO (HAM) TOWERS AND FACILITIES:

- A. Amateur radio towers and antennas are limited to a maximum height of 35 feet except as otherwise provided by Federal law or regulation, and do not require prior approval from the County.
- B. All amateur radio towers must be set back from any property line, at a minimum, a distance equal to the height of the tower, or a minimum of 25 feet, whichever is greater.
- C. Amateur radio operators wishing to erect a tower at a height greater than 35 feet may apply to the Department for approval prior to erecting such tower. Applications for variance in amateur radio tower height restrictions must include sufficient justification. Variance applications must show proof of notification to any applicable home owners association(s).
- D. Modifications to existing amateur radio towers require prior approval by Staff.

Notes: Staff may at their discretion forward any such requests to the BOCC for final approval. Also, amateur radio operators are strongly encouraged to research possible homeowners association covenants and regulations that may affect the installation of radio equipment and towers in their area.

23.13 REMOVAL OF ABANDONED ANTENNAS OR TOWERS:

- A. Any tower or antenna that is not operated for twelve (12) consecutive months shall be considered abandoned, and the owner of such antenna or tower shall remove the structure within ninety (90) days of receipt of notice from the Department notifying the owner of such abandonment.
- B. If said tower or antenna is not removed within ninety (90) days, it may be subject to enforcement action.

23.14 CONFLICT WITH OTHER LAWS:

If the Ouray County codes or regulations are in conflict with Federal law or regulations, Federal law or regulations shall control.

Note: Where HOA covenants/CCRs are more restrictive, they may control to the extent they are not inconsistent with State law or Federal laws or regulations, but such covenants may be enforced by an HOA. The County does not enforce HOA covenants.

23.15 SEVERABILITY:

- A.** In the event any article, section, sentence, clause or phrase of this Section shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other articles, sections, sentences, clauses or phrases of this Section, which shall remain in full force and effect, as if the article, section, sentence, clause, or phrase so declared or adjudged invalid or unconstitutional were not originally a part thereof.
- B.** The BOCC hereby declares that it would have adopted the remaining parts of this Section if it had known that such part or parts thereof would be declared or adjudged invalid or unconstitutional.

COMMUNICATIONS FACILITIES

SECTION

2

DRAFT

Section 2 - DRAFT

DEFINITIONS

Words and terms used in this Code shall be interpreted in accordance with the following definitions:

COMMUNICATIONS FACILITY. A fixed structure, including **a)** all installed electrical and electronic wiring, cabling, and equipment and **b)** all supporting structures, such as towers, utilities, ground network, electrical supporting structures, and equipment shelters.

PUBLIC UTILITY. Transmission, generation and storage and treatment facilities of providers of electrical, water, gas, and other like services.

COMMUNICATIONS FACILITIES

SECTION

3

DRAFT

SECTION 3 ZONING

3.1 PURPOSE AND INTENT:

- A. The zoning provisions that follow have been adopted to achieve the purposes set forth in Section 1.
- B. To allow gradual, long-term population and economic growth in Ouray County in a manner that does not harm the County's irreplaceable scenic beauty, wildlife, air and water resources, and other environmental qualities and that does not unduly burden the County's residents or its governments.
- C. The intent of the County zones is to achieve across the zones, the overall goal of the Master Plan. This goal includes, in alphabetical order, specific goals for agricultural lands, county/municipal relationships, economic development, housing, natural resources, rural character, tourism, transportation, utilities, visually significant areas, and wildlife and plant habitats.
- D. The specific intent of each of the zones that follow shall be read in conjunction with the combination of the Master Plan's overall and specific goals, and provide general guidance with regard to specific uses within each zone.

3.2 ZONING DISTRICTS, MAPS AND BOUNDARIES:

- A. The zones established by the Code are identified on the basis of the physical character of the County combined with the pertinent information about existing land use and ownership patterns and the needs of a stable and growing economy.
- B. All Zones shall be designated on the "Official Zoning Map of Ouray County" which is on file in the records of the County Clerk and Recorder. A copy of the map is attached to this Code and, in the event of any conflict between the copy and the map on file in the County records, the latter shall be conclusively deemed to prevail.

3.3 USES BY RIGHT AND SPECIAL USES:

- A. In each zone there are uses permitted by right and special uses which may be allowed on a site specific basis through a permitting process. These uses have been determined in each zone according to the unique characteristics of the zone.
- B. Uses allowed by right are allowed automatically, although construction of new structures may require a Site Development Permit and a building permit pursuant to Section 19 of this Code.
- C. Permits for special uses may be requested according to the procedures in Section 5. The criteria for approval of a special use are more specifically explained in Section 5.2.

3.4 USES NOT LISTED:

- A. Upon application, or by its own initiative, the BOCC may, in accordance with Section 14.5, by resolution add to either the uses by right or by special permit listed for a zoning district based on these criteria:
- (1) Such use is appropriate to the physiographic and general environmental character of the zone to which the use is added.
 - (2) Such use is compatible with other permitted uses in the zone and does not create any more offensive noise, vibration, dust, heat, smoke, odor, glare, or other objectionable influences, or more traffic, hazards, or alterations to the zone than the minimum amount normally resulting from the other uses permitted in the zone.

3.5 ESTABLISHMENT OF ZONES:

- A. The County is hereby divided into eight (8) zones, as follows:
- (1) Alpine
 - (2) Colona
 - (3) High Mesa
 - (4) North Mesa
 - (5) Public Lands
 - (6) South Mesa
 - (7) South Slope
 - (8) Valley

3.6 RESIDENTIAL DENSITY:

- A. Maximum residential densities for each Zone shall be as follows:
- | | |
|----------------------|------------------------------|
| (1) Alpine Zone | 1 Dwelling Unit per 35 Acres |
| (2) Colona Zone | 7 Dwelling Units per Acre |
| (3) High Mesa Zone | 1 Dwelling Unit per 35 Acres |
| (4) North Mesa Zone | 1 Dwelling Unit per 6 Acres |
| (5) South Mesa Zone | 1 Dwelling Unit per 6 Acres |
| (6) South Slope Zone | 1 Dwelling Unit per 6 Acres |
| (7) Valley Zone | 1 Dwelling Unit per 35 Acres |

3.7 CONSTRUCTION, MAXIMUM BUILDING AND STRUCTURE HEIGHT:

- A. In all zones, the maximum height of a building or other structure shall not exceed thirty-five (35) feet, unless a height of less than thirty-five (35) feet is required within an approved PUD, or as otherwise provided in a Special Use Permit **or Communications Facility Permit**. (See Definitions – Section 2 **and Communications Facilities – Section 23** for more information)
- B. Construction of structures in all zones may have additional requirements, including setbacks, as provided elsewhere in this Code. Property owners should consult with Land Use staff concerning applicability of other requirements before commencing design or construction.

3.8 ZONES:

A. Alpine Zone:

The intent of the Alpine Zone is to preserve the natural beauty, wildlife habitat, and recreational, historic and archeological values of high altitude areas and manage the County's natural resources in a manner that is both environmentally sound and protects private property rights, while allowing mining, agriculture, forestry, recreation, and limited low density residential and resort/conference center development.

(1) Uses Allowed by Right:

- (a) Underground mining subject to state and federal permitting
- (b) Accessory uses and structures to any other use by right and any permitted use
- (c) Farming/Ranching
- (d) Home occupation
- (e) Non-commercial camping
- (f) Non-commercial logging
- (g) Single-family dwelling unit (maximum density of one unit per 35 acres) on parcels not previously approved by the County as part of a Planned Unit Development (PUD).

(2) Uses Allowed by Special Use Permit or other County-Issued Permit:

- (a) Bed and breakfast
- (b) Cemetery
- (c) Church
- (d) Commercial camping

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- (e) Commercial equestrian activity
 - (f) Commercial logging
 - (g) Commercial outdoor recreation use – day use
 - (h) Governmental facility
 - (i) Guest ranch
 - (j) Home business
 - (k) Livery or horse rental operation
 - (l) All mineral extraction and processing operations except those allowed by right
 - (m) Oil and gas exploration and facilities pursuant to Section 21 of this Code
 - (n) Public park or wildlife preserve
 - (o) Public utility
 - (p) Public service facility
 - (q) Sand and gravel operation
 - (r) School
 - (s) Temporary use
 - (t) Wildlife Rehabilitation Facility
 - (u) Communications facilities**
- (3) Planned Unit Development:**
- (a) Resort/Conference Center PUD
 - (b) Regular PUD – as established by Section 6 of this Code
- (4) Minimum Lot Size:**
- (a) All uses, except as otherwise provided for in this Code - thirty-five (35) acres
 - (b) Special uses – as established by Section 5 of this Code
- (5) Required Setbacks:**
- (a) All structures shall be located at least twenty-five (25) feet from any property lines unless approved otherwise in a PUD
 - (b) For lots and parcels that have an area of two (2) acres or less, the minimum setback for structures shall be ten (10) feet from the side and back property lines and twenty-five (25) feet from the front property line

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- (c) No structure may be closer than one hundred (100) feet from the centerline of U.S. Highway 550 or Colorado Highway 62, if visible from such highways

B. Colona Zone:

The intent of the Colona Zone is to maintain an area of high-density residential development (one unit per 6,000 square feet) and commercial activity.

(1) Uses Allowed by Right:

- (a) Single-family dwelling units
- (b) Accessory uses and structures to any other use by right and any permitted use
- (c) Home Occupation

(2) Uses Allowed by Special Use Permit or other County-Issued Permit:

- (a) Church
- (b) Commercial use
- (c) Government facility
- (d) Home Business
- (e) Multi-family dwelling
- (f) Oil and gas exploration and facilities pursuant to Section 21 of this Code
- (g) Public service facility
- (h) Public utility
- (i) School
- (j) Communications facilities**

(3) Planned Unit Development: Regular PUD (maximum density of 7 units per acre).

(4) Minimum Lot Size: Lot size shall not be less than fifty (50) feet by one hundred twenty (120) feet. Larger lot sizes may be required to meet requirements for adequate sewage disposal.

(5) Floor-to-Lot Ratio: For all uses, maximum floor-to-lot ratio shall not exceed 1:1.

- (6) **Required Setbacks:** All structures shall be at least twenty (20) feet from any street or highway right-of-way (except alleys) and at least ten (10) feet from all other property lines.

C. High Mesa Zone:

The intent of the High Mesa Zone is to encourage agricultural production, preserve areas for wildlife migration and habitat, and scenic, historical and archeological values, and to allow low density residential development that does not adversely impact the significant vegetative, wildlife, historic, archeological and scenic values of the Zone.

(1) Uses Allowed By Right:

- (a) Farming/ranching
- (b) Single family dwelling unit (maximum density of one unit per 35 acres) on parcels not previously approved by the County as part of a PUD
- (c) Non-commercial logging
- (d) Accessory uses and structures that are accessory to any other use by right and any permitted use
- (e) Home occupation
- (f) Non-commercial camping

(2) Uses Allowed by Special Use Permit or other County-Issued Permit:

- (a) Bed and breakfast
- (b) Cemetery
- (c) Church
- (d) Commercial camping
- (e) Governmental facility
- (f) Guest ranch
- (g) Home Business
- (h) Mineral Operation
- (i) Oil and gas exploration and facilities pursuant to Section 21 of this Code
- (j) Public park or wildlife preserve
- (k) Public service facility
- (l) Public utility

- (m) Sand and gravel operation
- (n) School
- (o) Temporary use
- (p) Wildlife rehabilitation facility
- (q) **Communications facilities**

(3) Minimum Lot Size:

- (a) Single family dwellings – thirty-five (35) acres
- (b) Special uses – as established by Section 5 of this Code
- (c) Regular PUD – as established by Section 6 of this Code

(4) Required Setbacks: All structures shall be located at least twenty-five (25) feet from any property lines, unless a greater setback is required within an approved PUD.

D. North Mesa Zone:

The intent of the North Mesa Zone is to preserve areas for wildlife mitigation and habitat and allow up to six acre residential density (medium density) that is not impacted by geological hazards.

(1) Uses Allowed by Right:

- (a) Single family dwelling units (maximum density of 1 unit per 35 acres)
- (b) Accessory uses and structures that are accessory to any other use by right and any permitted use
- (c) Home occupations
- (d) Farming/ranching
- (e) Non-commercial camping

(2) Uses Allowed by Special Use Permit or other County-Issued Permit:

- (a) Bed and breakfast
- (b) Cemetery
- (c) Church
- (d) Governmental facility
- (e) Guest ranch

- (f) Home business
- (g) Oil and gas exploration and facilities pursuant to Section 21 of this Code
- (h) Public park or wildlife preserve
- (i) Public service facility
- (j) Public utility
- (k) Sand and gravel operation
- (l) School
- (m) Temporary use
- (n) Wildlife rehabilitation facility
- (o) **Communications facilities**

(3) Planned Unit Development:

- (a) Limited PUD (maximum - one unit per 13 acres)
- (b) Regular PUD (maximum - one unit per 6 acres)

(4) Minimum Lot Size:

- (a) Single family dwelling (outside of a PUD) thirty-five (35) acres
- (b) Planned unit developments – as established by Section 6 of this Code
- (c) Special uses – as established by Section 5 of this Code

(5) Required Setbacks: All structures shall be located at least twenty-five (25) feet from any property lines unless a greater setback is required within an approved PUD.

E. Public Lands Zone:

Only lands that are NOT owned by Federal or State entities are subject to this Zone and regulations. The intent of the Public Lands Zone is to preserve and protect private lands that are not publicly owned and managed by Federal or State entities in the Zone from future development, thereby providing visual and recreational enjoyment for the County's present and future residents as well as for visitors.

(1) Uses Allowed by Right:

- (a) Farming/ranching
- (b) Non-commercial camping

(c) Underground mining

(2) Uses Allowed by Special Use Permit or other County-Issued Permit:

(a) Commercial camping

(b) Commercial logging

(c) Governmental facility.

(d) Oil and gas exploration and facilities pursuant to Section 21 of this Code

(e) Public park and wildlife preserve

(f) Public service facility

(g) Public utility

(h) Wildlife rehabilitation facility

(i) Communications facilities

(3) Minimum Lot Size: Thirty-five (35) acres

(4) Required Setbacks: All structures shall be located at least twenty-five (25) feet from any property lines

F. South Mesa Zone:

The intent of the South Mesa Zone is to allow medium density and, where appropriate, high density (including commercial) development if all appropriate infrastructure is available. The purpose is to meet the overall Master Plan goal of allowing gradual, long-term population and economic growth without harming the County's irreplaceable environmental qualities and unduly burdening the County residents or governments.

(1) Uses Allowed by Right:

(a) Single-family dwelling units (maximum density of one unit per thirty-five (35) acres)

(b) Accessory uses and structures that are accessory to any other use by right and any permitted use

(c) Home occupations

(d) Non-commercial camping

(2) Uses Allowed by Special Use Permit or other County-Issued Permit:

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- (a) Bed and breakfast
- (b) Church
- (c) Commercial uses (as allowed in approved planned unit developments)
- (d) Governmental facility
- (e) Home business
- (f) Oil and gas exploration and facilities pursuant to Section 21 of this Code
- (g) Public park
- (h) Public service facility
- (i) Public utility
- (j) Sand and gravel operation
- (k) School
- (l) Temporary use
- (m) Communications facilities**

(3) Planned Unit Development:

- (a) Limited PUD (maximum - one unit per 13 acres)
- (b) Regular PUD (maximum - one unit per six acres)

(4) Minimum Lot Size:

- (a) Single-family Dwellings (outside a PUD) – thirty-five (35) acres
- (b) Planned unit developments – as established by Section 6 of this Code
- (c) Special uses – as established by Section 5 of this Code

(5) Required Setbacks: All structures shall be located at least twenty-five (25) feet from any property line unless otherwise approved in a PUD or subdivision. For lots and parcels that have an area of two (2) acres or less, the minimum setback for structures shall be ten (10) feet from the side and back property lines and twenty-five (25) feet from the front property line.

G. South Slope Zone:

The intent of the South Slope Zone is to preserve areas for wildlife migration and allow up to six acre residential development (medium density) that is not impacted by geologic hazards.

(1) Uses Allowed by Right:

- (a) Single-family dwelling units (maximum density one unit per thirty-five (35) acres (Unless otherwise approved in a County PUD process)
- (b) Accessory uses and structures that are accessory to any other use by right and any permitted use
- (c) Farming/ranching
- (d) Home occupation
- (e) Non-commercial camping

(2) Uses Allowed by Special Use Permit or other County-Issued Permit:

- (a) Bed and breakfast
- (b) Governmental facility
- (c) Home business
- (d) Oil and gas exploration and facilities pursuant to Section 21 of this Code
- (e) Public park and wildlife preserve
- (f) Public service facility
- (g) Public utility
- (h) Temporary use
- (i) Communications facilities**

(3) Planned Unit Development:

- (a) Limited PUD (maximum - one unit per 13 acres)
- (b) Regular PUD (maximum - one unit per 6 acres)

(4) Minimum Lot Size:

- (a) Single-family dwellings (outside a PUD) thirty-five (35) acres
- (b) Planned unit developments – as established by Section 6 of this Code
- (c) Special uses – as established by Section 5 of this Code

(5) Required Setbacks:

All structures shall be located at least twenty-five (25) feet from any property lines unless a greater setback is required within an approved PUD.

H. Valley Zone:

The intent of the Valley Zone is to protect and preserve visually significant and sensitive areas of the County, maintain its overall rural character, and/or encourage the continued use of the lands for agricultural productivity.

(1) Uses Allowed by Right:

- (a) Farming/ranching
- (b) Single-family dwelling units (maximum density of one unit per 35 acres)
- (c) Accessory uses and structures that are accessory to any other use by right and permitted use
- (d) Home Occupation
- (e) Non-commercial camping

(2) Uses Allowed by Special Use Permit or other County-Issued Permit:

- (a) Bed and breakfast
- (b) Cemetery
- (c) Church
- (d) Commercial equestrian activity
- (e) Commercial outdoor recreation – day use
- (f) Governmental facility
- (g) Guest ranch
- (h) Home business
- (i) Livery or horse rental operation
- (j) Oil and gas exploration and facilities pursuant to Section 21 of this Code
- (k) Public service facility
- (l) Public utility
- (m) Sand and gravel operation
- (n) School
- (o) Temporary use
- (p) Wildlife rehabilitation facility
- (q) Historical museum
- (r) Communications facilities**

(3) Minimum Lot Size:

- (a) Regular PUD – as established by Section 6 of this Code
- (b) All uses except as otherwise provided for in this Code – thirty-five (35 acres)
- (c) Special uses – as established by Section 5 of this Code

(4) Required Setbacks: All structures shall be located at least fifty (50) feet from any property lines unless otherwise approved in a PUD. For lots and parcels that have an area of two (2) acres or less, the minimum setbacks for structures shall be ten (10) feet from the side and back property lines and twenty-five (25) feet from the front property line. No structure may be closer than one hundred (100) feet from the centerline of U.S. Highway 550 or Colorado Highway 62.

3.9 OVERLAY DISTRICTS:

A. Intent and purpose: Due to continued growth pressures, there is an increased desire for coordination between the Municipalities and the County to promote the efficient use of services and protection of open lands, agricultural lands, alpine lands and community identities. It is therefore the intent and purpose of the Overlay Districts to establish districts and create a process to jointly review development on unincorporated property surrounding the Town of Ridgway and the City of Ouray.

B. Definitions:

- (1) Area of Influence (“AOI”).** An area of unincorporated land wherein development or use of land has an impact upon the adjoining municipality.
- (2) Urban Development.** Development that conforms to the standards of moderate and high density residential, commercial/industrial or tourist land use categories, which is typical to urbanized areas. Urban development also includes the types of services that are generally required to support that development such as central potable water, storm water systems, central sanitary sewer systems, quick-response fire and police protection, urban level street design and maintenance, parks and recreation programs, open space and undeveloped parks, urban level retail and commercial development and other similar services that are typically provided by cities and towns.
- (3) Urban Growth Management Area (“UGMA”).** An area of unincorporated land adjacent to a municipality in which urban development may be allowed when annexed by the municipality. The Urban Growth Management Area includes an area sufficient to provide for ten to twenty-five years of anticipated and desirable urban growth and development for the adjacent municipality.

C. Establishment of Overlay Districts: The following Overlay Districts are hereby established:

- (1) The Ridgway UGMA
- (2) The Ridgway AOI
- (3) The Ouray UGMA
- (4) The Ouray AOI

D. Overlay Districts: All Overlay Districts shall be designated on the “Official Zoning Map of Ouray County” which is on file in the records of the County Clerk and Recorder. A copy of the map is attached to this Code and in the event of any conflict between the copy and the map on file in the County records, the latter shall be conclusively deemed to prevail.

E. District Uses and Requirements:

- (1) Within the Ridgway AOI and the Ouray AOI, the following uses are allowed:
 - (a) All uses allowed by right shall be permitted within the underlying Zone(s), as stated under Section 3 of this Code.
 - (b) Uses allowed by special use permit and PUD’s within the underlying Zone, as stated under Section 3 of this Code, may be permitted, upon review and approval of the BOCC. Said uses shall follow the process as contained herein.
- (2) Within the Ridgway UGMA and the Ouray UGMA, the following uses are allowed:
 - (a) All uses allowed by right shall be permitted within the underlying Zone(s), as stated under Section 3 of this Code.
 - (b) Uses allowed by special use permit within the underlying Zone, as stated under Section 3 of this Code, except Home Businesses, may be permitted, upon review and approval of the BOCC. Said uses shall follow the process as contained herein.

F. Development Review – Urban Growth Management Area:

Applications for planned unit developments, special use permits, exemptions from the definition of subdivision, variances and rezoning shall first be considered for annexation by the adjoining municipality prior to submittal of an application to the County Land Use Office.

- (1) The municipalities will consider all petitions for annexation of lands within the adjoining UGMA and will not decline to annex such property except for good cause. For the purposes of this Section, good cause includes, without limitation, the following:

- (a) Extension of one or more municipal services to the area would place an unreasonable economic burden on the existing users of such service or upon the future residents or owners of property in the area itself.
 - (b) The area is not contiguous to the municipality's existing boundaries.
 - (c) The development proposal fails to meet the criteria for inclusion and annexation in the initial growth boundary outlined within the municipality's master or comprehensive plan.
- (2) If the municipality declines an annexation proposal within the UGMA, the Applicant/Developer may then submit a completed application to the County Land Use Office. Depending upon the request, the application shall include all information and documentation as set forth and outlined under the various sections of this Code. In addition, the application shall also include a written denial of annexation from the respective municipality.

G. Development Review – Area of Influence:

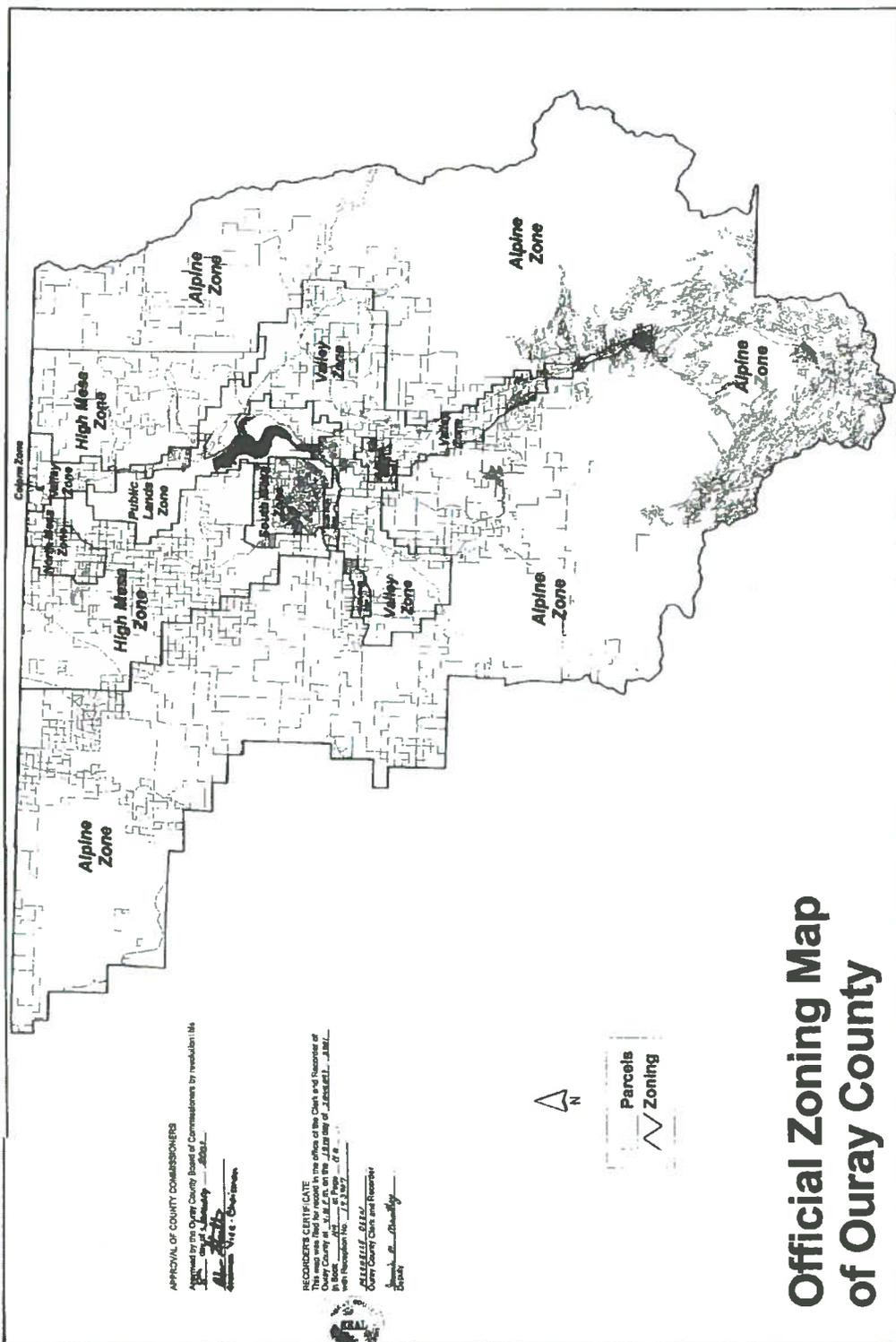
Applications for planned unit developments, special use permits, exemptions from the definition of subdivision, variances and rezoning shall be submitted to the County Land Use Office and shall follow the requirements, standards and processes as set forth and outlined under the various sections of this Code.

H. Joint Planning Boards:

Applications for planned unit developments, special use permits, exemptions from the definition of subdivision, variances and rezoning located within an UGMA or an AOI shall be reviewed by a Joint Planning Board, rather than the Ouray County Planning Commission, and the Joint Planning Board shall make a recommendation to the BOCC.

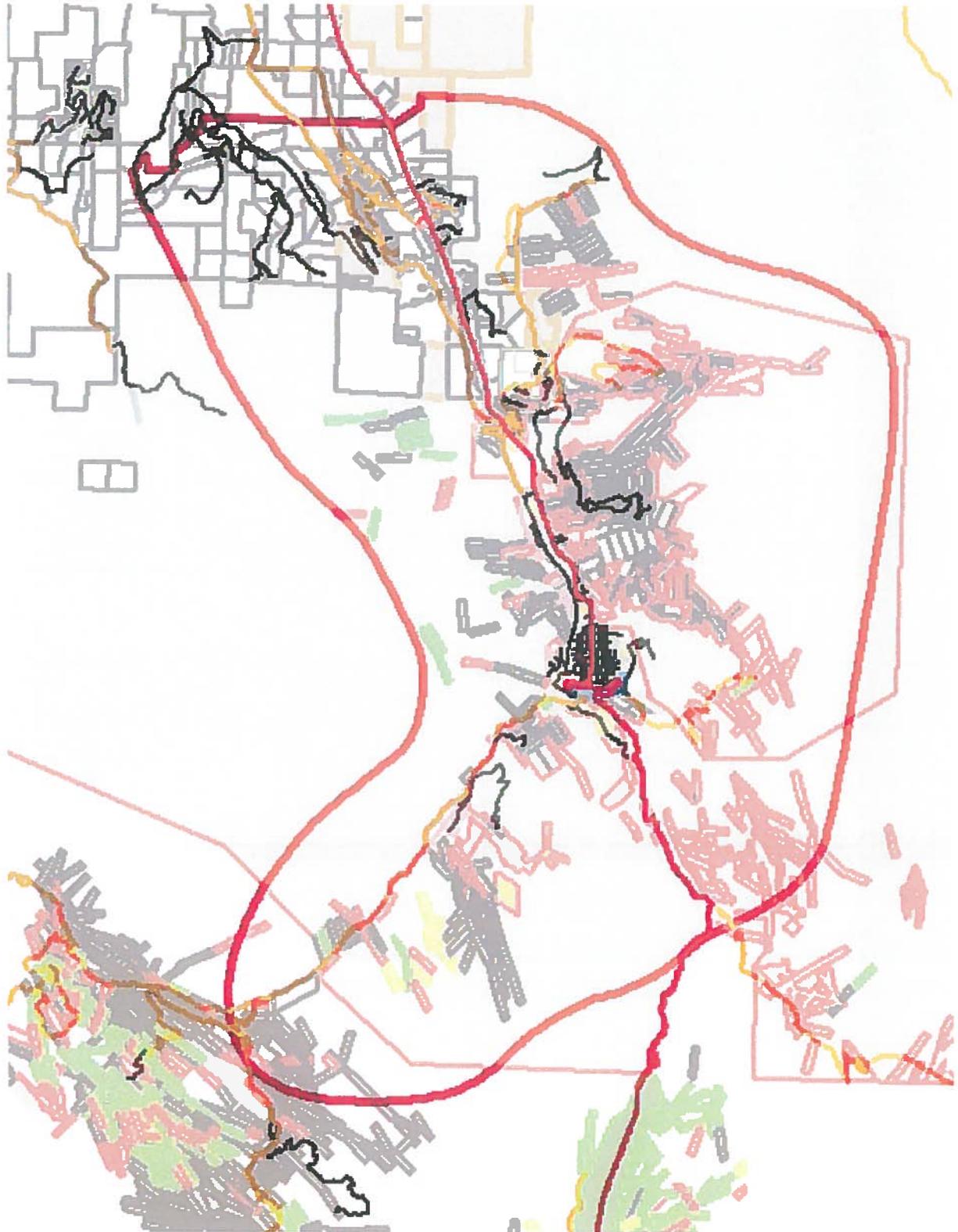
- (1) When a request is located within the Ridgway UGMA or the Ridgway AOI, the Ridgway Area Joint Planning Board shall review the application.
- (2) When a request is located within the Ouray UGMA or the Ouray AOI, the Ouray Area Joint Planning Board shall review the application.

Official Zoning Map – Filed under reception #173907



1-8-2007
OURAY COUNTY
173907

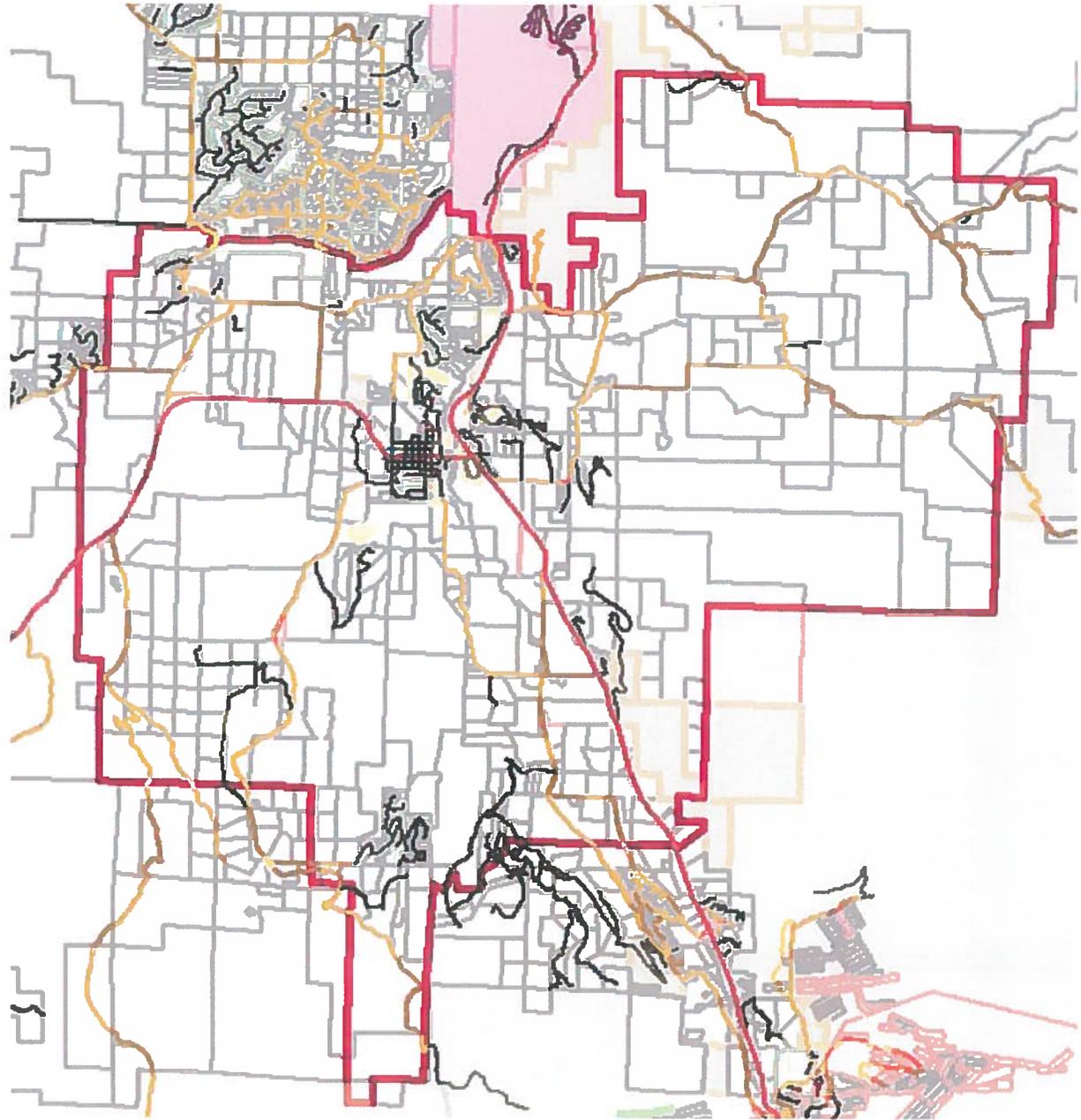
Ouray Area of Influence:



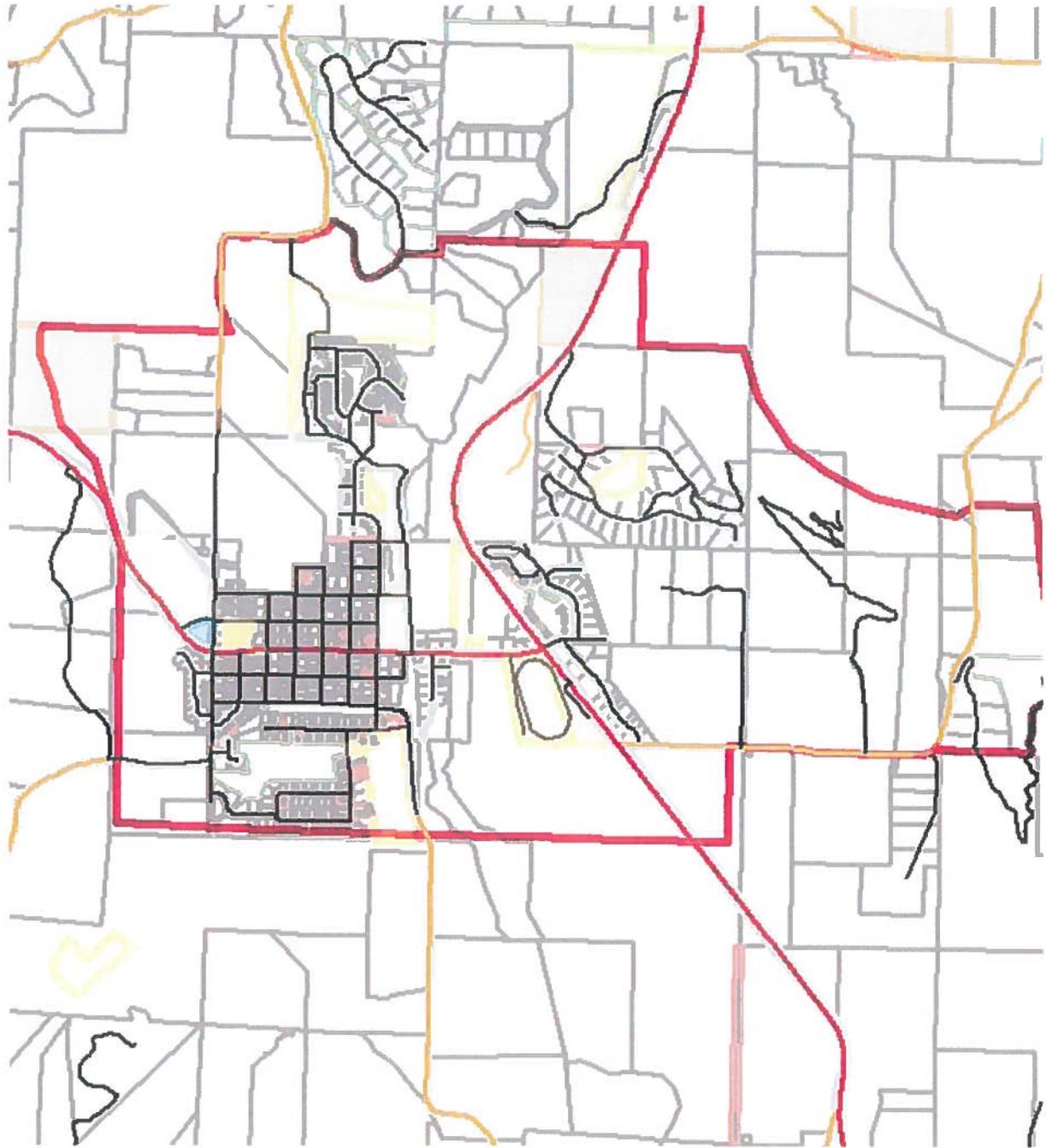
Ouray Urban Growth Management Area:



Ridgway Area of Influence:



Ridgway Urban Growth Management Area:



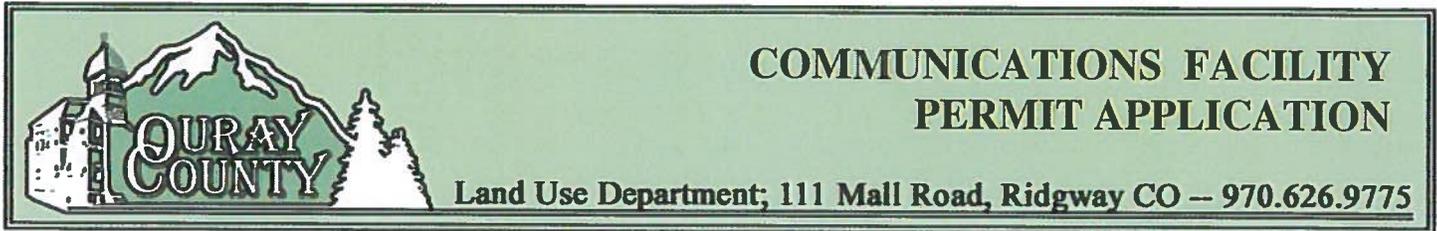
COMMUNICATIONS FACILITIES

COMMUNICATIONS

FACILITIES

PERMIT

APPLICATION



In order to submit a Communications Facility Permit (CFP) application in Ouray County for a new communications tower/facility, seven items are required. These items satisfy the *basic* application requirements, i.e. those required of all CFP applications. Additional submittal requirements may be required as identified by Land Use Staff during the processing of the application. The required items are:

- A. Completed CFP permit application;
- B. Legal description;
- C. Account or Parcel number(s);
- D. Written statement;
- E. Site Plan, Design Elevations, Site Photos, Photo Simulations;
- F. CFP application filing fee;
- G. Technical Review and/or Radiofrequency Engineering Analysis

County Pre-Application Meeting. In addition to the seven items listed above, an informal meeting prior to making application is recommended to allow Staff to explain the County's CFP approval process. As with all Land Use applications, County Staff is available to assist applicants through the entire process.

The following sections outline the details of each of the required application items listed above.

A. COMPLETED CFP PERMIT APPLICATION

Submittal of the attached application form, complete with all information and signatures as required. Signature of the property owner or a signed Agent Authorization Form, is required. **Form is available at the Land Use Department or online at: <http://ouraycountyco.gov/DocumentCenter/Index/40>**

B. LEGAL DESCRIPTION

A legal description of the land for which the permit is requested. This may be a lot or lots identified in a survey map or plat map, recorded with the Ouray County Clerk and Recorder's Office, showing the exact metes and bounds description of the property.

C. ACCOUNT OR PARCEL NUMBER(S)

Account and parcel number available from the Ouray County Assessor's Office, 421 6th Avenue, Ouray. Or online at: <http://ouraycountyco.gov/139/Assessor>

D. WRITTEN STATEMENT

1. Project Description. Thoroughly articulate the proposed project, clearly describing such things as the existing uses of the property, proposed use(s), time and schedule for development, and detailed reasons why the property and subject location was chosen. Two RF propagation plots must accompany the project description; one that shows the carrier's current service (highlighting the existing area void), and one that shows the service to be gained by the proposed facility. Plots shall be prepared in accordance with industry accepted standards and shall be accompanied by a clear and simply written description by an RF engineer explaining the plots and how to read them.

Both plots should also include and identify the location of any existing communications towers as well as any other possible structures that could be used to support the requester's antenna equipment within a 1.5 mile radius.

2. Co-Location. Section X.X of the Ouray County Land Use Code requires that no new telecommunications tower/facility shall be permitted unless the Applicant demonstrates to the satisfaction of the Land Use Department, that no existing alternative tower structure can accommodate the Applicant's proposed antenna(s). Evidence establishing a reasonable degree of certainty that no alternative tower structure is available shall include at least one or more of the following factors:

- (a) Existing towers or suitable alternative tower structures are not located within the area required to meet the applicant's technical requirements.
- (b) That existing towers or structures are not of sufficient height to meet the applicant's technical requirements.
- (c) That existing towers or structures do not have sufficient structural strength to support the applicant's antenna and related equipment.
- (d) That the applicant's proposed antenna(s) would cause electromagnetic interference with the antenna(s) on the existing towers or structures, or the antenna(s) on the existing towers or structures would cause interference with the applicant's proposed antenna(s).
- (e) That the cost or contractual provisions that would be imposed on the applicant to share an existing tower or structure, or, to adapt an existing tower or structure, exceed the costs of new tower development.
- (f) That the applicant adequately demonstrates that there are other limiting factors that render existing towers and structures unsuitable.

E. SITE PLAN, DESIGN ELEVATIONS, SITE PHOTOS, AND PHOTO SIMULATIONS

Site Plan. A complete site plan, including design elevations is required for every CFP permit application. The site plan should be drawn to a scale large enough to show sufficient detail on 11 x 17 sheets and shall include the following:

- 1. Small vicinity map, clearly identifying the sites location in relation to adjacent properties and roads.
- 2. Location of the subject property and parcel number or account number.
- 3. Scale and north arrow.
- 4. Date of the last revision of the plan.
- 5. Existing property lines and dimensions.
- 6. Proposed or existing lease area.
- 7. Proposed CFP area.
- 8. All current and proposed improvements including structures with and utilities.
- 9. Setbacks for current and proposed structures.
- 10. Location and width of interior roads or driveways.
- 11. Known easements.
- 12. Existing natural features, including two-foot contours, lakes, ponds, streams, significant drainage, general area of slopes in excess of 20 percent, flood zones, and wetlands.
- 13. Other significant features.
- 14. Possible future expansion areas. (if anticipated)

Design Elevations. The design elevation drawings should be stamped by a registered professional engineer (P.E.), and show, at a minimum:

- 1. A scaled elevation drawing of the proposed tower and the location and elevation (ft., AGL) of each proposed antenna array, any future anticipated arrays, and any anticipated lighting.
- 2. The location and height of all ancillary ground equipment and structures and any anticipated landscaping or berming.
- 3. A schematic showing the primary antenna orientation/downtilts.

Site Photos and Photo Simulation. The application should include two sets of 4 x 6 inch photographs and one set of photosimulations. The first set should be comprised of four photographs from the proposed base of the tower looking out toward the horizon into four cardinal directions – north, south, east, and west. Each photograph should be clearly identified in terms of what direction is being viewed.

The second set of photographs should be comprised of four photographs of the subject site from adjacent properties, taken from each of the four cardinal directions – north, south, east, and west. Again, each photograph should be clearly identified in terms of what perspective is being provided. Applicants may either indicate on the site plan or attach a separate map to show where each of the photos was taken.

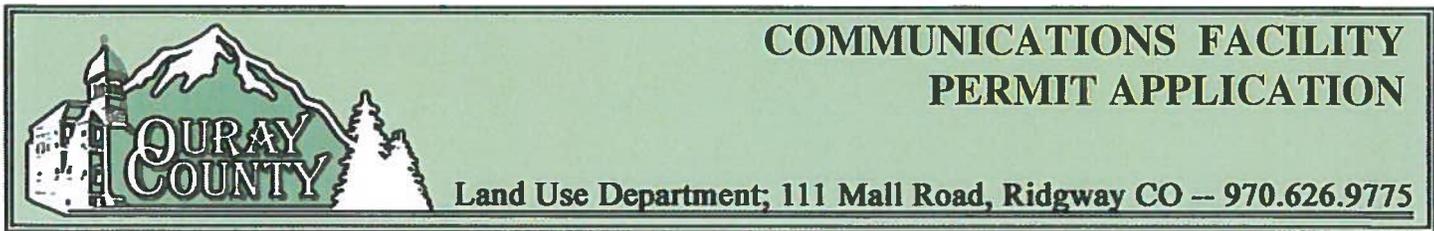
Lastly, one set of photo simulations providing a depiction of how the proposed tower, or stealth tower, will look should be included in the application materials. The simulations should include a scaled representation of the tower, superimposed on each of the four photos in the second set described above, i.e. those taken from adjoining properties looking toward the subject site. The tower or stealth tower should be shown as complete and/or painted as proposed.

F. CFP PERMIT APPLICATION FEE

The fee for a CFP application is listed on the current Land Use Fee Schedule and is payable at the time the application is made (check or cash only). Additional fees may be required as identified by Land Use Staff to offset potential costs for required engineering analysis.

G. TECHNICAL REVIEW AND/OR RADIOFREQUENCY ENGINEERING ANALYSIS

Ouray County reserves the right to consult with objective, third-party technical resources at the expense of the Applicant. If such technical review is deemed necessary, the Applicant may provide to Staff, names of consultants which the Applicant believes are qualified to assist in resolving the questions or issues.



Parcel or Account #*: _____ Job Site Address: _____

City: _____ Zip Code: _____

Legal Description of Property: Qtr. Sections: _____ Section: _____ Zone: _____

Section: _____ Town: _____ Range: _____

Directions to job site from nearest County Road:

**Parcel number is available from the Ouray County Assessor's Office - (970) 325-4371 or online at www.ouraycountyassessor.org*

Property Owner(s) Name: _____

Mailing Address: _____ City/ST/Zip: _____

Phone: _____ Email Address: _____

Applicant/Authorized Agent's Name: _____ Representing: _____

Mailing Address: _____ City/ST/Zip: _____

Phone: _____ Email Address: _____

Brief Description of Request (see requirements on reverse of this form):

I certify that I am the landowner or an agent authorized by the landowner and am hereby making application for approval of the above request. I further understand that if there are extenuating circumstances concerning this application, there may be additional fees required to process my application, and that the County will advise me of additional fees and receive my approval before proceeding with my application. I hereby certify that I have read this application completely and that all information provided is correct to the best of my knowledge. All laws, regulations, and ordinances governing the scope of the project contemplated by this application will be complied with, whether or not specifically described within this application. I understand that providing false or misleading information may result in any permit(s) issued being revoked. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating the scope of the project contemplated by this application. I understand that this application may be open for public inspection as required by the Colorado Open Records Law (C.R.S. 24-72-202, et seq.) and that my personal information contained on this application may be available to the public for review.

Signature of Owner(s) or Agent

Date

COMMUNICATIONS FACILITIES

**MODIFICATION OF
EXISTING
COMMUNICATIONS
FACILITY
PERMIT
APPLICATION**

SUBSTANTIAL VS NON-SUBSTANTIAL CHANGE (HR 3630)

HR-3630 states - “Notwithstanding Section 704 of the Telecommunications Act of 1996 or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.”

PROCESS:

1. Applicant/agent completes application form (attached)
2. If proposed change is designated as an emergency repair that immediately affects critical emergency services communication (such as pagers, VHF repeater, etc.)
 - a. Proposed change must be reviewed by either the Sheriff’s Department, EMS Coordinator, or the County Emergency Manager.
 - b. If confirmed as emergency repair, no further action required by Applicant
 - c. Land Use Staff sends Applicant/Agent letter or notice of approval and authorization to proceed with proposed modification.
3. If not an emergency repair, application process proceeds as follows -
4. Applicant confirms in writing that the proposal does not exceed the limitations of what is considered to be a “substantial change”, as stated in FCC document FCC 14-153. (see below)
5. Land Use Staff refers application to the County Attorney for review and comment.
6. Land Use Staff, based upon a review of the application and input from the County Attorney makes a determination and notifies the Applicant accordingly.
7. If tower site is within an existing PUD or county approved subdivision, Applicant confirms that application materials have been forwarded to appropriate HOA or ACC for comment.
8. If proposed work is deemed by Staff to be a *substantial change*, applicant will be notified in writing that an approved Communications Facility Permit (CFP) will be required prior to commencing with the project.
9. If proposed work is deemed by Staff to be a *non-substantial change*, Staff will notify the Applicant in writing that the project has been approved to proceed and no other approvals or permits are required.

** Applicant’s will receive a response from Staff within a maximum of 60 days.*

The following information must accompany ALL applications: (where applicant did not sign above)

- [] Current copy of any required lease or easement documentation
- [] Elevation Drawing: Showing the profile of the existing tower vs. the proposed modification (inc. colors/materials)
- [] Purpose/Function: Documentation explaining the purpose and/or function of the existing tower vs. the proposed.
- [] Site plan showing location of all existing and proposed improvements.
- [] If proposed modification is declared by the Applicant to be an emergency, or, directly affects the Health/Safety/ Welfare of the Citizens of Ouray County, written justification from Applicant must be attached to this application.

If Applicant declares modification to be “not a substantial change” per the FCC document FCC 14-153, detailed information must be provided affirming that the following criteria are not exceeded:

Substantial Change. A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

(i) for towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;

(A) Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings’ rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.

(ii) for towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

(iii) for any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

(iv) it entails any excavation or deployment outside the current site;

(v) it would defeat the concealment elements of the eligible support structure; or

(vi) it does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is noncompliant only in a manner that would not exceed the thresholds identified in §1.40001(b)(7)(i)-(iv).

Signature of Owner(s) or Agent

Date

APPLICATION REVIEW BY DEPARTMENT STAFF

All required materials/information submitted with application.

Date of Application Acceptance by Staff: ___/___/_____

Application materials sent to any applicable HOA/ACC.

Date Sent: ___/___/_____

Application materials submitted to County Attorney for review and comment.

Date of Submission: ___/___/_____

Staff finds proposed modification to be:

- Substantial Change

An approved communications Facility Permit is required PRIOR to commencing with the project. Please contact the Land Use Department for information on application requirements, fees, and permit process.

- Not a Substantial Change

Applicant is approved to proceed with the project. No further approvals or permitting are required.

Signed (Land Use Staff) : _____ **Date:** _____

Staff Member Title: _____

Notes/Comments:



LAND USE DEPARTMENT

STAFF REPORT

March 1, 2016

Application:	Amendment of a Special Use Permit
Original Resolution:	2015-019
Request By/Owner:	Porter & Chessie, LLC (aka. La Zona Colona, LLC)
Authorized Agent:	Michael Hockersmith - Hockersmith Law, PC
Location:	12 Hotchkiss Avenue, Colona
Zoning:	Colona Zone
Case Manager:	Mark Castrodale

Request

The property owner, through its authorized agent, is proposing an amendment of the existing special use permit (Resolution No. 2015-019) for the following purposes:

- To designate all properties to be used by the business.
- To include a drive-thru window function for the business.
- To modify the ingress/egress for the business to one-way traffic, relocating the egress to the west. (*see applicant's Exhibit A*)

Background & History

In 2015, via Resolution No. 2015-019, the Board of County Commissioners approved a Special Use Permit for a Commercial Use – Coffee Shop, to be operated at 12 Hotchkiss Avenue, Colona. Although the Applicant proposed the use of a drive-thru window as part of the original application, this specific element of the application was withdrawn during the hearing before the BOCC. Resolution 2015-019 states:

Whereas, the Board of County Commissioners finds that issuance of this Special Use Permit does not allow operation of a drive-thru window and should the Applicant choose to operate a drive-thru window, the Applicant will need to amend the Special Use Permit and designate all properties that would be used;

Parcels/Easements:

The subject application for an amendment of an existing Special Use Permit includes:

Lot No's: 1, 2 – Block 4

Easement: Across lots: 3, 4, 5 – Block 4

**See Ouray County Assessor Account Numbers: R006380, R004108*

Access/Parking/Affected Lots:

Ingress/egress for vehicle traffic associated with the coffee shop is shown on the Applicant's Exhibit A. The coffee shop building, business entrance, and customer parking, lie within the boundaries of Lots 1 & 2 of Block 4. The vehicle egress path and associated easement runs across Lots 3, 4, 5 of Block 4.

County Referrals, Outside Agency Referrals, and Public Comments

Road and Bridge Concerns:

Staff discussed the subject application and all associated materials with the Road & Bridge Superintendent. Subsequent to this discussion the Road & Bridge Superintendent stated that he has no concerns with the proposed amendment.

Building Inspector Concerns:

The Building Inspector reviewed the subject application and associated materials and stated that she does not have any concerns.

County Attorney Response:

The County Attorney reviewed the subject application and associated materials and stated that she does not have any concerns but made the following suggestion:

I would suggest that Exhibit A be revised to show ownership of Lots 2, 3, 4 (or easement) for the sake of clarity.

The Applicant made revisions to Exhibit A based upon the suggestion of the County Attorney.

Notification Requirements:

Publication

Notice of the public hearing was published in the Plaindealer at least 14-days in advance of the public hearing date.

On-Site Notice

On-site notice of the application for amendment of a Special Use Permit is not required until prior to the hearing before the Board of County Commissioners.

Adjacent Property Owner Notice

Adjacent property notifications of the application for amendment of a Special Use Permit is not required until prior to the hearing before the Board of County Commissioners.

Land Use Code Section 5.3A – Review Requirements

As the subject application is *amending* an approved/current special use permit, and, all requirements from Section 5 for the coffee shop are assumed to have been met in the original approval, Staff will only address those requirements from Section 5 that have a direct relationship to the proposed amendment: (ie. *use of a drive-thru window and revised location of driveway-ingress/egress*)

5.2E(2)

The proposed use will not create undue danger in surrounding areas, will not cause water pollution and will not create unreasonable amounts of offensive noise, vibration, smoke, dust, odors, heat, glare or other objectionable influences beyond the boundaries of the property on which such use is located. (At the discretion of the BOCC, a written plan may be required indicating methods to be used to minimize smoke, odors, dust and similar environmental problems, which might result from the operation of the proposed use.)

Staff Response:

Regarding offensive noise, vibration, dust; The Applicant has stated that the driveway location will be graveled and properly maintained. Additionally, the owner of the coffee shop is also the owner of the properties directly adjacent to the business and proposed driveway location. As such, it is Staff's opinion that the proposed drive-thru window and revised driveway and ingress/egress routes will not cause unreasonable impacts beyond the boundaries of the property.

5.2E(3)

The proposed use has legal access; potable water, sewage disposal and all other utilities necessary to serve the proposed use.

Regarding legal access; The Applicant is the owner of all parcels that are the subject of this application, and, has stated that a proper easement will be recorded (subsequent to approval of this application) for the driveway location. As such, it is Staff's opinion that the Applicant has legal access for the location of the driveway and revised ingress/egress routes as proposed.

5.2E(11)

Statements addressing any possible impacts on existing infrastructure beyond what would be created by a use by right.

Regarding potential impacts on infrastructure; Staff discussed the proposed drive-thru operation and the revised driveway location with the Road & Bridge Superintendent. At that time the Superintendent stated that he had no concerns with the proposed changes and no concerns regarding potential impacts on county roads. As such, it is Staff's opinion that the proposed drive-thru operation and revised driveway location does not create any additional impacts on existing infrastructure.

5.3B(1)

Sufficient distance shall separate such uses from abutting properties, which might otherwise be damaged or diminished in value due to the operation of the proposed use.

Regarding sufficient distance separating the use from abutting properties; The location of the proposed driveway is adjacent only to properties owned by Porter & Chessie, LLC or other legal entities, owned solely by the Applicant. As such, it is Staff's opinion that the revised driveway location allows sufficient distance from abutting properties.

5.3B(2)

The proposed uses will be properly maintained.

Regarding proper maintenance of the use; Staff has repeated the condition placed on the original approval, requiring the Applicant to install and maintain gravel in the driveway and parking areas; As such, it is Staff's opinion that the proposed driveway (and parking area) will be properly maintained.

5.3B(3)

Vehicle traffic to and from such use will not create hazards or nuisance.

Regarding potential hazards or nuisance; Staff discussed the proposed drive-thru operation and revised driveway location with the Road & Bridge Superintendent. At that time the Superintendent stated that he had no concerns regarding hazards or nuisances that might be caused by the addition of the drive-thru operation and the revised driveway location.

Staff Conclusions and Recommendations:

It is Staff's opinion that the proposed amendment of a special use permit complies with all regulations and requirements found in Section 5 of the Land Use Code. Further, it is Staff's opinion that the relocated *one-way* access is a safer and more practical design to handle traffic flow, parking, and use of the drive-thru window. Therefore, Staff is recommending the Planning Commission forward the application to the Board of County Commissioners with a recommendation of approval with the following conditions:

1. The following conditions are in addition to, and/or reaffirming, the conditions set forth in Resolution No. 2015-019, which remain intact and in-force.
 - a. The driveway easement proposed by the Applicant shall be in full force and effect as long as the Special Use Permit is in effect.
 - b. The Applicant shall be required to install and maintain gravel in the driveway and parking areas.
 - c. The Applicant shall erect proper signage to clearly delineate traffic flow and direction for ingress/egress, parking, and use of the drive-thru window.

Possible Motion Language:

I move that the Planning Commission forward this application for an amendment of an existing Special Use Permit to the Board of County Commissioners, with a recommendation of approval/denial, with the following conditions/with the conditions as recommended by Staff.

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY,
COLORADO
APPROVING A SPECIAL USE PERMIT FOR A COMMERCIAL USE
FOR THE OPERATION OF A COFFEE SHOP**

WHEREAS, Porter & Chessie, through its authorized agent, Michael D. Hockersmith, P.C., applied to the Ouray County Land Use Department for a Special Use Permit - Commercial Use, to operate a coffee shop; and

WHEREAS, Commercial Use is a use allowed by Special Use Permit in the Colona Zone; and

WHEREAS, the subject property (Acct. No. R004108) lies within the Colona Zone; and

WHEREAS, the Applicant posted a notice/sign on the subject property regarding the subject application within 10-days of *application acceptance* by the Land Use Department as required by Section 5 of the Ouray County Land Use Code; and

WHEREAS, the Applicant received approval of a building permit and has made significant interior and exterior improvements to the existing structure; and

WHEREAS, the subject application for a Special Use Permit was reviewed by the Planning Commission in a noticed hearing on May 19th, 2015 and forwarded the application to the Board of County Commissioners with a recommendation of approval; and

WHEREAS, Land Use Staff, in their submitted report, stated that the subject application meets the requirements of Section 5 of the Ouray County Land Use Code and made a recommendation of *approval* (with conditions) to the Board of County Commissioners; and

WHEREAS, the Applicant sent hardcopy notices to adjacent property owners, notifying them of the in-process application for a Special Use Permit, 14-days prior to a hearing before the Board of County Commissioners as required by Section 5 of the Ouray County Land Use Code; and

WHEREAS, Land Use Staff did not receive any written or verbal comments from the public regarding the subject application; and

WHEREAS, on June 22, 2015, the Board of County Commissioners received an email from Richard Wojciechowski, expressing his support for the subject use/application; and

WHEREAS, the Board of County Commissioners considered the subject application in a properly noticed public hearing on June 23rd, 2015; and

WHEREAS, the Board of County Commissioners finds that issuance of this Special Use Permit does not allow operation of a drive-thru window and should the Applicant choose to operate a drive-thru window, the Applicant will need to amend the Special Use Permit and designate all properties that would be used; and

WHEREAS, the Board finds that the application for a Special Use Permit – Commercial Use, meets the requirements set forth in Section 5 of the Ouray County Land Use Code and unanimously approves the subject application, subject to the following conditions:

1. The Applicant shall be required to install and maintain gravel in the driveway and parking area(s).
2. If grading occurs to install or improve the driveway and/or parking area, the Applicant shall conduct proper weed mitigation and control methods.
3. Applicant shall obtain any permits as may be required by the State of Colorado, prior to commencing the subject operation.
4. Applicant shall be required to maintain continued compliance with all Ouray County regulations, including but not limited to, Land Use Code Section 27 – Outdoor Lighting Regulations.

Adopted this 7 day of JULY, 2015

Voting for: Commissioners Batchelder, Padgett, and Tisdel
Voting against: None

BOARD OF COUNTY COMMISSIONERS
OF OURAY COUNTY, COLORADO

Attest:

 *[Signature]*
Michelle Nauer, Clerk and Recorder
By: Hannah Hollenbeck, Deputy Clerk of the Board

[Signature]

Don Batchelder, Chair

[Signature]

Lynn M. Padgett, Vice Chair

[Signature]

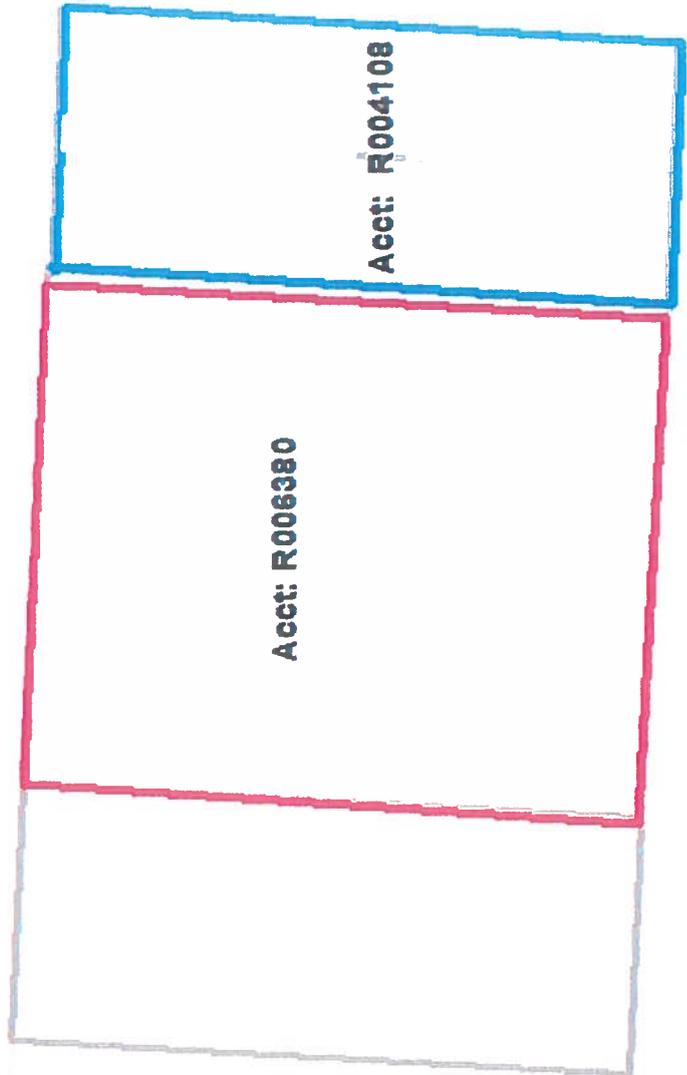
Ben Tisdel, Commissioner

HIGHWAY 55

HIGHWAY 55

HOTCHKISS AVE

SAWTOOTH ST



Acct: R006380

Acct: R004108

Drive-Thru Route

Existing Shed Removed



HOCKERSMITH LAW, P.C.

ATTORNEY & COUNSELOR at LAW

Alpine Bank Building
917 Main Street (2nd Floor)
Post Office Box 646
Ouray, CO 81427-0646

t: 970.325.4414
f: 970.325.7333
michael@mdhlawpc.com

Michael D. Hockersmith

March 29, 2016

Mark Castrodale
Bryan Sampson
Ouray County Land Use Department
111 Mall Road
Ridgway, CO 81432

Re: Porter & Chessie, LLC Application to amend special use permit for a commercial use in the Colona Zone

Dear Mark and Bryan:

This letter shall supersede and replace my letter to you, dated February 25, 2016. As you know, the undersigned is representing Porter & Chessie, LLC, the owner of Lots 1 and 2, Block 4, Colona, commonly referred to as 12 Hotchkiss, Montrose, CO 81403. Attached to this letter is an executed Amended Special Use Permit Application for the previously approved commercial use in the Colona Zone to operate a coffee shop pursuant to Ouray County Resolution #2015-019. A filing fee in the amount of \$500.00 has previously been tendered. Also enclosed is a partial transcript of the public hearing before the BOCC held on June 23, 2015, which we would like included in the packet to the Planning Commission.

Resolution #2015-019 provided that “should the Applicant choose to operate a drive-thru window, the Applicant will need to amend the Special Use Permit and designate all properties that would be used.” As contemplated by the foregoing provision of the Resolution, this amendment is to modify the SUP to include a such a drive-thru window, and to provide for ingress/egress from the business to one-way traffic, relocating the egress route to the south and west as shown on Exhibit A.

Section 5.2 PERMIT PROCEDURES

Section 5.2.B(1): “A site plan showing, for example, lot lines, road access, all proposed and existing driveways, parking areas and structures, all areas of significant vegetation and all ditches, ponds and waterways.” Attached hereto, as Exhibit A.

Section 5.2.B(2): "Signature of owner of all property, authorizing application and acceptable evidence of ownership." Agent Authorization executed by Manager of Porter & Chessie attached hereto as Exhibit B. Copy of warranty deed from Passmore to Porter & Chessie, LLC, Reception No. 185398, attached hereto as Exhibit C. Copy of quit-claim deed from Passmore to Porter & Chessie, LLC, Reception No. 185399, attached hereto as Exhibit D.

Section 5.2.B(3): "If the operator of the Special Use Permit will be someone other than the owner of the property or the Applicant, the proposed operator shall be identified on the application." The operator of the SUP will be La Zona Colona, LLC as owner of the subject property, the successor in interest to the Applicant.

Section 5.2.B(4): "A detailed explanation of the proposed operation or use. As stated above, the commercial use is the already approved operation of a coffee shop. The only change in the operation from that authorized by the existing SUP will be the use of a drive-up window available to motorists for take-out. The attached Exhibit A illustrates how the drive-up window will operate and how traffic exiting from the drive-up window will be routed to a fifteen (15) foot wide one-way driveway along the southern boundaries of Lots 3, 4 and 5, Block 4, Town of Colona, County of Ouray, State of Colorado and then along the western boundary the said Lot 5 back out to Hotchkiss Avenue. Porter & Chessie, LLC, as the owner of Lots 1, 2, 3, 4 and 5, will declare an easement which will establish the right of use of said property for a one-way exit driveway back to Hotchkiss Avenue, all as generally depicted on Exhibit A. A draft of the proposed easement declaration is attached with a copy to the Ouray County Attorney for review and comment.

Section 5.3 REVIEW REQUIREMENTS

Section 5.3.A(1): "Evidence that such use will not create undue danger in surrounding areas, will not cause water pollution and will not create substantial amounts of offensive noise, vibration, smoke, dust, odors, heat, glare or other objectionable influences beyond the boundaries of the property on which the use is located." The proposed amendment will not create any of the objectionable influences contemplated by this Code provision.

Section 5.3.A(2): "Evidence that legal access; potable water, sewage disposal and all other utilities necessary to serve the proposed use are available." The subject property has direct access onto Hotchkiss Avenue (County Road 1). The proposed easement agreement will assure the ability to use the adjoining property in order to allow a safe and reasonable turn-around area and one-way exit back onto Hotchkiss Avenue.

Section 5.3.A(3): "Evidence that the requested use will comply with the provisions of the Visual Impact Regulations found in Section 9 of this Code." The only modification to the existing structure will be the addition of a drive-up window which will not implicate any issue under Section 9 and Section 4 of the OCLUC.

Section 5.3.A(4): "Evidence that the requested use will not unreasonably impact wildlife or significant wildlife habitat." The proposed amendment will have no impact on wildlife or wildlife habitat.

Section 5.3.A(5): "Evidence that the use will not alter, restrict, inhibit or interfere with historic irrigation practices, headgates, ditches and ditch rights-of-way." No irrigation structures are located on the subject property or on the adjoining property and the amended operation will not affect in any way any irrigation structures or practices.

Section 5.3(6): "Evidence that the use is not located within any area subject to geohazards,...." Given that the use will be conducted entirely within the boundaries of the subject property and the adjoining property, located within Colona, no geohazard consideration is needed.

Section 5.3.A(7): "Evidence that the property has no chemical or other contamination." The subject property has no such contamination.

Section 5.3.A(8): "Evidence that the request is consistent and compatible with the community character and surrounding land uses within the area for which the request is being proposed." The subject property is located within the Colona Zone. The addition of a drive-thru window for the approved coffee house fits squarely within the intent of the zone as defined by the OCLUC. The subject property is located across County Road 1 from an existing restaurant and across U.S. Highway 550 from a convenience store and gas station. As a result, the proposed amendment, as proposed by this application, is compatible and consistent with the character of Colona.

Section 5.3.A(9): "Evidence that the request would not have a material adverse effect on the surrounding area." See the response to Section 5.3.A(8) above. The addition of the proposed use to the subject area will have no material adverse effect on the surrounding area.

Section 5.3.A(10): "Evidence that the use will not create impacts on existing infrastructure beyond what would be created by a use by right or evidence that such impacts will be mitigated as provided by Section 5.2.F above." The addition of the drive-through window and one-way exit route, all on private property, will not create any impacts on existing County infrastructure.

Section 5.3.A.(11): "If the property is located within a Planned Unit Development, Applicant shall submit evidence that the Homeowner's Association has approved the proposed use." The subject property is not located within a PUD.

Section 5.3.A(12): "Weed mitigation and/or revegetation on the property that may be required as a result of the Special Use Permit shall be the responsibility of the Applicant." The Applicant will perform whatever weed mitigation and/or revegetation that may be required, although it is anticipated that the need for such action will be minimal.

Section 5.3.A(13): "Applicant shall comply with any and all other Ouray County regulations contained in the Land Use Code, such as the Sign Regulations and the Outdoor Lighting"

Regulations.” The Applicant acknowledges its responsibility to comply with all applicable regulations contained in the OCLUC.

Section 5.3.C(1): “*Sufficient distance shall separate such uses from abutting properties which might otherwise be damaged or diminished in value due to the operation of the proposed use.*” All activities associated with proposed amendment to the SUP will occur entirely within the boundaries of the Lots 1-5 as depicted on Exhibit A.

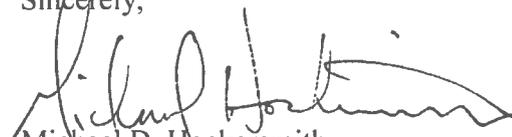
Section 5.3.C(2): “*The proposed uses will be properly maintained,*” The Applicant acknowledges its responsibility to maintain the proposed uses.

Section 5.3.C(3): “*Vehicle traffic to and from such use will not create hazards or nuisance to areas elsewhere in the County.*” As indicated on the submitted Exhibit A for the proposed amended use, the flow of traffic to and from County Road 1 (Hotchkiss Avenue) allows for entry into the subject property and exit from the subject property through the adjoining property.

Section 5.3.C(4): “*Sufficient off-street parking, as required by Section 7.2(M) of this Code, shall be provided to accommodate the expected volume of users of the proposed facilities.*” The proposed amendment will not alter the existing parking plan as shown on Exhibit A, which was approved in the previously-issued SUP.

Based upon the foregoing, we believe that the Applicant has submitted a complete application for an amendment to the existing commercial special use permit for the subject property. Of course, if you require any additional information, please do not hesitate to ask. Thank you for your cooperation in this regard.

Sincerely,



Michael D. Hockersmith

Enclosures



SPECIAL USE PERMIT APPLICATION

Land Use Department; 111 Mall Road, Ridgway CO -- 970.626.9775

- Check here if renewal application

- Check here if SUP amendment application

Parcel #: 404117302001 Job Site Address: 12 Hotchkiss Ave.
 City: Montrose (Colona) Zip Code: 81403
 Legal Description of Property: Qtr. Sections: n/a Section: 17 Zone: Colona
(see Section 3 of the Land Use code)
 Town: 47 Range: 8 Subdivision Name: n/a
 Filing: n/a Lot Name/Number: Lots 1 and 2, Blk 4 ** Directions to job site from nearest County Road: _____
 Located at the SW Corner of Highway 550 and County Road 1 (Hotchkiss Ave.)

****And a non-exclusive easement across Lots 3, 4 and 5 for an egress route arising out of use of the drive-thru window on Lots 1 and 2.**

*Parcel number is available from the Ouray County Assessor's Office - (970) 325-4371 or online at www.ouraycountyassessor.org

Owner(s) Name: Porter & Chessie, LLC
 Mailing Address: 20 Sneffels Street City/ST/Zip: Montrose, CO 81403
 Phone: 970-249-4214 Email Address: cj@jackmanoffice.com

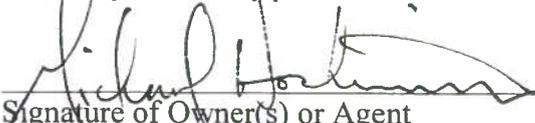
Authorized Agent's Name: Michael D. Hockersmith of Hockersmith Law, PC
 Mailing Address: Alpine Bank Bldg. (2nd Floor) 917 Main Street; PO Box 646 City/ST/Zip: Ouray, CO 81427
 Phone: 970-325-4414 Email Address: michael@mdhlawpc.com

Brief Description of Request (see requirements on reverse of this form):

Amendment to Special Use Permit Resolution #2015-019 re Commercial Use to operate a coffee shop - Colona Zone (See attached).

I certify that I am the landowner or an agent authorized by the landowner and am hereby making application for approval of the above request. I further understand that if there are extenuating circumstances concerning this application, there may be additional fees required to process my application, and that the County will advise me of additional fees and receive my approval before proceeding with my application. I hereby certify that I have read this application completely and that all information provided is correct to the best of my knowledge. All laws, regulations, and ordinances governing the scope of the project contemplated by this application will be complied with, whether or not specifically described within this application. I understand that providing false or misleading information may result in any permit(s) issued being revoked. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating the scope of the project contemplated by this application.

I understand that this application may be open for public inspection as required by the Colorado Open Records Law (C.R.S. 24-72-202, et seq.) and that my personal information contained on this application may be available to the public for review.



 Signature of Owner(s) or Agent
 Michael D. Hockersmith, Agent
 Form Rev. 5/09

February 25, 2016

 Date

Special Use Permit – Requirements and Procedures

Per Section 5 of the Ouray County Land Use Code, the following information must be submitted with any application for a Special Use Permit:

- Site Plan – Showing lot lines, roads, access, existing or proposed drive, parking areas, structures, areas of significant vegetation, all water features including ditches, ponds, waterways.
- Signature(s) of all owner(s) of all property authorizing application and acceptable evidence of ownership. If land is leased, a copy of the current lease agreement. *(All proprietary or confidential information may be redacted.)*
- If the operator of the proposed Special Use Permit is other than the Owner of the property or the Applicant, the proposed operator shall be identified within this application.
- A detailed explanation of the proposed operation or use.

Any application for a Special Use Permit will be reviewed first by the Planning Commission and then the Board of County Commissioners who will either:

- Approve the application
- Approve the application with conditions
- Deny the application

Refer to Section 5.3 C of the Ouray County Land Use Code for additional provisions regarding:

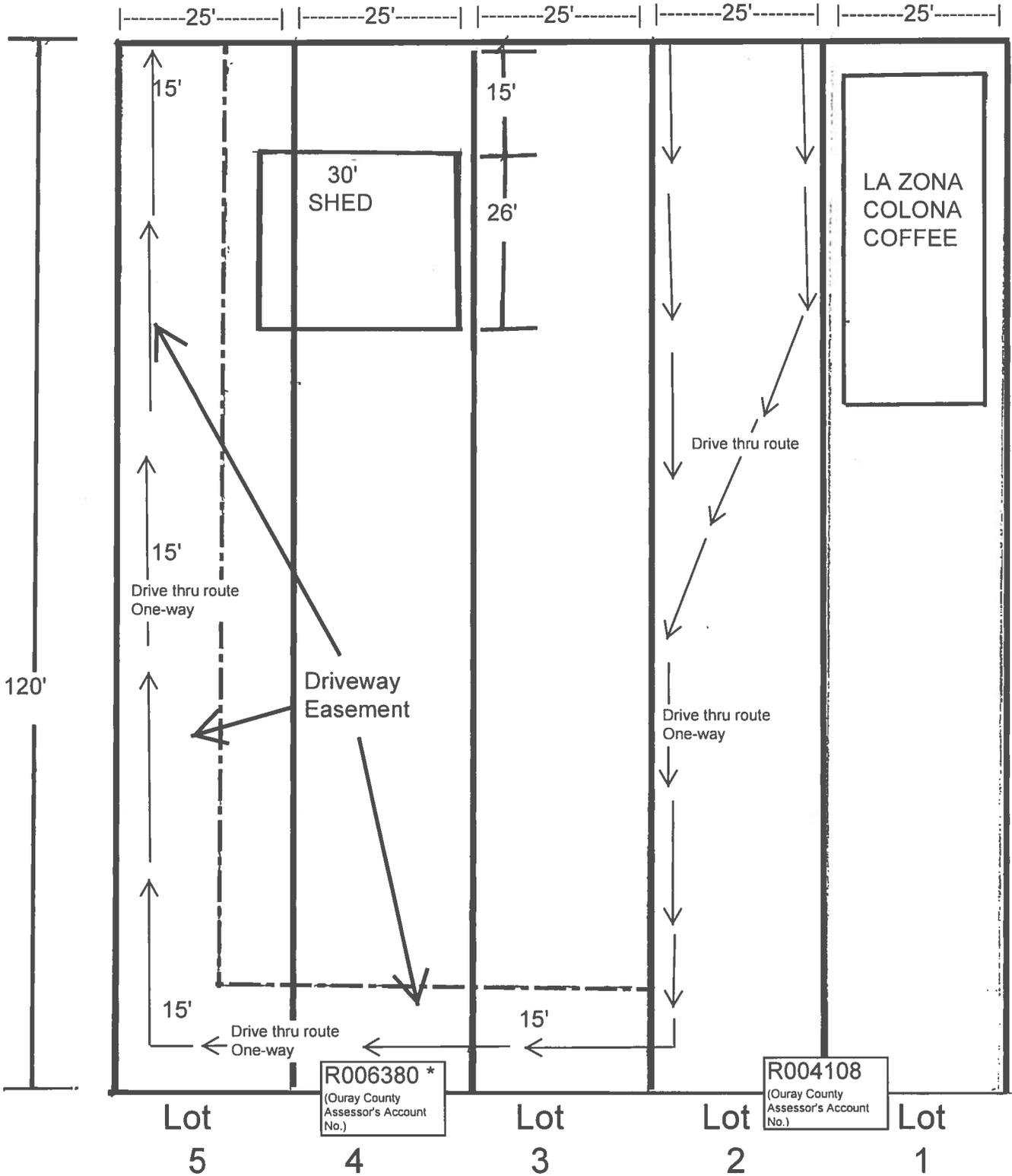
- Cemeteries
- Bed & Breakfast Operations
- Churches
- Commercial Equestrian Activities
- Commercial Outdoor Recreation
- Livery or Horse Rental Operations
- Commercial Camping
- Guest Ranches

Section 5.6 of the Ouray County Land Use Code states:

A. After a Special Use Permit has been issued, it shall be effective for a term of two years and shall be subject to biennial renewal. Within sixty (60) days prior to the expiration of the Special Use Permit, the Land Use Department shall notify the Applicant in writing of the permit's pending expiration. Applicant shall be responsible for contacting the Land Use Department regarding the renewal of the Special Use Permit and the Land Use Department shall conduct a review of the status of the Special Use Permit, including the status of any conditions placed upon the permit, any changes to the permit, and the Applicant's compliance with the terms of the Permit and the Land Use Code. The biennial review may include a site visit by representatives of Ouray County if deemed necessary by Land Use Staff. If Applicant is in compliance with all of the conditions of the permit and the Land Use Code, the Land Use Staff shall renew the permit for an additional two-year period. If the Land Use Staff finds that there is non-compliance with the conditions of the permit or the Land Use Code, or if there has been non-use of the permit for a period of twelve months or more, the Land Use Staff may revoke the permit. Any decision of the Land Use Staff shall be appealable by the Applicant according to the provisions of Section 19.7 of this Code.

EXHIBIT A

Hotchkiss Ave.



R006380 *
(Ouray County Assessor's Account No.)

R004108
(Ouray County Assessor's Account No.)

BLOCK 4, COLONA
All lots shown owned by Porter & Chessie, LLC

*Note: Ouray County Assessor's Account No. R006380 includes Lots 3, 4, 5 and 6, Block 4. Lot 6 is not part of this application.

EXHIBIT B



I/we, the undersigned owner(s) of the following described real property located in Ouray County, Colorado hereby authorize:

Agent:

Name: Michael D. Hockersmith Phone: 970-325-4414

Name of Business or Entity: Hockersmith Law, PC

Address: 917 Main Street, 2nd Floor; PO Box 646

City: Ouray State: CO Zip: 81427-0646

to act in my/our behalf in applying for permits from the County of Ouray.

Legal Property Description:

Parcel or Account Number: Account: R004108 Lots 1 and 2, Block 4,
Section: 17 Township: 47 Range: 8 Quarter Section(s): Colona

Permit(s) Applied For: Amended Special Use Permit - Commercial Use/Colona Zone

Signature(s) of Property Owners of Record:

By my signature I hereby certify that I have read any applications and other materials completely and that all information provided is correct to the best of my knowledge. All laws, regulations, and ordinances governing the scope of the project contemplated by this application will be complied with, whether or not specifically described within this application. I understand that providing false or misleading information may result in any permit(s) issued being revoked. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating the scope of the project contemplated by this application.

I understand that this application may be open for public inspection as required by the Colorado Open Records Law (C.R.S. 24-72-202, et seq.) and that my personal information contained on this application may be available to the public for review. Porter & Chessie, LLC

Signature: [Signature] Date: 2-23-16

Printed Name: Craig E. Jackman, Manager

La Zona Colona, LLC

Signature: [Signature] Date: 2-23-16

Printed Name: Craig E. Jackman, Manager

1050854A04

EXHIBIT C

185398
Page 1 of 3
Michelle Nauer, County Clerk & Recorder
Duray, Colorado
08/03/2004 01:41 PM Recording Fee \$82

WARRANTY DEED

THIS DEED, Made this 30th day of July, 2004,
between Larry R. Passmore

DOCU: ...
11703 2004
66 07-

of the County of Ouray and State of Colorado
grantor, and Porter & Chessie, LLC, a Colorado Limited
Liability Company

whose legal address is 400 South 3rd Street, Montrose, CO 81401

of the County of Montrose and State of Colorado, grantee:

WITNESSETH, That the grantor, for and in consideration of the sum of SIX HUNDRED SIXTY THOUSAND AND
NO/100-----

-----DOLLARS, (\$660,000.00),
the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents
does grant, bargain, sell, convey and confirm, unto the grantee, his heirs and assigns forever, all the real property together with
improvements, if any, situate, lying and being in the County of Ouray, and State of Colorado,
described as follows:

See Exhibit "A" attached hereto and incorporated herein.

also known by street and number as 46 Hotchkiss, #9 & #43 Sawtooth, Montrose, CO 81401

TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and
the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest,
claim and demand whatsoever of the grantor, either in law or equity, of, in and to the above bargained premises, with the
hereditaments and appurtenances.

TO HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances, unto the grantee, his
heirs and assigns forever. And the grantor, for himself, his heirs and personal representatives, does covenant, grant, bargain and
agree to and with the grantee, his heirs and assigns, that at the time of the enrolling and delivery of these presents, he is well
seized of the premises above conveyed, has good, sure, perfect, absolute and indefeasible estate of inheritance, in law, in
fee simple, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form
as aforesaid, and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments,
encumbrances and restrictions of whatever kind or nature soever, except for taxes for the current year, a lien but not yet due
and payable, and those specific Exceptions described in exhibit B

The grantor shall and will WARRANT AND FOREVER DEFEND the above-bargained premises in the quiet and peaceable posses-
sion of the grantee, his heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof.
The singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.
IN WITNESS WHEREOF, the grantor has executed this deed on the date set forth above.

Larry R. Passmore
Larry R. Passmore

STATE OF COLORADO)
COUNTY OF OURAY) ss.

The foregoing instrument was acknowledged before me this 30th day of July, 2004 by
Larry R. Passmore

My Commission Expires November 5, 2005



Witness my hand and official seal.
Sharon Herbert
Notary Public

Ouray

WARRANTY DEED (See Photograph of Record) (ASB/MS/WD)

My Commission Expires 11/05/2005

File # 1050854A04

46 Hotchkiss, #9 & #43 Sawtooth

LEGAL DESCRIPTION OF DEED DATED
July 30, 2004

Parcel 1:
Lot 1,
Block 4, Town of Colona,

Parcel 2:
Lots 3, 4, 5, 6, 7, & 8, and Lots 17, 18, 19, 20, & 21,
Block 4, Town of Colona,

Parcel 3:
Lot 2,
Block 4, Town of Colona,

Parcel 4:
Lots 22, 23 & 24,
Block 4, Town of Colona,

NOTE: Lots 3, 4, 5, 6, 7, 8 and 21, Block 4, Town of Colona are shown on Plat
Survey recorded June 5, 1994 at Reception No. 156069,
County of Ouray, State of Colorado

Reservations contained in Patent from the United States recorded in Book 64 at Page 71. Subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes, and rights to ditches and reservoirs used in connection with such water rights. Also subject to the right of a proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted. Also reserving from the lands granted, a right-of-way thereon for ditches or canals constructed by the authority of the United States.

NOTE: Item(s) No. 8, above refer to recorded evidence that a mineral estate has been severed, leased, or otherwise conveyed from the surface estate.

Terms and conditions of the Ouray County Weed Management Resolution recorded August 8, 1997 at Reception No. 164857.

1050854A04

EXHIBIT D

185399
Page 1 of 2
Michelle Nauer, County Clerk & Records
Ouray, Colorado
08/03/2004 01:42 PM Recording Fee \$11.

QUIT CLAIM DEED

THIS DEED, Made this 30th day of July, 2004,
between Larry R. Passmore and Lisa Passmore

DOCUMENT
11 03 2004
- 0 -

of the County of Ouray and State of Colorado
grantor(s), and Porter & Chessie, LLC, a Colorado Limited
Liability Company

whose legal address is 400 South 3rd Street, Montrose, CO 81401

of the County of Montrose and State of Colorado, grantee(s):

WITNESSETH, That the grantor(s), for and in consideration of the sum of TEN DOLLARS AND NO/100-----
AND NO/100-----

-----DOLLARS, (\$10.00),
the receipt and sufficiency of which is hereby acknowledged, has remised, released, sold, and QUIT CLAIMED, and by
these presents does remise, release, sell, and QUIT CLAIM unto the grantee(s), his heirs, successors and assigns, forever, all the
right, title, interest, claim and demand which the grantor(s) has in and to the real property, together with improvements,
if any, situate, lying and being in the County of Ouray, and State of Colorado, described as follows:

See Description attached hereto and made a part hereof.

TOGETHER WITH: All interest of Grantors to and in streets, alleys, right
of ways, easements, water rights, wells and all other real
property interests in the Colona Zone

also known by street and number as 46 Hotchkiss, #9 & #43 Sawtooth, Montrose, CO 81401

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging, or
in anywise thereunto appertaining, and all the estate, right, title, interest, and claim whatsoever, of the grantor(s), either in law or
equity, to the only proper use, benefit and behoof of the grantee(s), his heirs and assigns forever.

The singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.
IN WITNESS WHEREOF, the grantor(s) has executed this deed on the date set forth above.

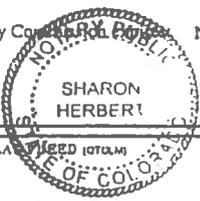
Larry R. Passmore
Larry R. Passmore

Lisa Passmore
Lisa Passmore

STATE OF COLORADO)
COUNTY OF OURAY) ss.

The foregoing instrument was acknowledged before me this 30th day of July, 2004, by
Larry R. Passmore and Lisa Passmore

My Commission Expires November 5, 2005



Witness my hand and official seal.
Sharon Herbert
Notary Public

Ouray

QUIT CLAIM DEED 10704M
My Commission Expires 11/05/2005

File # 1050854A04

46 Hotchkiss, #9 & #43 Sawtooth

LEGAL DESCRIPTION OF DEED DATED
July 30, 2004

Parcel 1:
Lot 1,
Block 4, Town of Colona,

Parcel 2:
Lots 3, 4, 5, 6, 7, & 8, and Lots 17, 18, 19, 20, & 21,
Block 4, Town of Colona,

Parcel 3:
Lot 2,
Block 4, Town of Colona,

Parcel 4:
Lots 22, 23 & 24,
Block 4, Town of Colona,

NOTE: Lots 3, 4, 5, 6, 7, 8 and 21, Block 4, Town of Colona are shown on Plat
Survey recorded June 5, 1994 at Reception No. 156069,

County of Ouray, State of Colorado

EASEMENT DECLARATION

This Easement Declaration (“**Declaration**”) is executed this ____ day of _____, 2016, by Porter & Chessie, LLC, a Colorado limited liability company (**Declarant**”), as follows:

WHEREAS, Declarant owns certain real property located in the unincorporated Town of Colona, Ouray County, Colorado, more particularly described as follows:

Lots 1 and 2, Block 4, Town of Colona, County of Ouray and State of Colorado (the “**Benefitted Property**”); and,

WHEREAS, Declarant also owns certain real property located in the unincorporated Town of Colona, Ouray County, Colorado, more particularly described as follows:

Lots 3, 4 and 5, Block 4, Town of Colona, County of Ouray and State of Colorado (the “**Burdened Property**”); and,

WHEREAS, Declarant operates a coffee shop business on the Benefitted Property pursuant to a Special Use Permit issued by Ouray County, Colorado; and,

WHEREAS, Declarant is desirous of establishing a non-exclusive easement over the Burdened Property to allow for an exit route for Declarant’s customers who utilize a drive-up window on the coffee house structure located on the Benefitted Property.

NOW, THEREFORE, Declarant hereby submits the Burdened and Benefitted Properties, as described above, to the terms and conditions of this Easement Declaration as follows:

1. Easement Description and Grant: Declarant hereby establishes for the benefit of the Benefitted Property, a non-exclusive easement (“**Driveway Easement**”) over the Burdened Property, said Driveway Easement being fifteen feet in width. The Driveway Easement shall extend along the southern boundary of the Burdened Property and along the western boundary of the Lot 5 of the Burdened Property, all as generally depicted on Exhibit A, attached hereto and incorporated herein by this reference. The benefits and burdens of the Driveway Easement shall run with and be appurtenant to the land and shall bind, and inure to the benefit of the parties hereto and to their respective assigns and successors in title to the Burdened Property and to the Benefitted Property. Declarant reserves the right to use the Driveway Easement for any purpose that does not unreasonably interfere with the allowed uses of the Driveway Easement.

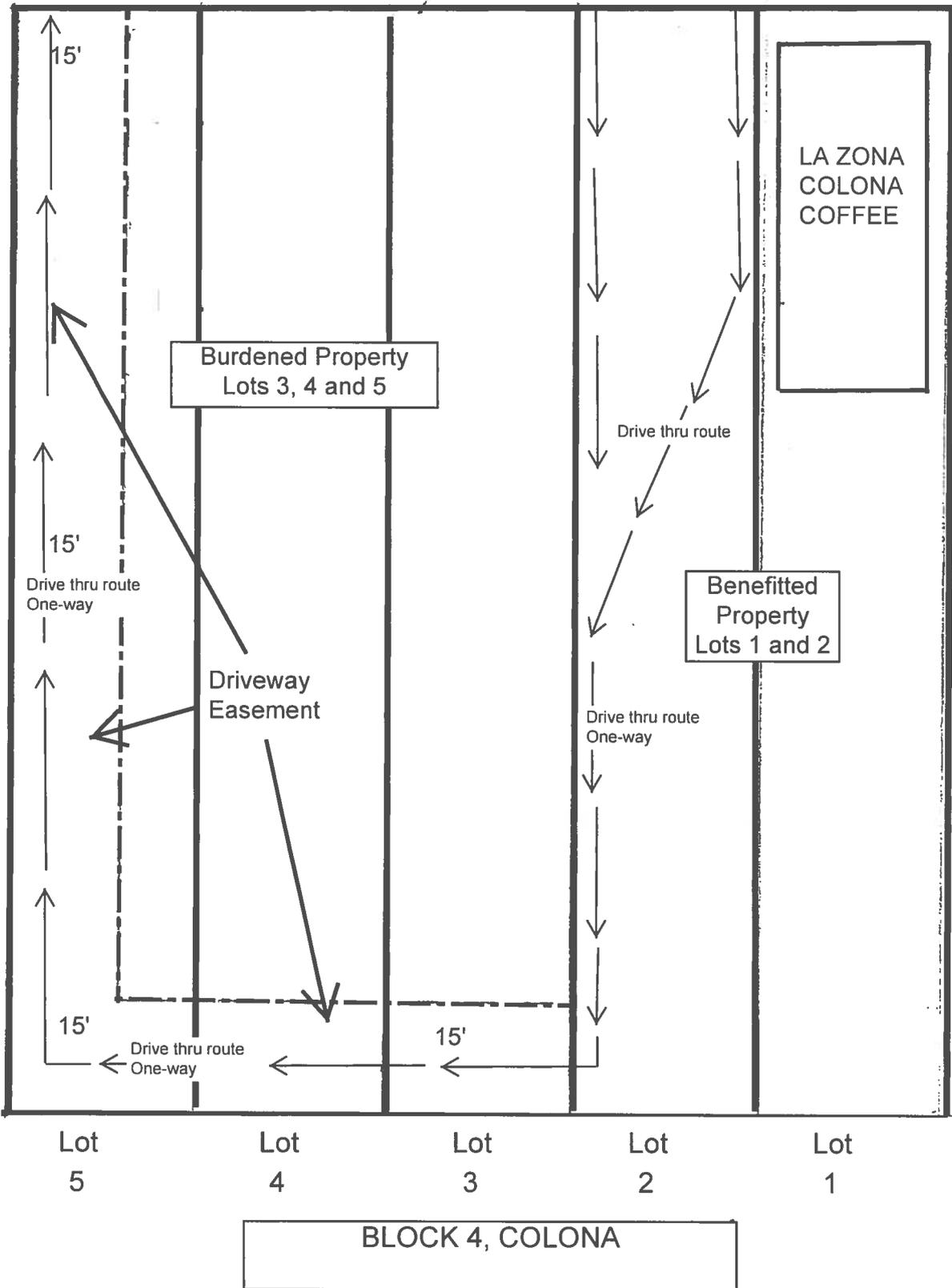
2. Termination of Easement: The Driveway Easement and this Declaration shall terminate without notice upon the expiration or termination of the Ouray County Special Use Permit allowing a commercial use on the Benefitted Property.

3. Allowed Uses of Driveway Easement: The Driveway Easement may be used for the one-way egress of motor vehicles from the Benefitted Property (including residential and commercial uses of the Declarant Property), over the Burdened Property for exit onto Hotchkiss Avenue as depicted on Exhibit A.

4. Not a Public Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Benefitted Property or the Burdened Property to or for the general public or for any public purpose whatsoever, including, but not limited to, dedication as a

EXHIBIT A
to Easement Declaration

Hotchkiss Ave.



**PORTION OF TRANSCRIPT OF BOCC PUBLIC HEARING RE
COFFEE SHOP IN COLONA ON JUNE 23, 2015**

Don Batchelder opened the public hearing as follows:

VERBATIM TRANSCRIPT OF MOST OF PUBLIC HEARING

“So we have another public hearing scheduled. This is a public hearing again another Special Use for commercial use. The BOCC will conduct a public hearing to review a request by Porter & Chessie, LLC for approval of a SUP commercial use coffee house in the Colona Zone. For the record, we do have an email which Hanna forwarded to you from Richard Wojiekowski expressing his support of this so that is now part of the record. Procedure wise I’m going to do this slightly different just for time’s sake I will ask staff to give a very, very brief synopsis, I will give applicant’s representative, in this case, MDH, the opportunity to make a brief statement and then before we open up for public comment, I will ask for, if the BOCC has any questions for clarity’s sake and then I will open up to public comment and then we will close public comment and go into deliberation decision. Any questions? Okay, so, if that is amenable to everyone, Mark if you would go ahead and give a brief synopsis and staff’s recommendation on this please.”

Portion of Transcript Intentionally Omitted

Don Batchelder – “So, Mark, if you would give a brief.”

[Mark Castrodale then gave a brief synopsis of the application.]

Portion of Transcript Intentionally Omitted

Lynn Padgett – “You may be answering it anyway but just while you have got these photos can you show me where the drive thru driveway is going to be potentially and where it actually goes onto the separate parcel?”

Mark Castrodale - “So, the proposed drive up window would be approximately in that area about the center of the building and then, let’s see if I have, I don’t think I am going to have a better view than that. Where the turn-around goes on to the adjoining property so you would, vehicles would come in here to park or drive down here towards the end is where they would circle on to the adjoining property also owned by the applicant and then come back out.”

Lynn Padgett – “And is the adjoining property a subject parcel of this special use application, on this application?”

Mark Castrodale – “I don’t think that it would be excluded.”

MDH – “No, it’s not.”

Mark Castrodale – “I mean, I guess, that I don’t know that it would require a separate special use permit to address that turn around area.”

Lynn Padgett – “Isn’t a special use permit issued ... on a specific property ... and specific ownership?” (partially inaudible)

Mark Castrodale – “I don’t think we would be limited if we have got the same owner to adjacent parcels for example of a commercial equestrian operation could span a property boundary when we have got two properties owned by the same owner I don’t see that we would be, I don’t see that the Code would restrict us to making an issuance of two special use permits.”

Lynn Padgett – “So, the question is not whether or not we need two different special use permits but just that if it’s, if it’s applied to, if it’s not, if it is being proposed, that we have the right scope of the boundaries. In this case, that was something that was unclear to me. I can let you finish your conversation, or your presentation, and come back to it but just while you had those photos I wanted to be, the understanding where that sort of encroachment was and be sure that I was understanding what’s in the content, the stuff that was in our packet with regards to that but I know that you can even look that up on the side here. Are we at a process to permit an activity occurring on a parcel regardless of who owns it, that wasn’t actually the subject of our application?”

Mark Castrodale - “Ok, ... (inaudible) the site plan clearly shows that that’s our property boundary here or our western property boundary so this turn around area would encroach into the neighboring property owned also by the applicant. I hadn’t considered that in your comments. I don’t think so off the top of my head but I would have to turn and kind of peruse Section 5 but I don’t think that it would limit us from doing that but I could certainly take a little stronger look at that.”

Lynn Padgett - “... (inaudible) special use permit would be for these two parcels together, but they didn’t.”

Mark Castrodale – “Ok.”

Mark Castrodale then continues his synopsis of the application.

Mark Castrodale - “... and I am eliminating Condition 4¹ *We just had some confusion on our part. We thought we needed an amended building permit application for the drive up window, the drive up window was shown in the initial approved plans and we have those plans to verify that today so I am eliminating Condition 4 so this 5 will become Condition 4. Emphasis*

¹Condition 4 originally read, “Prior to installation of drive-up window, Applicant must submit an amended building permit application to the Land Use Department.” Please note that Applicant did include the drive-up window in its initial application and Condition 4 was later omitted by Staff. See Page 5 of this transcript.

supplied. The applicant shall submit a letter to the Land Use Department addressing ownership and use of the adjacent lot for turn-around purposes and Number 6, the Applicant shall be required to maintain continued compliance with all Ouray County Regulations, including, but not limited to, Land Use Code Section 27, Outdoor Lighting Regulations.”

[Mark Castrodale completes his presentation.]

Don Batchelder: “Ok, now, if the applicant wishes to make a brief.”

MDH – “Sure, a couple of points. First off, with regard to the statement on Page 1 of the staff report With regard to the and Mark’s already dealt with the building permit issue but I think that probably the issue that Ms. Padgett addressed is probably the one that needs the most comment. We, originally as we proposed this, we did not have the turn-around as shown on the application in your packet and we expanded it into the adjoining lot primarily as a convenience for the owners, or excuse me, the patrons of the business. It’s not part of the building permit, it’s not part of the special use permit operation and, as you can tell, actually, at this point, I don’t even think that the drive through or drive up window, Craig you can correct me on this, has been even constructed yet because we are still setting out the internal layout for the shop itself and so, I, we were willing to accept and are willing to accept the standard or the condition that was imposed by the Planning Commission which would be basically a letter that would address the fact that there is ownership, the same owner who owns the property that is subject to this special use permit owns that adjoining lot and that that use is permissible and will be permissible and as long as Porter & Chessie owns that property. But I don’t know that we can, I certainly don’t have the authority to agree to say that we are going to impose any sort of long term condition that would deal with the title to that property but I’m open to hearing your comments in that regard. Otherwise we don’t have a problem with any of the other conditions and I am open to any questions that you might have on this.”

Don Batchelder - “Ok, at this point, I will open this hearing to public comment. Hearing none, I will.”

Craig Jackman – “Commissioner Batchelder?”

Don Batchelder – “Yes?”

Craig Jackman – “This is Craig Jackman of Colona. Let’s see. The, the lots are 50 feet in width combined. A parking space is 18 feet and that leaves us 32 feet to turn a car around. If this, if this really became an issue of great debate, I would say that we would just turn the car around within the 50 feet of these two lots. We have 32 feet to back up in and drive back out and I don’t think that we really need the turn-around, there is a, the majority of the turn-around the way that we have drawn it is on the two 50 foot lots. I’m not sure if you can scale out how much would cut into the next lot. It’s probably not much more than 10 feet, if that. I guess the point is maybe the simplest thing is to, we will just do all of the turning around within the 50 feet and we can, it wouldn’t be quite as convenient for people but if it is an issue that we don’t want to get into the next lot we can do it without doing that.”

Lynn Padgett – “I don’t think the issue for me is that you don’t want to get into the next lot but the issue for me was that this special use being proposed spills onto the next lot and the next lot was not included as a part of the permit application and since it would be as proposed the use appears to utilize two different lots. Emphasis supplied. It would have been cleaner, from my point of view, if the application basically came in saying that it was an application to change the use of two lots or portions of two lots so basically the area of the use coincided with the area that would be the subject of the special use permit application. But there’s no, I mean I’m not insinuating that you couldn’t use both lots just that the application didn’t seem to match what the use was.”

Craig Jackman - “Well, and that’s a fair point and I don’t think we had the turn-around in the initial application and then I think it was through discussions with staff that we made the turn-around larger and then it got into the next lots so the application didn’t contemplate using the next lots. In fact, I really didn’t want to but it needed to get a little larger so that’s how it evolved.”

Mark Castrodale – “I guess some background might help a little bit. I think just some clarification. When I did my research and so the original site plan that came in did not have the proposed turn-around onto the adjacent lot my concern was for a reasonable sized vehicle to be able to turn around in that area and was finding that most vehicles required right about 40 feet for turn around and I could find only one vehicle that could turn in that short of an area and that would be a smart car and so my concern was people parking and backing out into the same area that somebody is making a two or three point turn just didn’t seem safe to me. Now, all that being said we don’t do a lot of this type of planning here but I think that it’s something that I think from a safety standpoint I think it made sense to have a little more room there so you are not having people backing out where somebody’s trying to do a two or three point turn.”

Lynn Padgett – “Again, I am not suggesting that anyone add that, I’m suggesting that there seems to be a quirk in the application and that the other concerns which is even with the turn-around as scoped is there any anticipated kind of signage that would notify the people that might be pulling a trailer which is fairly frequent on County Road 1 that maybe the turn-around is not going to be adequate for vehicles of a certain length or meeting a certain radius? Because I would suggest that a perspective of a person who goes to a drive thru coffee place in let’s say Gunnison or if you or Delta or even Montrose you might notice that there were some longer vehicles, longer trucks, things pulling trailers and they are used to pulling alongside of the building and the continuing to pull all the way through. So to the degree that we are talking about a special use permit that is supposed to insure that impacts are properly mitigated the question is are you providing enough of a turn-around and notice of who may be able to turn-around and who may not be and then as are you getting closer to areas where there are houses, for example, how are you mitigating the dust aside from the fact that you made it a condition that gravel would be provided in the driveways, that’s a separate question, that the art of turning around, and how fast you turn around and are you trying to beat the next person who’s pulling into the drive-thru. I’m not sure that all of this has been really fully thought through.”

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Don Batchelder - "Can I just, point of clarification? So, Craig, what I'm hearing is that you are proposing that the drive-thru window not be part of this special use permit but you would like the possibility, at some point, if it is deemed reasonable for the business, to come back and amend this special use permit?"

Craig Jackman - "Yes."

Don Batchelder - "Ok."

Lynn Padgett - "And that would seem cleaner especially if that amendment would then include all of the land regardless of who owns it where the special use would be occurring and I would say, you know I wouldn't ask our staff to have you alter your building permit so that you are omitting the window I think the window is fine to be built but that the use of such window, especially on multiple parcels, would be more appropriate if it came back as a request for a modification to a special use permit."

Portion of Transcript Intentionally Omitted

Don Batchelder - "Ok. Other questions? Ok, if not, is the Board prepared to make a motion?"

Lynn Padgett - "I can move that we approve the special use permit for the purpose of a commercial use being more specifically a coffee shop at the request of Porter & Chessie, LLC located at 12 Hotchkiss Ave. subject to the conditions that are in our staff recommendations. Mark, is there a second side or is that all of them that you have on there?"

Mark Castrodale - "That's it because I deleted that Number 4 that I had highlighted. I do have a quick fix if you have issues with the, the properties and the two properties. I think the applicant could submit an amended special use permit application and note both properties. And I think that would resolve that."

Lynn Padgett - "I was going to add a separate condition actually that the special use permit does not allow at this time for the operation of a drive-thru window and that should the applicant desire to operate a drive-thru window feature, they would need to come back and request an amendment to the special use permit and clearly designate all of the properties, parcels that would be included in that use."

Don Batchelder - "Ok. Did you get that, Hannah?"

Hannah Hollenbeck - "Got it."

Don Batchelder - "Is there a second to that?"

Ben Tisdell - "Yes."

Don Batchelder – “So we have a motion and a second. That motion will carry and this public hearing will be closed. Thank you very much.”

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MINUTES
OURAY COUNTY PLANNING COMMISSION
REGULAR MEETING

March 15, 2016 7:00 – 9:00 p.m. (appx)

Meeting held at the Land Use/Road & Bridge Offices, Conference Room
111 Mall Road, Ridgway, Colorado

Attending:

PC: Miller, Jackman, Williams, Carr, Baskfield, Currin, Peters
Staff: Castrodale, Sampson, Whitmore
Absent: Parker

Note: These minutes are not intended to be a *transcription* of the hearing. Comments are abbreviated and paraphrased. Every intention is made to capture the intent and meaning of the comments made during the hearing.

**I. Call to Order – Regular Meeting of the Ouray County Planning Commission
(8:00 P.M.)**

1. **Public Hearing** (7:00 PM): The purpose of the hearing is to review and make a recommendation to the Board of County Commissioners on an application by Del-Mont Consultants, Inc., authorized agent for the Law Family Trust and the Owners Association of Elk Meadows Estates, Inc. on a proposed final plat amendment of the Elk Meadows Estates Subdivision No. 2 - Lot 222, to correct an encroachment by the house on Lot 222 on to the greenbelt (open space).

A. Staff Presentation

- Castrodale explained the application
 - Lot 222 (owned by the Laws) and green belt Elk Meadows
 - Law Parcel is 1.066 acre, open space parcel is 7.18 acres
 - Castrodale showed a map of the location
 - Castrodale explained the history of the subdivision and the construction of the home.
 - Assessor lists home as being built in 1981
 - No permit on file
 - 2015 ILC discovered the encroachment
 - Application seeks to exchange land between the private parcel and the green belt
 - Explained why a boundary adjustment process wasn't used for this application
 - Explained a condition that will require a signature by a lien holder on the green belt

- When property lines are adjusted, the existing home will then comply with setbacks
- Castrodale read his conclusion from the staff report:

It is Staff's opinion that the proposed plat amendment of Elk Meadows Estates Subdivision No. 2 is in compliance with the standards and regulations found in Section 6.12 of the Ouray County Land Use Code. Therefore, Staff recommends the Planning Commission forward the subject application to the Board of County Commissioners, with a recommendation of approval, with the following conditions:

1. The Applicant shall make any revisions to the plat, as noted by the Staff and the Planning Commission and shall provide a new/revised plat to Staff to be included with the packet for the Board of County Commissioners.

2. The BOCC will not sign the application until all other required signatures are obtained, including signature by the open space lienholder (USDA).

3. The Applicant shall record the approved plat within 7-days from the final approval and signature from the Board of County Commissioners.

4. Any future construction on either affected lot shall require prior issuance of a building permit by the Land Use Department.

- Peters disclosed that he had worked with Del-Mont before and had done some work with Danica Gilbert, but that there is no conflict.
- Carr disclosed that he had also done work with Del-Mont, but did not have a conflict.
- Jackman also disclosed that he had known Bill for many years, but did not have a conflict.

B. Applicant Presentation

- Owner selling property
- Lien on open space was a result of getting a loan through the USDA to make infrastructure improvements.
- Property is under contract
- No survey done when purchased by Laws, and it was not disclosed to them.
- Does not see any issues with meeting the conditions, including the signature from the USDA.

C. Questions from Planning Commission

- Carr asked how it made it through title

- No survey done, original owner carried note
- Jackman asked if there had been any public comment
 - 3 responses to notice and they were all in favor of approving the application
- Peters asked about septic systems
 - No septic system, Elk Meadows is on sewer system
- Williams asked why condition #4 is on there, does it apply to all buildings
 - Safety plat note, all buildings would require a building permit
- Miller asked what the structure was in the green-belt
 - Water treatment plant
- Carr asked if they asked the applicant if they have building permit records
 - Staff has not asked them. Bill offered to send an email to the Law's to see if they happen to have them
- Baskfield asked what happens if the BOCC doesn't approve
 - Property owner wouldn't be able to sell
- Peters asked about the grammar in condition #4
 - It was decided to remove the word "prior"
 - Any future construction on either subject lot will require a building permit issued by the County
- Carr suggested waiving the fee

D. Public Comment (open at 7:20)

- James Cammack; owns adjacent lot. Is fine with the proposal, but asked if it was unreasonable to ask for a stipulation that the home is restricted to its current height
 - Jackman clarified that Cammack wanted the restriction to not allow the height to get higher. Jackman noted that the Planning Commission could discuss during their deliberations
- Close at 7:24

E. Planning Commission Deliberation

- Currin stated that he seemed that it was a reasonable request, but did not see the need to restrict height
- Whitmore noted that it would be inappropriate to spot zone the parcel to limit the building height
- Williams; applicants bear some responsibility, would not be in support of waiving the fee
 - A straw vote was taken and it was not the recommendation of the PC to waive the application fee
- Jackman asked if restricting the home on the portion that is in green space would still be spot-zoning

- Whitmore stated that she would need to research the subject further
 - It was clarified that the new lot lines are 25' from the existing home
 - Baskfield speculated that the building location was chosen because it was a spectacular setting. Asked if it would be a challenge to add a plat note, to deal with height
 - Bill noted that if approved, the home would no longer be on the green-belt property
 - Williams; noted that the PUD was from 1971, and also that the new subdivisions have building sites established. And given the legal opinion, she would not be in favor of adding a plat note for height
 - **MOTION:** Currin moved that the Planning Commission forward the subject application to the Board of County Commissioners with a recommendation of approval with the following conditions:
 1. The BOCC will not sign the application until all other required signatures are obtained, including signature by the open space lienholder (USDA).
 2. The Applicant shall record the approved plat within 7-days from the final approval and signature from the Board of County Commissioners.
 3. Any future construction on either affected lot shall require a building permit by the land use department.
 - **SECOND:** Miller seconded motion
 - **DISCUSSION:** No discussion was had
 - **VOTE:** A vote was taken and the motion passed unanimously.
2. **Public Hearing** (7:45 PM, or immediately following the previous item): The purpose of the hearing is to review and make a recommendation to the Board of County Commissioners on an application by Masters & Viner, P.C., authorized agent for the Elk Mountain Resort, LLC, on a proposed final plat amendment of the Elk Mountain Resort PUD – Phase 1A, for the purpose of the construction and use of a modified on-site waste water treatment system (OWTS) and to allow caretaker/maintenance use of the property while prohibiting any commercial use.
- Called to order at 7:34
 - Peters and Carr disclosed again that he had worked with Del-Mont, but did not have a conflict
 - Peters and Currin disclosed that they had worked with Mr. Masters before, but had no conflict
- A. **Staff Presentation**
- Castrodale introduced the topic
 - Showed a vicinity map of the area

- Discussed the history of the development
- Development is no longer active, and is currently in “maintenance mode”
- CDPHE has new standards that the existing sewage system will not meet those new standards
 - Elevation does play a role in that
- New full system (over 2,000 gallon) would cost 0.5 -1.5 million
- Sub 2000 gallon would then come under county review, and not state review, and is what the application seeks to accomplish
- Reviewed which structures would be served by the new system. 28 other buildings would no longer be served
- New system would be limited to 8 persons/day
- Commercial use suspended until a new full (2000 gal+) system was installed that did comply with the state requirements
- Castrodale finished with his conclusion:

Reasonable to support the owners desire to maintain and market the property

Cost to upgrade the system is probably not cost effective for a resort that has not operated in approximately 9 years

In Staff’s opinion the request complies with the Land Use Code section 6.12, and is not in conflict with the County Master Plan.

Therefore, Staff is recommending the Planning Commission forward the subject application to the Board of County Commissioners, with a recommendation of approval with the following conditions:

1. Final approval by the BOCC is subject to issuance of a revised septic permit, issued per the information and materials provided with the application.
2. The authority of the Elk Mountain Resort to conduct commercial and resort-conference center operations is suspended as long as the revised OWTS system remains in use.
3. Any application to re-open the resort facility and commence with the original approved commercial operation is conditioned upon the approval of an OWTS, or other wastewater treatment facility, in compliance with current Colorado Department of Public Health and Environment regulations for such use.
4. Use of the Elk Mountain Resort property and facilities is restricted to those operations necessary for maintenance of the infrastructure, and marketing of the facility to prospective purchasers.

5. All structures shall remain in a *winterized*, non-functioning status and shall not be serviced by the OWTS system, with the exception of the following:

- a. Main Lodge
- b. Valhalla Shooting Club
- c. Maintenance Shop
- d. Fresh Water Plant
- e. Housekeeping, Shipping/Receiving
- f. Porters Cottage
- g. Aspens Cottage

6. Final approval by the BOCC is subject to approval and recordation of an Amended Plat of the Elk Mountain Resort – Phase IA. The recorded plat shall include all necessary plat notes, including, but not necessarily limited to the following:

a. Ouray County has approved the construction of a modified on-site wastewater treatment system (OWTS), requiring issuance of a Septic Permit issued by the Ouray County Land Use Department, to serve the following structures only:

- i. Main Lodge
- ii. Valhalla Shooting Club
- iii. Maintenance Shop
- iv. Fresh Water Plant
- v. Housekeeping, Shipping/Receiving
- vi. Porters Cottage
- vii. Aspens Cottage

b. The authority of the Elk Mountain Resort to conduct commercial operations has been suspended by the Ouray County Board of County Commissioners as long as the revised OWTS system remains in use.

c. The use of the resort and the seven (7) structures served by the OWTS system shall not exceed an average monthly usage of eight (8) persons per day.

d. Any application to re-open the resort facility and commence with the original approved commercial operation is conditioned upon the approval of an OWTS, or other wastewater treatment facility, in compliance with current Colorado Department of Public Health and Environment regulations for such use.

B. Applicant Presentation

- Mr. Masters introduced Greg Tokasetak (spelling may not be accurate) as a representative to the owners of Elk Mountain Resort

- Has worked with owner since 1997
- Waste water facility was built to regulations in place at the time, and then the regulations changed
- Does not make economic sense when the property is not currently active
- Talked with Delmont and Land Use Staff during the process
- The reason to maintain septic for these buildings is because they have sprinklers
- They have care-takers using two buildings
- Two cottages that may be used by the owner or potential buyers
- It is not actively being marketed
- PUD conference center, only one in the county
 - Conditions are restrictive
 - Difficult to market
 - Had discussions about potentially amending LUC to operate as a facility other than Motel use
- Looking for resolution to allow continuance of property maintenance

C. Questions from Planning Commission

- Williams noted a redundancy in the Staff Reports
- Williams – how is the maximum use going to be monitored?
 - Larry (Engineer) explained how the new systems work
 - Ponds and liners are still in good condition
 - Determined the maximum capacity with mathematical equations, and a conservative number was 8 person/day as a year round average. You could have 100 people there for 2 or 3 days and then 2 people there for 2 or 3 months
 - Castrodale noted that they would not be monitoring on a daily basis – rather complaint enforcement
 - Larry noted that in order to satisfy OWTS permitting process a head count was required
 - Williams asked if the goal is to stop discharge, then would it be better to modify the condition to monitor discharge
 - Larry: currently monitor and could ask them to continue monitor, or request a log book
 - Jackman, would you still have a discharge point.
 - Larry – no
 - Any discharge from the pond would not be legal
 - Jackman – asked if it would be unreasonable to require notice if pumping is required?

- Masters – wouldn't be unreasonable, and it's very unlikely that discharge will occur
- Masters – so little water going through that the meter typically doesn't read
- Williams just wants to ensure that records are maintained
- Miller asked if care-takers stay on-site
 - i. Masters – one of the care takers may stay one or two nights a week to avoid snowmobiling out, but there are no regular overnight stays
- Asked if the one empty pond in the aerial photo was functional
 - Engineer stated that it was functional, but must not have had water on the day that the picture was taken
- Peters; ponds seem to have more capacity than you probably every need?
 - Larry; that is very likely
- Peters; Liners installed in 2000, would you estimate how much longer will last?
 - Guaranteed for 20 years, due to elevation they will probably last longer than 20 years, and will probably be good for another 10-15 years
- Baskfield; are you planning to use treatment system with existing ponds, but permitted for a smaller capacity, or excavate for a new system
 - Larry; there are several things allowed by the OWTS regulations. They will now install tank and then effluent would then go to the existing ponds
 - Masters; solids will collect in the tank and the ponds will serve the purpose of the leach field
 - Masters; plan calls for a 2,000 gallon tank, but they're difficult to locate
- Baskfield; are you maintaining the ponds for future use?
 - Larry; not likely utilization of the ponds will be allowed for a large system in the future because of State regulations
- Williams asked if they should add a condition that notification is required when pumping is required
 - Jackman asked to readdress this issue during planning commission deliberation
- Jackman asked the county attorney if the application complies with state law
 - Whitmore; yes

D. Public Comment (Opened at 8:03)

- No public comments were stated
- Public comment closed at 8:03

E. Planning Commission Deliberation

- Currin; comfortable that it's been engineered and is fine with it.
- Williams asked if condition about pumping should be added?
 - Castrodale said that would be reasonable.
 - Wanted to note that the building inspector has reviewed the application and is comfortable issuing a septic system for the design as proposed
- **MOTION:** Peters moved to forward the application to the BOCC with a recommendation of approval with the following conditions.
 1. Final approval by the BOCC is subject to issuance of a revised septic permit, issued per the information and materials provided with the application.
 2. The authority of the Elk Mountain Resort to conduct commercial and resort-conference center operations is suspended as long as the revised OWTS system remains in use.
 3. Any application to re-open the resort facility and commence with the original approved commercial operation is conditioned upon the approval of an OWTS, or other wastewater treatment facility, in compliance with current Colorado Department of Public Health and Environment regulations for such use.
 4. Use of the Elk Mountain Resort property and facilities is restricted to those operations necessary for maintenance of the infrastructure, and marketing of the facility to prospective purchasers.
 5. All structures shall remain in a *winterized*, non-functioning status and shall not be serviced by the OWTS system, with the exception of the following:
 - a. Main Lodge
 - b. Valhalla Shooting Club
 - c. Maintenance Shop
 - d. Fresh Water Plant
 - e. Housekeeping, Shipping/Receiving
 - f. Porters Cottage
 - g. Aspens Cottage
 6. Final approval by the BOCC is subject to approval and recordation of an Amended Plat of the Elk Mountain Resort – Phase IA. The recorded plat shall include all necessary plat notes, including, but not necessarily limited to the following:

a. Ouray County has approved the construction of a modified on-site wastewater treatment system (OWTS), requiring issuance of a Septic Permit issued by the Ouray County Land Use Department, to serve the following structures only:

- i. Main Lodge
- ii. Valhalla Shooting Club
- iii. Maintenance Shop
- iv. Fresh Water Plant
- v. Housekeeping, Shipping/Receiving
- vi. Porters Cottage
- vii. Aspens Cottage

b. The authority of the Elk Mountain Resort to conduct commercial operations has been suspended by the Ouray County Board of County Commissioners as long as the revised OWTS system remains in use.

c. The use of the resort and the seven (7) structures served by the OWTS system shall not exceed an average monthly usage of eight (8) persons per day.

d. Any application to re-open the resort facility and commence with the original approved commercial operation is conditioned upon the approval of an OWTS, or other wastewater treatment facility, in compliance with current Colorado Department of Public Health and Environment regulations for such use.

7. The owner notify the county for any need for pumping the OWTS.

- **SECOND:** Williams seconded motion
- **DISCUSSION:**
 - The Planning Commission discussed the condition regarding discharge
 - Whitmore noted that the application is not to further regulate OWTS, but rather to amend a plat in a fashion that will allow the applicant to install an OWTS system that will comply with the State and County OWTS regulations.

Could add plat note that the applicant shall follow the OWTS regulations

- The Planning Commission discussed the condition further, and it was decided to make a friendly amendment to strike condition #7

- **VOTE:** A vote was taken and the motion passed unanimously

3. Request for approval of minutes; 3/1/2015

- **MOTION:** Williams moved to approve
- **SECOND:** Miller seconded motion
- **DISCUSSION:** None
- **VOTE:** A vote was taken and the motion passed unanimously
 - Currin; abstained but questioned if they needed 4 members
 - Whitmore; clarified that fewer members could approve
 - The Planning Commission discussed the meeting on March 15, 2016

4. New business

- Castrodale; Tamara is working up a cost estimate of implementing the new point system for wildfire
- Next meeting will be a workshop on telecomm – April 5th 6-8pm
- Williams asked about public comment regarding Ham radios
 - Castrodale will verify that those comments were addressed

5. Adjourn Regular Meeting

- **MOTION:** Peters moved to adjourn
- **SECOND:** Carr seconded motion
- **DISCUSSION:** None
- **VOTE:** A vote was taken and the motion passed unanimously

Submitted By:

Approved By:

Bryan Sampson
Associate Planner

Sheelagh Williams
Temporary Chair