

Section 17

EXCEPTIONS AND EXEMPTIONS

17.1 EXCEPTIONS:

The Board of County Commissioners may grant exceptions to this Code, as the Code relates to the division of land. An application for an exception shall be made by a verified petition of the subdivider, stating fully the grounds of the application and the facts relied upon by the petitioner. In the case of an application for exceptions which relates to a Planned Unit Development, the petition shall be filed with the preliminary development plan.

17.2 EXEMPTION FROM DEFINITION OF SUBDIVISION:

In addition to the exemptions from the definition of subdivision set forth in Section 22 of this Code, the Board of County Commissioners may, by resolution, exempt from this definition any division of land if the Board of County Commissioners determines that said division is not within the purpose of this Code. Application for such exemption shall be made by a verified petition of the subdivider, stating fully the grounds of the application and the facts relied upon by the petitioner.

17.3 PROCEDURE:

The Board of County Commissioners, unless otherwise required by this Code, may request a recommendation regarding an exception or exemption from either: 1) the appropriate Joint Planning Board in the case of an application for an exception or exemption located within an Urban Growth Management Area or an Area of Influence or 2) the County Planning Commission, as provided by the Ouray County Land Use Code. In addition to the application, information and fees, the Applicant shall also submit completed notification postcards obtained from the County Land Use Office. The postcards will contain all pertinent information and will be stamped and addressed to all adjacent property owners.

In the event a recommendation is requested and the appropriate Joint Planning Board or County Planning Commission fails to make a recommendation on the application as soon as possible within sixty (60) days after such referral, the Board of County Commissioners may, however, proceed to make a finding thereon. The Joint Planning Board or Planning Commission may recommend approval or the Board of County Commissioners may grant an exception or exemption only upon a finding of all of the facts under either set of criteria contained in subparagraphs A and B herein below as follows:

- A. The applicant/landowner has conveyed real property to the County, subsequent to the effective date of the resolution adopting this provision, for easements, public rights-of-way, or for other public projects or public purposes,

which results in a division of the said property not occurring as a result of any legal proceeding including, but not limited to, an eminent domain action or inverse condemnation. The granting of the request will not increase the density, that is otherwise allowed by the underlying zoning, by more than one additional unit of density.

or;

- B.
1. There are special and unusual circumstances or conditions affecting the property and;
 2. The exception or exemption improves the condition of Ouray County as envisioned in the Ouray County Master Plan or, at a minimum, has no net negative impact and;
 3. The granting of the exception or exemption will not be detrimental to the public welfare or demonstrably injurious to other property rights and;
 4. Granting the request will be consistent with and secure the objectives of this Code and shall be in accordance with any applicable intergovernmental agreements affecting land use or development and;
 5. Granting the request will not increase the density otherwise allowable in the underlying zone, unless the applicant provides proof satisfactory to the full Board that: 1) this requirement is impractical for the particular request and; 2) the granting of the request will provide substantial benefits for the general public, in which case this requirement must be waived with a unanimous vote of the Board members present and eligible to vote. The granting of the request will not increase the density, that is otherwise allowed by the underlying zoning, by more than one additional unit of density and;
 6. In the case of an exception or exemption which would create more than one additional lot, all of the Site Requirements and Site Development Standards contained in Section 6.9 of this Code shall be met, unless otherwise modified by the Board of County Commissioners pursuant to a Development Agreement. Such exception or exemption shall be governed by a binding Development Agreement approved by the Board pursuant to Section 25 of this Code and;
 7. Any new parcel created shall not create nonconformity or increase the degree of nonconformity of an existing structure as it relates to setback requirements and;
 8. All proposals for the development of parcels created shall conform to other applicable provisions of this Code including, but not limited to, access, except as specifically allowed by this Section and;

9. Proposed parcel boundaries and development shall be suitably located and sized with respect to the physical characteristics of the land, the character of the neighborhood, and the County's goals of preserving agricultural and forestry lands and;

10. Exceptions and exemptions shall not be approved solely for convenience of construction or the creation of a new lot or parcel for development or resale purposes.

For the purposes of this Section 17, the Joint Planning Board or County Planning Commission's failure either to make a recommendation or to recommend approval shall constitute a recommendation for denial. The Board of County Commission's failure to grant or approve the request for an exception or exemption shall be deemed to constitute denial of the request.