

RESOLUTION NO. 2008-037

**A RESOLUTION OF THE
BOARD OF COUNTY COMMISSIONERS OF OURAY COUNTY, COLORADO
ADOPTING REVISIONS TO SECTION 5 OF THE OURAY COUNTY LAND USE CODE ENTITLED
“USES ALLOWED BY SPECIAL USE PERMIT”**

WHEREAS, after public notice and hearing held on February 19, 2008, the Ouray County Planning Commission returned its recommendation to the Board of County Commissioners of Ouray County, Colorado (“Board”) for certain revisions to Section 5 to the Ouray County Land Use Code (“Code”) entitled “Uses Allowed by Special Use Permit”; and

WHEREAS, the Board received, reviewed and considered the recommendation of the Planning Commission and held a public hearing on April 28, 2008 regarding the revisions to Section 5 to the Code; which public hearing was continued to June 2, 2008 and June 30, 2008; and

WHEREAS, the Board is now authorized by the provisions of C.R.S. §§ 29-20-101, *et seq*; 29-20-201, *et seq*. and 30-28-101, *et seq*. to adopt these revisions to Section 5; and

WHEREAS, the Board heard public comment regarding the proposed revisions to Section 5 and has incorporated such comments into these revisions; and

WHEREAS, the Board finds that the proposed revisions to Section 5 of the Code are consistent with the stated purposes and objectives of the Code and the Ouray County Master Plan.

NOW, THEREFORE, BE IT RESOLVED, that Section 5, which is attached hereto and incorporated herein by this reference, is adopted as proposed and shall be incorporated as a part of the Code, and shall become effective as of _____, 2008.

APPROVED AND ADOPTED THIS 30th DAY OF JUNE, 2008.

BOARD OF COUNTY COMMISSIONERS
OF OURAY COUNTY, COLORADO

Attest:

K. Keith Meinert, Chair

Don Batchelder, Vice Chair

Michelle Nauer, Clerk and Recorder
By: Linda Munson-Haley, Deputy Clerk of the Board

Heidi M. Albritton, Commissioner Member

SECTION 5
USES ALLOWED BY SPECIAL USE PERMIT

5.1 INTENT

- A. To provide for uses allowed by special use permit as designated under Section 3, Zoning Provisions - Zones. Such uses may be allowed only by approval of the Board of County Commissioners of Ouray County, Colorado (“County Commissioners”) whose determination shall be based on the purposes, standards and requirements as set forth under this Section. In granting approval for a special use, the County Commissioners may impose additional conditions, which comply with the purposes and intent of this Code.

5.2 PERMIT PROCEDURES

- A. A Special Use Permit application, together with the information described below and the required fees shall be submitted to the Ouray County Land Use Department at least forty-five (45) days prior to the County Commissioners, Planning Commission or Joint Planning Board meeting at which the request will be initially considered.
- B. In addition to the provisions described under Section 5.3 the following information shall be submitted:
- (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.
 - (2) Signature of owner(s) of all property, authorizing application and acceptable evidence of ownership. If land included in an application is leased to an Applicant, a copy of the lease shall be provided, however, the Applicant may redact all proprietary or other confidential information.
 - (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.
 - (4) A detailed explanation of the proposed operation or use.
- C. The County Commissioners, in granting approval, may condition the operation in order to ensure compatibility with surrounding uses and to ensure that impacts are properly mitigated. The County Commissioners may place conditions on the length of time a use may be operated and may require periodic review.

- D. The Applicant/Operator must, at all times, be in compliance with all applicable state and federal laws and regulations. In case of non-compliance with such laws or regulations, the County Commissioners may suspend or revoke the permit, after notice and the Applicant is given an opportunity to be heard.
- E. If land included in an approved application or use is leased to the Applicant, the Applicant or his successors shall notify the Land Use Department of any changes in the lease that may occur following approval by the County Commissioners. The permit may be suspended or revoked in case of non-compliance with such lease.
- F. If the County Commissioners shall determine, on the basis of information submitted and available to it, that a proposed operation will have an impact on, or will necessitate, improvements to facilities or services provided by the County, the school districts or other governmental entities within the County, the County Commissioners shall, to the greatest extent possible and as a condition of Special Use Permit approval, require that the Applicant take steps to mitigate the impact by payment of impact fees or provision of in-kind contributions. The amount and purpose of any impact fee shall be determined by the County Commissioners based upon a finding that there is an essential nexus between the payment or contribution and a legitimate local government interest and the payment or contribution is roughly proportional in nature, timing and extent to the impact of the proposed use. Failure to fund such impacts by the Applicant may be grounds for denial of the Special Use Permit. The County Commissioners may waive any impact fee for a particular permit if the Applicant shows that the impacts associated with the use will not exceed the anticipated impacts for a use by right on the same property. The County Commissioners may require that the Applicant obtain a traffic analysis, completed by a professional engineer, illustrating the expected traffic by type and volume for the anticipated use; the County Commissioners may require that other appropriate studies or analyses be obtained by the applicant, depending upon the type of use proposed. Any impact fee assessed for a Special Use Permit may be pro-rated by the County Commissioners to address the seasonal impacts associated with a particular use.
- G. The County Commissioners may determine that an application for a Special Use Permit should be referred to an outside agency for review when particular, special circumstances are present that require more detailed analyses. No referral to an outside agency shall result in a delay of the normal processing of a Special Use Permit.

5.3 REVIEW REQUIREMENTS

Satisfactory evidence shall be supplied by the Applicant to comply with all applicable requirements set forth below. The following regulations shall apply to special uses allowed by permit only, as indicated.

- A. All special uses allowed in the various zones under Section 3 of this Code, shall be subject to the following provisions:

- (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 such use is located. At the discretion of the County Commissioners, 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.
- (2) Evidence that legal access; potable water, sewage disposal and all other utilities necessary to serve the proposed use are available.
- (3) Evidence that the requested use will comply with the provisions of the Visual Impact Regulations found in Section 9 of this Code.
- (4) Evidence that the requested use will not unreasonably impact wildlife or significant wildlife habitat.
- (5) Evidence that the use will not alter, restrict, inhibit or interfere with historic irrigation practices, headgates, ditches and ditch rights-of-way.
- (6) Evidence that the use is not located within any area subject to geohazards, including, but not limited to rockfall areas, avalanches, landslide, potentially unstable slopes, slopes greater than 30 percent, alluvial fans, talus slopes, shale, faults, expansive soils or ground subsidence. If the proposed use is located within areas subject to the effects of geological hazards, the Applicant shall present satisfactory evidence that such hazards will be avoided. If avoidance is not possible, evidence shall be provided that hazards will be mitigated. The County may require qualified professional geologic or engineering certification that the proposed land use can be located or developed in a safe manner.
- (7) Evidence that the property has no chemical or other contamination. If the property is contaminated, a mitigation plan must be presented that would satisfactorily resolve the contamination.
- (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.
- (9) Evidence that the request would not have a material adverse effect on the surrounding area.
- (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.
- (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.

- (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.
 - (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
- B. Sand and gravel, oil and gas, commercial logging, mineral operations, mining and mineral extraction and processing operations, if allowed, shall be subject to the following additional conditions or requirements:
- (1) Evidence that all applicable state and federal permits have been obtained prior to commencement of the proposed use.
 - (2) Special Use Permits shall be granted for the uses listed above only if the Applicant/Operator is in full compliance with all rehabilitation and reclamation requirements. The permit may be revoked or suspended if, at any time, Applicant is in non-compliance with such state or federal permits. Where no state or federal agency requires a rehabilitation or reclamation plan, the County may require such a plan. Said plan shall depict, in writing and graphically, the proposed methods for restoring any disturbed areas, to include the extent and type of revegetation proposed. In addition, in the case of a proposed commercial logging operation, the County may require the Applicant/Operator to submit a site-specific forest management plan which shall address such matters as the size of trees to be taken, the locations of the proposed operation, time of year of the operation, clean-up, reforestation and related items. The County, in its discretion, may obtain independent review of the site-specific forest management plan, with the costs of such review being borne by the Applicant/Operator.
 - (3) Evidence that vehicle traffic to and from such use will not create undue hazards or nuisance to areas elsewhere in the County, nor shall it unduly damage public roads. If it is found that hazards, nuisances or damage to public roads will occur from the proposed use, a mitigation plan shall be submitted.
- C. Cemeteries, schools, bed and breakfast operations, churches, commercial equestrian activities, commercial outdoor recreation, livery or horse rental operations, commercial uses, commercial camping, and guest ranches shall be subject to the following additional provisions or conditions:
- (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.
 - (2) The proposed uses will be properly maintained.

- (3) Vehicle traffic to and from such use will not create hazards or nuisance to areas elsewhere in the County.
- (4) Sufficient off-street parking, as required in Section 7.2(M) of this Code shall be provided to accommodate the expected volume of users of the proposed facilities. Bed and breakfast operations shall provide parking to the same extent required for hotels and motels under this Code.
- (5) For Guest Ranches (See Section 22 for additional criteria for a Guest Ranch):
 - (a) Provide the hours and months of operation.
 - (b) Identify any traffic impacts, such as noise and dust, and any abatement measures necessary to mitigate impacts from traffic.
 - (c) Identify any ancillary facilities, such as trails, and proof of permission to use off-site facilities, if necessary.
 - (d) Specify the maximum numbers of guests on the site at any time.
 - (e) Identify the portion of the site to be used for operations.
 - (f) Provide the location and design of all proposed signs.
 - (g) Provide any other nuisance abatement measures as may be required by the County.
- (6) For Cemeteries:
 - (a) A business plan shall be submitted to show how the Applicant will ensure the proper operations of the Cemetery in perpetuity.
 - (b) Applicant shall supply sufficient information to show how the applicant will remediate and rehabilitate the property, including relocation of any remains, if Applicant ceases operation of the facility.
 - (c) Applicant shall submit sufficient documentation to show the mechanisms and operational methods that Applicant will utilize to contain all potential contamination resulting from the use of the property as a cemetery and to prevent contamination of groundwater in or near the site.

5.4 PUBLIC NOTICE AND HEARING

- A. After the receipt of a complete application for a Special Use Permit by the Land Use Department, a Special Use 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 will review the request at the next Joint Planning Board meeting. The Planning Commission or Joint Planning Board shall review the application and shall approve,

approve with conditions or deny the application if it does not meet the requirements of the Ouray County Land Use Code and the action shall be in the form of a motion as noted in the minutes. If the recommendation is approval with conditions or modifications, the conditions or modifications shall be stated in clear and concise terms in the motion. Land Use Department Staff shall forward such recommendation to the County Commissioners. If the Planning Commission or the Joint Planning Board is unable to make a recommendation on the Special Use Permit application within 45 days of the receipt of a complete submittal, the application shall be forwarded to the County Commissioners for a public hearing.

- B. If the request is located within the Urban Growth Management Area or the 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 Land Use Department within thirty (30) days of transmittal of the application to the municipality.
- C. Before granting a Special Use Permit, the County Commissioners shall hold a public hearing on the matter. Notice of such hearing shall be published at the expense of the Applicant, in a newspaper of general circulation within Ouray County at least fourteen (14) days prior to the hearing date. In addition, written notice of the hearing shall be mailed at least fourteen (14) days prior to the hearing date to the Applicant. The Applicant shall send written notification to all owners holding a fee simple interest in property abutting upon or directly across a road or street from the proposed use (this information is available at the Ouray County Assessor's Office) at least fourteen (14) calendar days prior to the date of such hearing. The notice shall be given in a form approved by the Land Use Department. No less than seven (7) days prior to the hearing, the Applicant shall provide evidence to the Land Use Department that such notice has been properly sent by providing certificates of mailing from the U.S. Postal Service. On-site notice of any pending Special Use Permit application, in a form approved by the Land Use Department, shall be posted on the property where the use is proposed no later than ten (10) days after a complete application has been received by the Land Use Department. 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 Land Use Department staff.
- D. At the public hearing, the County Commissioners shall review the Special Use Permit application and any supporting materials or referrals from the Planning Commission or the Joint Planning Board, in accordance with this Section. The County Commissioners shall, by resolution, approve, approve with conditions or modifications, or deny the application.

5.5 FEEES FOR SPECIAL USE APPLICATIONS

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

5.6 LIMITATIONS AND TERM OF SPECIAL USE PERMIT

- A. After a Special Use Permit has been issued, it shall be effective for a term of two years and shall be subject to bi-annual 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 bi-annual 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.
- B. In the event that the Applicant shall fail to contact the Land Use Department for renewal of a Special Use Permit within sixty (60) days of the expiration of the permit, such permit shall be deemed revoked and Applicant shall cease all operations under the permit. Applicant shall be allowed to re-apply for the permit according to the then existing Land Use Code requirements.
- C. If multiple Special Use Permits have been issued for the same property, the uses permitted under the existing permits shall be considered in reviewing the new permit application. If the existing uses are not compatible with the new permit, if it is shown that the cumulative impacts of all Special Use Permits cannot or will not be mitigated or if it is shown that the cumulative impacts of all Special Use Permits would not be in compliance with the Ouray County Master Plan, the application may be denied or appropriate conditions may be required on the new permit to address or mitigate any such incompatibility or cumulative impacts.