

(Adopted by the County Commissioners on November 10, 2003)

SECTION 17
VESTED PROPERTY RIGHTS

17.1 PURPOSE

The purpose of this section is to provide the procedures necessary to implement the provisions of Article 68 of Title 24, C.R.S., as amended. It is the County's intent to provide procedures and standards for review and approval of a site specific development plan for the purpose of vesting property rights in real property as described herein.

17.2 VESTED PROPERTY RIGHT – DURATION – TERMINATION – EFFECT

A property right which has been vested as provided for in this section shall remain vested for a period of three years. This vesting period shall not be extended by any amendments to a Site Specific Development Plan unless expressly authorized by the Board of County Commissioners. Such an extension may only be granted upon a finding by the Board of County Commissioners of good and sufficient cause and the applicant shall bear the burden of demonstrating the existence of good and sufficient cause for an extension.

- A.** A Vested Property Right, once established as provided for in this section, precludes any zoning or land use action concerning the subject property which would prevent the landowner from undertaking and completing the development and use of said property under the terms and conditions of the Site Specific Development Plan, except:
- (1)** With the consent of the affected landowner, or
 - (2)** Upon the discovery of natural or man-made hazards could not reasonably have been discovered at the time of Site Specific Development Plan approval, and which hazards, if uncorrected, would pose a threat to the public health, safety and welfare.
 - (3)** Upon the failure to comply with the terms and conditions of a Development Agreement and sketch plan approved in accordance with Section 17.6 of this Code.
 - (4)** Upon the failure to comply with the terms and conditions of a Final Development Plan and Final Plat or combined Preliminary/Final Development Plan and Plat.

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- B. Significant changes or amendments to a Site Specific Development Plan, including any amendment of a PUD Final Development Plan that is not consistent with the approved Preliminary Development Plan, shall render the terms and conditions of the original Site Specific Development Plan null and void, and vested property rights shall be forfeited. The County shall determine whether any proposed change is significant for purposes of this section, in accordance with all applicable provisions of the Code.
- C. Following approval or conditional approval of a Site Specific Development Plan, as provided herein, nothing in this section shall exempt such a Site Specific Development Plan from subsequent reviews and approvals by the County to ensure compliance with the terms and conditions of the original approval.

17.3 NOTICE AND HEARING

No Site Specific Development Plan shall be approved until after a public hearing, preceded by written notice of such hearing. Such notice may, at the County's option, be combined with any notice that may be required for the Special Use Permit, PUD Final Development Plan, or with other required notice. Interested persons shall have an opportunity to be heard at the hearings.

17.4 APPROVAL – EFFECTIVE DATE – AMENDMENTS

A Site Specific Development Plan shall be deemed approved upon the effective date of the Board of County Commissioners' final or conditional approval action. In the event amendments to a Site Specific Development Plan that are found by the County to be not significant under Section 17.3B herein, are proposed and approved, the effective date of such amendments, for purposes of duration of a Vested Property Right, shall be the date of the approval of the original Site Specific Development Plan, unless the Board specifically finds to the contrary, upon good and sufficient cause shown, and incorporates such finding in its approval of the amendment. The applicant shall bear the burden of demonstrating that good and sufficient cause exists for such a finding.

17.5 DEVELOPMENT AGREEMENTS

A. PURPOSE AND INTENT

The purpose and intent of this section is to provide an option to reach a creative negotiated contractual agreement regarding the development of private land. This process allows more flexibility in the regulatory process in a creative, alternative and expedited way.

The intent of the County in providing this option is to further the goals of the Master Plan by encouraging smart growth on land otherwise exempt from subdivision regulations. It would encourage permanent preservation of open lands, scenic views, productive agricultural lands, wildlife habitat, and migration corridors while providing for clustering and reducing infrastructure requirements and expenses, not including roads and utilities.

The purpose of this section is to create tangible economic and timesaving incentives to attract landowners to this option.

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B. AUTHORITY

The Board of County Commissioners may, in its discretion, negotiate and enter into Development Agreements with landowners providing that property rights shall be vested for a period of three years or as otherwise approved per a Development Agreement. Such development agreements may be executed where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of the proposed development, economic cycles, and market conditions. Any division of land authorized pursuant to terms and conditions of this Section shall be exempt from the definition of subdivision and subdivided land as provided in paragraph D of Section 2, SUBDIVISION AND SUBDIVIDED LAND. Any division and improvement of land made pursuant to a Development Agreement shall only be approved if it is consistent with the provisions set forth in this Section. Notwithstanding any other provision of this Section 17.6, Joint Planning Board review may be required pursuant to an Intergovernmental Agreement.

C. MINIMUM REQUIREMENTS

All Development Agreements approved by the County pursuant to this Section shall meet the following minimum requirements:

- (1) Density. In no event shall the overall density (primary residential dwelling units per acre) exceed one (1) primary dwelling unit per 35 acres gross density.
- (2) Sketch Plan. A Sketch plan for development upon any property proposed for a Development Agreement must be submitted along with proposed provisions which are additional to the County's standard development agreement form. Such sketch plan shall be a legibly drawn concept plan of the proposed development. The plan shall reflect actual or estimated contours of appropriate intervals. It is intended that the sketch plan be used to review the overall land uses, intended densities, feasibility, and design characteristics of the

development project and shall include, but not be limited to, the following:

(17.5C2)

- (a)** Sufficient information, including legal description, to readily determine the location of the proposed development and its relationship to adjacent lands; and
- (b)** The appropriate lot size, acreage and configuration of lots and roadways, to the extent known, within the proposed development; and
- (c)** A description of the proposed uses, including land use types and densities for each development parcel and improvements including at least the following:
 - i.** Area included in application and development; and
 - ii.** Number of lots, including residential, nonresidential, and non-commercial; and
 - iii.** Area of non-residential land uses; and
 - iv.** Area of lots and/or building envelopes; and
 - v.** Maximum structure size.
- (d)** Name, address and phone number of the holders of all record interest in the property (including severed mineral interests) and of the developer.
- (e)** Any available information concerning site characteristics, including, but not limited to, the following:
 - i.** Geologic characteristics of the area which could affect proposed future uses.
 - ii.** Areas within and in the vicinity of the proposed development containing suspected or known hazards, including the type of hazard.
 - iii.** Maps and other data describing the suitability of soil under the proposed development.

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- (f) Any analyses which the developer may have undertaken or which may be required by the County concerning the demographic and economic impact and the impact on public facilities including, but not limited to, traffic impact studies.
 - (g) A written and graphic description of the areas to be reserved as open space and the establishment of an organization for the ownership and maintenance of the open space or other provisions acceptable to the County for adequate future ownership and maintenance and the establishment of procedures to be followed in the event that the organization or any successor organization fails to maintain the open space.
- (3) Open Lands:
- (a) Open lands may be reserved for non-commercial use as common open space, wildlife habitat/migration corridors, wetlands, riparian areas, active and passive recreational use and facilities and limited parking for such use and facilities, and farming and ranching as defined in Section 2 of this Code.
 - (b) Open lands shall be restricted by the establishment of covenants which run with the title to all lands included within the Development.
 - (c) If approved as part of a Development Agreement, the Open space may be used for active recreational activities provided that:

 - i. Only accessory structures and facilities which are specifically approved as part of the Development Agreement shall be allowed and;
 - ii. The activity is to be located on private lands which are subject to the Development Agreement.
 - (d) The density allowed by a Development Agreement shall not exceed the underlying zoning less the density eliminated as a result of a conservation easement or other similar restrictions, which are in place at the time of application.
- (4) Historic Water Flow. Development is not located within, or mitigation has been provided for allowing historic water flow to continue: Consideration should be given for maintenance of water for historic agricultural purposes on the property.

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- (5) Access. Availability of adequate legal and physical access to each lot and, as appropriate, to open lands shall be demonstrated. Access points onto County roads should be minimized, and may be shared with other lots to minimize the number of access points.
- (6) Mitigation of Risks and Hazards. Adequate mitigation of risks and identification of hazards resulting from flooding, fire and wildfire hazards, avalanche and geologic hazards, chemical hazards, unstable soils, and other hazards shall be demonstrated. Wildfire mitigation regulations set forth at Section 16 of this Code shall be satisfied.
- (7) Storm Drainage. Storm drainage facilities of sufficient capacity to handle all predictable storm water runoff for a one hundred year storm shall be provided.
- (8) Master Plan. Approved Development Agreements sketch plans, all preliminary plats, all final plats, final improvement agreements, and similar final documents related to development pursuant to a development agreement approved pursuant to this Section shall be consistent with and advance the applicable goals of the Ouray County Master Plan.
- (9) Land Use. Only permitted uses in the underlying zone are allowed.
- (10) Adjacent Development. An applicant who owns real property which: 1) is situated either in Ouray County or in an adjacent county and 2) is contiguous to the property being subdivided pursuant to a Development Agreement shall provide, at a minimum, an informal sketch plan showing plans for the eventual development of the property situated in the adjacent County. In addition, the landowner must provide any other documentation including, but not limited to, copies of subdivision, exemption and development applications, preliminary or final plats, site development permits or other related documentation, regarding the development in the adjacent County, such documentation to be submitted in a scale and format similar to and compatible with the documentation submitted regarding the real property subject to the Development Agreement proposal. The applicant must provide a narrative defining the relationships between the development proposed in Ouray County and the adjacent county.

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- (11) Financial Ability. Statement of estimated construction costs, broken into the components as identified in Subsection D, Minimum Terms and Conditions, of this Section 17.6, and additional infrastructure such as utilities, proposed sources of financing, financial statement of the developer, banking references and any other information which will enable the County to ascertain that the developer is financially capable of completing the project. Detailed construction costs shall be included in the preliminary development plan.

D. MINIMUM TERMS AND CONDITIONS

All Development Agreements shall contain the following as minimum terms and conditions for approval.

- (1) Minimum Lot Size. Minimum lot size shall be one (1) acre, if served by individual disposal system, with smaller lots being allowed if uses are connected to a central wastewater treatment system or other community wastewater system as approved by the State of Colorado and Ouray County.
- (2) Site Standards. At the time of the application, along with the submittal of a Development Agreement and Sketch Plan, the landowner/developer must provide information showing the site standards contained in Section 6.6 of this Land Use Code, which exist at the time of submittal of the application, will be met.
- (3) County Road Standards. All roads and driveways lying within the property subdivided in accordance with this Section 17.6 shall comply with the Ouray County Road Standards, Section 15 of the Ouray County Land Use Code, except as otherwise approved in the Development Agreement.
- (4) Improvements. The development agreement shall also provide that, if the development receives final development plan/final plat approval by the Board of County Commissioners, the applicant landowner/developer shall make and install within a mutually agreed-upon period of time, all improvements required by the development agreement. All required improvements shall be in accordance with Ouray County Improvement Standards as set forth in Section 7 of this Code, as applicable.

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- (5) Impact Fees. When a proposed development will have a major on-site and off-site impact on, or will necessitate improvements to, facilities or service provided by the County, special districts or other governmental entities or subdivisions within the County including, but not limited to roads, emergency services, and schools, the Board of County Commissioners shall, as a condition of development agreement and sketch plan approval, require that the developer take steps to mitigate this impact by payment of impact fees or provision of in kind contributions. If impact fees are paid, the amount of such fees shall be used or set aside for the purpose for which it was paid.
- (6) Phasing. A schedule indicating when the various phases of the proposed development will be completed and a schedule for the completion of the required public improvements will be included in the development agreement.
- (7) Health, Safety, Welfare. Any other provisions which the County deems necessary, to protect the public health, safety or welfare, which requirements are in accordance with the provisions of Colorado Revised Statutes, Section 30-28-137, as amended.

E. DEVELOPMENT AGREEMENT PROCEDURE

Development Agreements may be approved only if entered pursuant to the following process:

- (1) Initial Consultation. Unless otherwise required by this Section, the Land Use Department will assist the landowner in initially working toward the terms and conditions of a proposed Development Agreement. However, the Board of County Commissioners will negotiate the final terms and conditions. If a party seeking approval of a Development Agreement is not the owner of the property, written consent for development pursuant to this Section 17.6 shall be required from the owner(s) of record of the property.
- (2) Application. In order to commence the development agreement process, the applicant must submit a complete Application to the Land Use Department on a form approved by the County. An incomplete Application shall be returned to the applicant with a brief explanation.
- (3) Fees. In order to defray the costs associated with review of a proposed development plan/plat or amendments to a development plan/plat, the developer shall pay to the County fees in accordance with the County's current fee schedule. In the case of a

development agreement, fees shall be paid at the time of submittal of a preliminary development plan.

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- (4) Referrals. The Land Use Department shall refer the proposed application, development agreement, and sketch plan to each county or municipality within a three (3) mile radius of any portion of the proposed development; to each record owner of a severed mineral interest; and to various agencies, utilities, organizations, or individuals, as required by law, regulation, by intergovernmental agreement. Referrals may also be made as the deemed appropriate by the County for complete review of the development agreement and sketch plan.

Responses to referrals must be filed within thirty (30) days from the date of mailing. The County may, upon the request of the reviewing agency or committee, or upon its own motion, extend the response period. Failure to respond to, or request an extension to a date certain of, the referral within the time allowed shall not be deemed to indicate either approval or disapproval of the development.

- (5) Public Meeting for Commissioners' Review. The Board of County Commissioners shall hold a public meeting regarding the application, including the proposed development agreement, upon referral from the Land Use Department. Such item shall be placed upon the Board's agenda at next available meeting. Additional public meetings may be held as necessary to thoroughly review the application.
- (6) Public Hearing. The Board of County Commissioners shall conduct a public hearing prior to making a decision upon an Application for Exemption submitted pursuant to Section 12. The Board shall provide published public notice of at least fourteen (14) days prior to the hearing, at the applicant's cost. The applicant shall notify the adjacent landowners and to the owners of mineral estates underneath the surface estate subject to the application for development pursuant to C.R.S. 24-65.5, as may be amended from time to time, in writing at least thirty (30) days prior to the hearing by first-class mail. Such notice in writing shall include: the applicant's name; the general location of the subject property; a description of the request sufficient to provide reasonable notice of the request; the date, time and place of the public hearing, and telephone number of the Land Use Department. The applicant shall provide evidence to the Land Use Department that such written notice was given.

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- (7) Decision. At the public hearing, based upon the evidence presented, the Board of County Commissioners: a) may exercise its discretion to enter into Development Agreement and approve a Sketch Plan and b) upon the decision to enter into a Development Agreement and sketch plan approval, may make a decision to grant or to deny regarding the Application for Exemption in accordance with the provisions of Section 12 of this Code.
- (8) Notice to State Engineer. Within ten (10) days of approval of the Development Agreement, the Board of County Commissioners shall notify the State Engineer of such approval and shall provide the State Engineer a copy of the Agreement as required by C.R.S. 30-28-404(3), as may be amended from time to time.
- (9) Recordation. Upon approval of the Application for Exemption, Development Agreement and Sketch Plan, the applicant shall pay all recording fees to the County Clerk and Recorder to be submitted along with the Development Agreement and Sketch Plan for recording. All Development Agreements and Sketch Plans approved pursuant to this Section shall be recorded by the County Clerk and Recorder of Ouray County within ten (10) days following final execution by all parties. No Development Agreement and Sketch Plan is valid until properly recorded as required by this Section.
- (10) Alteration/Amendment. Once finally approved, executed and recorded, the terms and conditions of an Exemption, a Development Agreement and Sketch Plan may not be altered or amended unless first considered and approved by the landowner and the Board of County Commissioners following notice and public hearing held in accordance with paragraph E.6 hereinabove. Any amended development agreement and sketch plan must be recorded in the same manner as provided in paragraph E.8 hereinabove.
- (11) Transfer, Sale, Occupation. No property subject to a development agreement pursuant to this Section 17 shall be transferred, sold or occupied for its intended purpose until approval of a Final Development Plan and Final Plat have been approved or conditionally approved by the Board of County Commissioners, provided, however, that the entire property subject to the development agreement may be transferred or sold as a whole subject to the terms of the development agreement.

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- (12) Landowner Bound Until Cancellation Upon Notice.** A landowner shall retain the right to cancel an approved and recorded Development Agreement prior to the end of its stated term and prior to any preliminary development plan approval or subdivision of the property subject to the Development Agreement.
- (a)** Notice of Cancellation. The landowner shall provide at least ninety (90) days' written notice to the County prior to cancellation of a previously approved and recorded Development Agreement,
 - (b)** Effect of Cancellation. Upon lawful cancellation of a previously approved and recorded Development Agreement by a landowner, all rights and obligations provided for in the Development Agreement and this Section shall cease and shall become void and of no lawful effect. Immediately upon such cancellation, the property formerly subject to the Development Agreement shall become subject to and governed by all then existing and otherwise applicable provisions of County zoning, subdivision and other regulations.
 - (c)** Recordation of Statement of Cancellation. No cancellation of a previously approved and recorded Development Agreement shall be effective unless and until a Statement of Cancellation is executed by the landowner and recorded in the records of the Ouray County Clerk and Recorder.

F. PRELIMINARY DEVELOPMENT PLAN / PRELIMINARY PLAT

- (1) General Process - Conformance.** During the period of time in which the Development Agreement is vested and prior to the subdivision, use, or occupancy of the property for its intended purpose, the landowner/developer shall obtain approval of a Final Development Plan and Final Plat from the Ouray Board of County Commissioners. To obtain Final Development Plan and Final Plat approval the Board of County Commissioners, taking into consideration the 1) term anticipated for completion of the entire development project; 2) use of open space; and 3) complexity of the development project, the landowner/developer must submit either; 1) a Preliminary Development Plan and Preliminary Plat followed by a Final Development Plan or Final Plat or 2) a Final Development Plan/Final Plat which is combined with the Preliminary Development Plan/Preliminary Plat providing all of the information for required for a Preliminary Development Plan/Preliminary Plat. The

Preliminary Development Plan and Preliminary Plat or Final Development Plan/Final Plat must conform to the Development Agreement.

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(2) Required Information. The Preliminary Development Plan shall be submitted initially to the County Land Use Department for review and shall include, as a minimum, the following information, unless otherwise specifically provided for in the approved Development Agreement:

(a) The Preliminary Development Plan shall be drawn to a scale sufficient to show enough detail to enable full evaluation of all elements of the proposal. A scale of one (1) inch to one hundred (100) feet shall be acceptable. Plans shall be on 24" by 36" blue line prints, which shall be folded to approximately 12" by 18". The applicant must submit fifteen (15) complete copies, including all of the required attachments

(b) Existing conditions map-containing north arrow and scale, showing existing site features prior to any alteration of natural vegetation, landscape features or construction:

i. Vicinity map at 1" = 1000', or other scale as determined to be appropriate by the Land Use Administrator, showing the location of the proposed development in relation to the surrounding area; and

ii. Site boundary, with dimensions, shown relative to section lines; and

iii. Topography, with 5' intervals for land with slope less than 10%, 10' intervals for land with slopes greater than 10%; and

iv. One hundred year flood plain, streams, ponds, wetlands and other water features; and

v. Existing structures, including their current uses, locations, height, dimensions and an indication of which structures are to be preserved on the site; and

vi. Existing roads and easements; and

vii. Location and alignment of existing utilities and existing easements; and

viii. Other data as may be required by the County.

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- (c) Site plan: Showing major features of the proposed development, including building locations and footprints at scale of 1"=100' or 200', or other scale determined to be appropriate by the Land Use Administrator. The site plan shall include sufficient information to allow evaluation of land planning, building location, and potential off-site visual impact and structure massing. The site plan shall include a north arrow and scale and illustrate, as applicable, the following information.
- i.** Proposed lot name and/or lot number, including, the name of the proposed development shall be different from all others in the County. Other information required shall include the preparation date, north arrow, written and graphic scale and accurate boundary description and area of each parcel.
 - ii.** Names and addresses, The names, addresses and phone numbers of the owner(s) of record, developer, surveyor, engineer and planner involved in the preparation of the preliminary development plan, including owners of severed mineral interests.
 - iii.** Subdivision of which the lot is a part, if applicable.
 - iv.** Locations, dimensions, square footage (area) of all lots, sublots, parcels or footprints within the project. Location and extent of areas to be used for residential, open space, recreational, and other uses. Land use information shall be specific for each use area, with densities, maximum structure size and maximum structure footprint, if applicable, and land use types delineated.
 - v.** Location and maximum size of all existing and proposed structures, both on site and within 100 feet of the lot boundary.
 - vi.** Roads, streets, walkways, drainage, sanitary sewer, public utility and other easements, open space and other areas reserved for use of the public or residents of the development. Roads must be named in accordance with County standards.
 - vii.** Proposed open spaces with an indication as to use and ultimate ownership.
 - viii.** Ownership(s) and land use(s) of adjacent properties.

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- (d) Other Information: Unless previously provided to the County in the process of receiving development agreement and sketch plan approval from the Board of County Commissioners, the applicant shall provide:
- i. Grading Plan. Preliminary grading plan showing proposed grades, the extent of cuts and fills and the proposed slope angle of all banks. Preliminary grading plans may be based on a photogrammetric survey of a scale not less than 1" = 100'. Contour intervals shall be as follows:
 - (a) Greater than 15% slope – 10' interval
 - (b) Less than 15% slope – 5' interval
 - ii. Inundated areas. Approximate boundaries of all areas subject to inundation by a one hundred (100) year flood or storm water overflow and the location, width and direction of flow of all watercourses.
 - iii. Cross sections and grades. Typical cross sections and proposed grades for each street, highway, alley and access easement and details of curbs, gutters and sidewalks and other public improvements shall accompany the Preliminary Development Plan and shall be of such scale to show clearly all the necessary details.
 - iv. Preliminary landscaping plan. A conceptual plan showing, as a minimum, the following information:
 - (a) Where dense stands of trees or tree clusters exist, an outline of the limits of the trees must be shown; and
 - (b) A conceptual plan for the proposed landscaping to be installed, showing trees, vegetation and other design features to be included; and
 - (c) Any other recognizable features of importance to the design of the development, such as rock outcroppings.
 - v. Open space plan. This plan shall conform to the provisions of an approved development agreement and sketch plan.

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- vi.** Reports. The developer shall furnish additional preliminary reports which concern streams, lakes, topography, vegetation and geologic characteristics which could affect the proposed land use (including potential hazards, soil suitability and any other reports, responses or concerns raised during the review of the sketch plan for the proposed development) and any other information as may be determined necessary by the County.
- vii.** A detailed land use description for the final plan, including specific land uses and unit types for each use area and open lands, maximum number of units or floor area for non-residential uses, average lot size, maximum and minimum lot sizes, and any other land use information deemed appropriate by the County in its review of the project.
- viii.** Proposed utility distribution system, including water and waste disposal systems.
- ix.** A plan detailing how compliance with Section 13.10 of this Code will be accomplished.
- x.** Narrative, in written form indicating:
 - (a) An explanation of plan
 - (b) Statement identifying form of present and proposed future ownership
 - (c) Copies of any special agreements, conveyances, restrictions, covenants which will govern the design, use maintenance, and continued protection of the structures or features of the project and common areas
 - (d) Summary of all proposed uses and areas within the project, including
 - (i) Area of lot/development
 - (ii) Number of units and/or lots and sublots.
 - (iii) Amount of non-residential square footage
 - (iv) Area of lots and sublots and/or building footprints.
 - (v) Maximum structure size.
 - (e) Other information as may be requested by the Land Use Administrator or County Boards.

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- (e) Additional Data: Information regarding the following details shall either be on the preliminary development plat or contained in the information submitted with the preliminary development plan:
- i. Drainage. A development drainage plan with maps and narrative description, which identifies the historical storm runoff from the site, the anticipated increase in runoff resulting from the development for storms having two (2), five (5), ten (10) and one hundred (100) year frequencies and the proposed method for handling the runoff, including the location and description of any necessary drainage facilities. Where the proposed development drainage plans require the alteration of any identified one hundred (100) year flood plain, the drainage plan shall detail the plans for the proposed alteration of the flood plain limits and any proposed flood control measures. The drainage plan and supporting maps shall be prepared by an engineer registered in the State of Colorado who has experience in the evaluation and design of storm drainage and related facilities.
 - ii. Water Supply. If a municipality or quasi-governmental entity will supply the water to the proposed development, the applicant shall obtain a letter of intent to serve and file it with the Final Subdivision Plat. If the water supply is provided in another manner, the developer/applicant must comply with federal law and regulations and Colorado state law, regulations, and orders regarding the provision of water supply.
 - iii. Sewage Disposal. Adequate provisions for sewage disposal shall be addressed. Sewage disposal may be accomplished by installation of onsite wastewater treatment systems ("OWTS"), community septic tank system or by central wastewater treatment facilities approved by the County as a special use and fully permitted by the State of Colorado as applicable. If OWTS are utilized, the applicant shall demonstrate the suitability of soils through soil profiles and percolation tests sufficient to demonstrate that the installation of OWTS can be achieved on all proposed lots of six (6) acres or less. Demonstration will be by an eight foot or bedrock deep profile hole and three (3) percolation hole tests within that area of the proposed buildable area on each lot where the OWTS will most likely be installed. This demonstration is to be completed by a Colorado registered professional engineer knowledgeable of OWTS design and installation and be included in the report. A certificate of the Colorado Department of Health that the

sewage disposal system, as designed by the developer, will comply with State and local laws and regulations, must be filed with the proposed Final Subdivision Plat. The applicant shall provide a report containing detailed information concerning sewage disposal, including, but not limited to, total sewage disposal needs and evidence that the proposed system for the disposal of sewage will comply with applicable State of Colorado statutes, regulations and design requirements and that the proposed method is both technically feasible and environmentally sound.

If the average lot size is less than one acre or as otherwise provided by the more stringent State or Federal laws, rules and regulations, central wastewater treatment or other community wastewater system as approved by the State of Colorado and Ouray County may be required

If sewage collection and treatment is to be provided by an existing system, a letter of commitment from the owners of that system, or their authorized representative, must accompany the report, stating that there exists sufficient capacity to supply the needs of the proposed development and that the owners of the system are willing and able to handle the additional effluent in compliance with applicable State laws and regulations. If at the time of installation, the disposal field is not to be located in the area where the percolation tests were done by the applicant, new percolation tests in the area to be used will be required.

No preliminary development plan shall receive approval of the Board of County Commissioners until the Department of Health has made a favorable recommendation regarding the proposed method of sewage disposal

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- iv. Covenants.** A draft of the protective covenants to be filed with the final plat shall be supplied. The covenants must include provision for maintenance of open space consistent with Section 6.7C of these regulations and any proposed restrictions, upon use of water and sewer systems, visual impact provisions complying with Section 9.8 of this Code, and a provision that the County may, but need not, take action to enforce the covenants. The covenants shall also specify the intended land uses, with average and maximum densities and total maximum numbers of units and maximum amounts of non-residential floor area specified.

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(3) Filing and Fees.

- (a)** The County shall not accept the submittal of a preliminary development plan unless all required maps, documents and other supporting materials are submitted together (except any additional materials requested later by the County).
- (b)** In order to defray the costs associated with review of a proposed development plan/plat or amendments to a development plan/plat, the developer shall pay to the County fees in accordance with the County's current fee schedule. In the case of a development agreement, fees shall be paid at the time of submittal of a preliminary development plan.
- (c)** If any of the lots shown on the submitted preliminary development plan have been sold or otherwise conveyed in violation of the provisions of these regulations prior to the approval of the final plat, penalties may be assessed in accordance with Section 13 of this Code and State statutory provisions, as may be amended from time to time.

(4) Referrals. The County Land Use Administrator may refer the preliminary plat review to each county or municipality within a three (3) mile radius of any portion of the proposed development; to each record owner of a severed mineral interest, as identified by the applicant; and to agencies, utilities, organizations, or individuals, as required by law, regulations, by intergovernmental agreement or as deemed appropriate for complete review.

(5) Public Hearing. Upon referral by the Land Use Administrator of a Preliminary Development Plan, which complies with the requirements of this Section 17.6 as determined by the Land Use Administrator, the Board of County Commissioners shall set a date for a public hearing on the proposal, which shall be scheduled and noticed in the same manner as provided in Section E.7 hereinabove provided, however, that notification to mineral estate owners is not required if such owners have waived the right to notice in writing and copies of such waivers are provided to the Land Use Department.

(6) Decision. At the public hearing, the Board of County Commissioners shall review the Preliminary Development Plan and shall, by resolution, approve, approve with conditions or modifications, or disapprove the plan. The Commissioners shall state clearly, in writing, the grounds for disapproval or conditions or modifications.

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- (7) Recordation. Upon approval of a Preliminary Development Plan, the plan and covenants, with any amendments required by the County Commissioners, shall be recorded by the developer after first obtaining the signature of the County Land Use Administrator on the plan. The Land Use Administrator shall certify that the plan and covenants represent the preliminary approval granted by the Commissioners.
- (8) Effect of Commissioners' Approval. The Board of County Commissioners' approval of the preliminary development plan shall be binding on the County for a period of one (1) year, unless a greater period is stated in the approval resolution, If the developer fails to submit to the County, within one (1) year after Commissioners' approval of the preliminary development plan, a final development plan, the preliminary plan approval shall be void and shall be reconsidered only in accordance with all the provisions of this Code as it may then have been amended.

G. FINAL SUBDIVISION PLAT

To obtain Final Subdivision Plat approval, the applicant / developer shall:

- (1) Required Information. Provide a Final Subdivision Plat, Site Plan and accompanying materials including sufficient information, such as the designated building areas, roads and infrastructure, to demonstrate that all standards and requirements of this Section have been satisfied.

The Preliminary Development Plan and Preliminary Plat may be combined with the Final Development Plan and Final Plat upon approval of the Board of County Commissioners.

- (2) Fees. At the time of submittal of the Final Subdivision Plat, pay a fee as determined by the County's current fee schedule or as negotiated through the Development Agreement process.
- (3) Final Improvements Agreement. If the applicant for Final Subdivision Plat wishes to have the final plat approved prior to the installation, inspection, and approval of all required improvements, the applicant must enter a Final Improvements Agreement with the County binding the applicant to complete all roads and utilities infrastructure required to serve the Development within a specified period of time no greater than two (2) years after approval of the final plat and further providing that, should such roads and utilities infrastructure work not be satisfactorily completed within the specified time limit, the County may complete it and recover the costs thereof from applicant. In the event that all required

Improvements are not completed, inspected, and approved within two (2) years of the date of the approval of the final plat by the Board of County Commissioners, it shall then be unlawful to sell any further lots in the subdivision until all improvements are completed. No building permit shall be issued by the County until the infrastructure necessary to serve the lot is completed.

The Final Improvements Agreement shall be secured as follows:

(17.5G3)

- (a) Subdivision Lien Agreement. A subdivision lien agreement placing an adequate lien upon the lots of the subdivision, with an escrow account with the County into which the applicant/subdivider shall pay, prior to the sale of any lot within the subdivision, an amount to be verified by the County Road and Bridge Supervisor equal to one hundred and fifty percent (150%) of the pro rata cost to complete the subdivision improvements necessary to serve that lot; or
- (b) Cash Escrow or Performance Bond. A cash escrow deposited with the County or a sufficient performance bond held in the names of applicant and the County. The amount of the surety shall equal one hundred and fifty percent (150%) of the estimated costs of improvements to serve each lot as verified by the County Road and Bridge Supervisor. Performance bonds may be structured so as to provide for annual review of the amount of the bond necessary to complete the remaining improvements.

The Final Improvements Agreement shall provide for release of the surety one year after completion of improvements and County approval of the roads and utilities infrastructure and may provide for partial release of the surety upon partial completion of the roads and utilities infrastructure; provided, however, that funds in any escrow account shall be returned to the applicant / subdivider upon the completion and approval by the County of the improvements.

- (4) Title Insurance Policy. Provide evidence of title issued by a reputable title insurance or abstract company or title opinion by an attorney licensed to practice law in the State of Colorado, showing the names of all persons having any right, title or interest in the land proposed for development and whose consent is necessary to convey clear title to such land shall be filed with the proposed Final Subdivision Plat.

(17.5G)

(5) Final Subdivision Plat. In addition to other requirements for final subdivision plat approval, all Final Subdivision Plats shall provide as follows:

(a) Use and Service Disclosure. All Final Subdivision Plats subject to this Section 17.5 must provide an Ouray County Use and Service Disclosure containing the following language:

Ouray County services, as well as private and other public services, including but not limited to emergency services such as fire and ambulance and various utilities, including water supply in terms of quality or quantity, may not be available or may be limited. Purchasers are advised to seek private consultation regarding any of these matters. In addition, roads providing ingress and egress to the properties included within this Plat may not be constructed or maintained in accordance with County Road Standards. Approval of this Final Plat does not constitute and shall not be considered as conferring any guarantee or expectation of the provision of any County service.

In addition, site development permits shall not be issued until all improvements are completed in accordance with a Final Improvements Agreement and Development Agreement and are inspected and approved by the County Building Official.

(b) Advisements. All deeds to or contracts for the sale of property located within a Development approved pursuant to this Section 17.5 must also contain an advisement as follows: Ouray County services, as well as private and other public services, including but not limited to emergency services such as fire and ambulance and various utilities, including water supply in terms of quality or quantity, may not be available or may be limited. Purchasers are advised to seek private consultation regarding any of these matters.

(6) Public Meeting for Board of County Commissioner's Review. Upon determination by the Land Use Department staff that the Final Subdivision Plat, site plan, and all accompanying materials have met all requirements, the County Land Use Administrator shall refer the matter to the Board of County Commissioners. The Board of County Commissioners shall, at the next regular meeting after receipt of the Final Subdivision Plat, site plan and accompanying material determine if the Final Subdivision Plat, site plan and accompanying materials are in compliance with the provisions of this Section.

(17.5G)

- (7) Decision. If the Board of County Commissioners finds that the Final Development Plan and Final Plat and accompanying materials are in compliance with all requirements of this Section, the Board shall approve and sign the Final Subdivision Plat. If the Board of County Commissioners finds that the Final Development Plan, Final Plat, Final Improvements Agreement, or accompanying materials are not in compliance with the requirements of this Section, the Board shall specifically identify all deficiencies and shall specify all recommended or required resolutions and shall promptly deliver them to the applicant. The Board of County Commissioners may deny the Final Development Plan and Final Plat if it fails to meet the requirements and conditions of the Preliminary Plat.
- (8) Payment of Road Maintenance Impact and Land Dedication Fees. Any Road Maintenance Impact and Land Dedication Fees required as part of the Development Agreement shall be paid prior to the recordation of the documents as required in subsection G.10 herein below.
- (9) Execution of the Final Documents. Upon approval by the Board of County Commissioners, the Final Development Plan, Final Plat, and Final Improvements Agreement shall be fully executed within five (5) working days of approval.
- (10) Recordation. The fully executed Final Development Plan, Final Plat, and Final Improvements Agreement shall be recorded in the Ouray County public records by the applicant within five (5) working days of full execution.

H. CONSTRUCTION - REQUIRED APPROVALS

- (1) Required Information. No construction shall commence and no permits for construction shall be granted until all of the following which are required by the County and have been approved by the Board of County Commissioners and properly recorded with the County Clerk and Recorder's Office; Development Agreement and sketch plan; Preliminary Development Plan; Preliminary Plat; and Final Development Plan; Final Plat; Final Improvements Agreement; and other documents required by this Section 17.5.

(17.5H)

- (2) Conformance Forfeiture. All construction shall conform to the Final Subdivision Plat, Development Agreement, and other applicable laws and regulation, with any material variation subject to Board of County Commissioners' approval.

The Development must be completed in accordance with the schedule established by the approved Development Agreement, approved Final Subdivision Plat, and approved Final Improvements Agreement. Failure to do so may result in forfeiture of the developer's/landowner's performance bond.

- (3) Construction Permit Application. Prior to the commencement of construction, the landowner shall first obtain a Construction permit from Ouray County. The application for such permit shall include construction plans for all public improvements These shall consist of three (3) copies of plans and profiles for all streets drawn to a scale of 1" = 10' vertical and 1" = 5' vertical and 1" = 50' horizontal, showing all proposed utility line locations and sizes, connections, valves, fire' hydrants, detailed plans for all water supply and sanitary sewer service facilities (if applicable) and detailed plans for all drainage structures and flood plan channelization facilities. The Construction Permit may be referred to various utility companies for review prior to issuance of the permit, The County shall approve the application and issue a permit if it finds that the construction will be in conformance with the previously approved Final Subdivision Plat, the Development Agreement, utility requirements, and other applicable laws and regulations.
- (4) Construction to Commence. Once all phases of the application and approval process are completed and all applicable fees have been paid to the County the applicant/subdivider may commence with the construction phase of the plan according to the requirements as approved by the Board of County Commissioners.
- (5) Release of Performance Bond. For release of the performance bond one year after completion of improvements and County approval of the roads and utilities infrastructure and may provide for partial release of the surety upon partial completion of the roads and utilities infrastructure-, provided, however, that funds in any escrow account shall be returned to the applicant/subdivider upon the completion and approval by the County of the improvements.

17.6 NOTICE OF APPROVAL

Each map, plat, or other document constituting a Site Specific Development Plan shall contain the following language: “approval of this plan may create a vested property right pursuant to Article 68 of Title 24, C.R.S., as amended.” Failure to contain this statement shall invalidate the creating of the Vested Property Right. In addition, a notice describing generally the type and intensity of use approved, the specific parcel or parcels of property affected and stating that a Vested Property Right has been created shall be published once, not more than 14 days after approval of the Site Specific Development Plan in the newspaper designated by the Board of County Commissioners for publication of notices.

17.7 PAYMENT OF COSTS

In addition to any and all other fees and charges imposed by this Code, the applicant for approval of a Site Specific Development Plan review, including publication of notices, public hearing and review costs.

17.8 OTHER PROVISIONS UNAFFECTED

Approval of a Site Specific Development Plan shall not constitute an exemption from or waiver of any other provisions of this Code pertaining to the development and use of property. The establishment of a Vested Property Right shall not preclude the application of ordinances or regulations which are general in nature and are applicable to all property subject to land use regulation by a local government including, but no limited to, building, fire, plumbing, electrical, and mechanical codes.

17.9 LIMITATIONS

Nothing in this section is intended to create any Vested Property Rights but only to implement the provisions of Article 68 of Title 24, C.R.S., as amended. In the event of the repeal of said article or a judicial determination that said article is invalid or unconstitutional, this section shall be deemed to be repealed, and the provisions hereof no longer effective. Nothing contained in this section is intended to or shall affect the County’s rights of eminent domain and condemnation as otherwise granted by law.