

SECTION 5

USES ALLOWED BY SPECIAL USE PERMIT

5.1 **INTENT:**

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 BOCC, 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 BOCC may impose additional conditions, which comply with the purposes and intent of this Code.

5.2 **SUBMITTAL REQUIREMENTS:**

A completed Special Use Permit application form, together with any applicable information as described below, and the required fees, shall be submitted to the County Land Use Department at the time of application submittal:

- A. Applicants should review the definition for the proposed use in Section 2, Definitions, and demonstrate that the requested Special Use Permit meets the definition criteria.
- B. Existing conditions map.
- C. A detailed site plan which includes, but is not limited to, lot lines, easements, road access, all proposed and existing driveways, parking areas and structures, all areas of significant vegetation and all ditches, ponds and waterways. Signature of owner(s) of all property, authorizing application and proof of ownership satisfactory to the County, and if land included in an application is leased to an Applicant, a current copy of the lease shall be provided. *(Applicant may redact all proprietary or other confidential information.)*
- D. 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.
- E. A detailed written narrative explaining the proposed operation or use that includes, at a minimum, statements addressing the following issues or concerns:
 - (1) Description of proposed use.
 - (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.)*

(5.2E)

- (3) The proposed use has legal access; potable water, sewage disposal and all other utilities necessary to serve the proposed use.
- (4) The proposed use will comply, if applicable, with the provisions of the Visual Impact Regulations found in Section 9 of this Code.
- (5) The proposed use will not unreasonably impact wildlife or significant wildlife habitat.
- (6) The proposed use will not alter, restrict, inhibit or interfere with historic irrigation practices, headgates, ditches and ditch rights-of-way.
- (7) The proposed use is not located within any area subject to identified geohazards, including, but not limited to rockfall areas, avalanches, landslide, potentially unstable slopes, slopes greater than 30 percent, alluvial fans, colluvial slopes, 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.)*
- (8) The proposed use/property has no known chemical or other contamination. If the property is contaminated, a mitigation plan must be presented that would satisfactorily resolve the contamination.
- (9) The proposed use is compatible with the community character and surrounding land uses within the area for which the request is being proposed.
- (10) Statements addressing any potential material adverse effect on the surrounding area.
- (11) Statements addressing any possible impacts on existing infrastructure beyond what would be created by a use by right. *(If potential impacts are identified, evidence shall be provided that such impacts will be mitigated as provided by this Section.)*
- (12) If the property/use is located within a Planned Unit Development, current letter from the Homeowner's Association approving the proposed use.
- (13) If located within a PUD, proof of notification that the HOA has been notified of an application and a statement that the use is not otherwise prohibited is required.
- (14) Weed mitigation and/or revegetation plan shall be required if applicable. *(May require meeting and on-site review by County Weed Manager.)*

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- (15) Additional information may be required as deemed appropriate by Staff for the specific application.

5.3 ADDITIONAL SUBMITTAL INFORMATION AND REQUIREMENTS:

In addition to the general submittal information required by Section 5.2 above, information specific to the special use permit being requested shall be provided by the Applicant or Authorized Agent as listed below. Special use permits for these activities may be permitted only if they are listed as a potential special use in the zone, or are requested pursuant to Section 3.4.

A. Sand and Gravel, Oil and Gas, Commercial Logging, and Mineral Extraction and Processing Operations:

- (1) Evidence that all applicable state and federal permits have been obtained, prior to commencement of the proposed use.
- (2) Evidence that vehicle traffic to and from such use will not create undue hazards or nuisance, 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.
- (3) 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.

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B. 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, Historical Museums, and Wildlife Rehabilitation Facilities

- (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.
- (4) Sufficient off-street parking, as required in Section 7 of this Code shall be provided to accommodate the expected volume of users of the proposed facilities.

C. Cemeteries

Applicant shall also provide the following additional information:

- (1) A business plan detailing how the Applicant will ensure the proper operations and maintenance of the Cemetery in perpetuity.
- (2) 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.
- (3) 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.

D. Guest Ranches

- (1) Proposed hours and months of operation.
- (2) Identification of any potential/possible traffic impacts, such as noise and dust, and any abatement measures necessary to mitigate impacts from traffic.
- (3) Identification of any ancillary facilities, such as trails, and proof of permission to use off-site facilities, if applicable.
- (4) Maximum numbers of guests on the site at any time.
- (5) Identify the portion of the site to be used for operations.(attach site plan)
- (6) Location and design of all proposed signs. (attach graphics or photo-sims)

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- (7) Additional information regarding any other nuisance abatement measures as may be required by the County.

E. Wildlife Rehabilitation Facilities

- (1) A detailed *Wildlife Rehabilitation Facility Management Plan* shall be submitted and approved as part of the Special Use Permit application and shall be kept on permanent file at the Land Use Office. Plan shall include and address, but not necessarily be limited to, the following issues:
 - a) Safety – Plan shall address methods, procedures and design considerations to be undertaken by the facility to ensure safe operation at all times.
 - b) Animal Welfare – Plan shall address in detail, the facility’s ability to provide proper food, water, shelter, medical care and protection from predators, to all animals under its care.
 - c) Facilities – Plan shall address how the facility will conduct ongoing maintenance to all structures, animal enclosures and other associated facilities.
 - d) Traffic – Plan shall address vehicle traffic and demonstrate that day-to-day traffic will not create a nuisance to neighboring properties or areas elsewhere in the County.
 - e) Parking – Plan shall address off-street parking as required by Section 7.2 (K) of this Code, or as otherwise required by the Road & Bridge Superintendent. Minimally, plan shall provide adequate off-street parking to accommodate the expected volume of employees, volunteers and visitors of the proposed facility.
- (2) Facility shall comply, at all times, with all applicable State and Federal requirements and shall provide County with proof of any required license and associated documentation.
- (3) No Special Use Permit shall be issued without proof of proper access permits by the Colorado Department of Transportation or other State or Federal entity if required.
- (4) Any proposed change to natural features on the property, including but not limited to site grading, drainage and removal of trees/shrubs shall be clearly detailed on a site plan and submitted with the Special Use Permit Application.

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- (5) Applications for Wildlife Rehabilitation Facilities shall include proof of all current licenses as required by the Colorado Division of Wildlife and such licenses shall be maintained at all times during the Special Use Permit. Special Use Permit application materials shall also be referred to the Colorado Division of Wildlife for review and comment.
- (6) Applicant will be required to supply evidence of adequate liability insurance to cover the proposed operations of the Wildlife Rehabilitation Facility. Applicant shall be required to maintain such insurance during the term of the Special Use Permit

5.4 STATE/FEDERAL COMPLIANCE:

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 BOCC may suspend or revoke the permit, after giving notice to the Applicant/Operator and giving the Applicant/Operator an opportunity to be heard.

5.5 LEASED LAND:

If land included in an approved application or use is leased to the Applicant/Operator, the Applicant/Operator or his successors shall notify the Land Use Department of any changes in the lease that may occur following approval by the BOCC. The permit may be suspended or revoked in case of non-compliance with such lease.

5.6 IMPACT FEES:

- A. If the BOCC 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 BOCC may, 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.
- B. The amount and purpose of any impact fee shall be determined by the BOCC 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 BOCC 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.

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- C. The BOCC 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 BOCC 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 BOCC to address the seasonal impacts associated with a particular use.

5.7 OUTSIDE AGENCY REVIEW:

The BOCC 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.

5.8 PUBLIC NOTICE AND HEARING:

- A. After the receipt of a complete application for a Special Use Permit by the Land Use Department, Staff shall complete a report including review and recommendation regarding the proposed use. When the report has been completed by Staff, the Special Use Permit application shall be considered in a public hearing at the next available Planning Commission regular meeting or, if the request is located within an UGMA or AOI, the appropriate Joint Planning Board shall review the request at the next available meeting date. Notice of such public 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 (not including the date of the hearing). 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 this 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. Staff shall forward such recommendation to the BOCC. If the Planning Commission or the Joint Planning Board is unable to make a recommendation on the Special Use Permit application within 60 days of the receipt of a complete submittal, the application shall be forwarded to the BOCC for consideration in public hearing.
- B. If the request is located within the UGMA or the AOI, the request shall also be submitted to the adjacent municipality for review and comment. Notice to the adjacent municipality shall state that any comments provided to the Land Use Department are due within thirty (30) days of transmittal of the application to the municipality.

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- C. Before granting a Special Use Permit, amendment, or renewal, the BOCC 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, adjacent, adjoining upon or directly across a road or street from the proposed use (this information is available at the 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 at least 14-days prior to the date of the public hearing before the BOCC. Such notice shall be maintained on the property by the Applicant until final action on the application has been made. 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.

At the public hearing, the BOCC 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 BOCC shall, by resolution, approve, approve with conditions or modifications, or deny the application.

5.9 FEES 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.

5.10 MULTIPLE SPECIAL USE PERMITS:

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. The application may be denied or appropriate conditions may be required on the proposed use to address or mitigate any incompatibility or cumulative impacts if:

- A. The existing uses are not compatible with the new/proposed use.
- B. Cumulative impacts of all Special Use Permits cannot or will not be mitigated.
- C. Cumulative impacts of all Special Use Permits would not be in compliance with the Ouray County Master Plan.

5.11 TERMS, CONDITIONS AND RENEWAL OF SPECIAL USE PERMITS:

- A. Special Use Permits may include terms and conditions to address concerns regarding the health, safety, and welfare of the citizens of the County. The BOCC may place conditions on the Special Use Permit in order to ensure compatibility with surrounding uses and to ensure that impacts are properly mitigated. The BOCC may specify the term of the Special Use Permit and may require periodic review.
- B. The BOCC may provide any term of years for the Special Use Permit, may provide for a limitation on renewals, or may otherwise establish a termination date for a Special Use Permit, but if no term is provided in the BOCC resolution approving the application, then the Special Use Permit shall be approved for two years from the date of the BOCC resolution.
- C. Not less than sixty (60) days prior to the expiration of a Special Use Permit, the holder of the permit may request an extension of the permit for another term. An application to extend the term of a Special Use Permit shall provide information demonstrating compliance with the terms and conditions of the permit and requirements for the activity. If staff finds that all terms, conditions and requirements have been met, then staff shall extend the Special Use Permit for a two year term. If staff finds that any terms, conditions or requirements have not been met, then the term of the Special Use Permit shall not be extended except upon review and approval by the BOCC after a public hearing. Any Special Use Permit for which an extension has not been granted by the land use staff or by the BOCC shall terminate automatically at the end of the term of years provided in the approving resolution or at the end of two years where no term of years has been specified. A temporary extension may be granted by the land use staff pending review and decision by the BOCC as to an extension.
- D. If the Applicant fails at any time during the term of the Special Use Permit to meet the requirements and conditions established for the permit as set forth in the resolution approving the permit, the BOCC, subject to review and public hearing, may revoke any approved Special Use Permit.

5.12 SPECIAL USE PERMIT – AMENDMENT:

- A. Any Applicant may apply to the Land Use Department for an amendment to an approved Special Use Permit.
- B. Amendments to approved Special Use Permits shall comply with all provisions of this Code.
- C. Applications for Special Use Permit amendments shall include:
 - (1) A completed application form.
 - (2) Any applicable fee as listed in the approved Land Use Fee Schedule.

- (3) A detailed narrative explaining the purpose and details of the amendment.
- (4) Current and proposed (if applicable) detailed site plan.
- D. The same process, public notice, and hearing requirements shall apply to amendments to Special Use Permits.
- E. Process, public notice, and hearing(s) for proposed amendments to a Special Use Permit shall be as described in Section 5.8.

5.13 MARIJUANA USES – SPECIAL USE PERMIT NOT REQUIRED

Marijuana-related businesses are regulated by Ordinance No. 2017-001 (ie. Marijuana Ordinance) as may be updated or revised by the BOCC. As such, uses permitted and licensed through the Marijuana Ordinance do not require a Special Use Permit.