

## SECTION 24

### HIGH ALPINE DEVELOPMENT REGULATIONS

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#### **24.1 PURPOSE & INTENT:**

The purpose and intent of these regulations is:

- A.** To protect and preserve:
  - (1) The alpine, sub-alpine and scenic hillsides in the upper Uncompahgre River watershed for their historic and natural landscapes.
  - (2) The area needed for the protection and production of a safe public water supply
  - (3) The relatively undeveloped character of these backcountry areas.
  - (4) The historical structures and the native flora and fauna.
  - (5) The public lands from the impacts of incompatible development.
- B.** To protect mineral resources, and access to those resources, by regulating non-mineral development on patented mining claims. This area is comprised of public lands managed by the United States Forest Service (USFS), patented mining claims, and unpatented mining claims and mineral rights from the surface estates. Ouray County has a long history of mineral exploration, development, and commercial mineral extraction and processing, which led to the patenting of numerous mining claims. Ouray County continues to derive economic benefits from mineral extraction, and these regulations are intended to ensure that mining remains a viable component of the Ouray County economy by limiting the potential for conflicts between residential uses of patented mining claims and active, past and future mining operations.
- C.** To limit development activities in the High Alpine Area due to risks associated with:
  - (1) Natural conditions of the area, including high elevation, environmentally sensitive and geologically hazardous areas, including areas at risk for avalanche and rock slides, steep terrain, and other site constraints.
  - (2) Limited access for potential residents as well as emergency responders.
  - (3) Increased demand for public services beyond what is currently provided.
  - (4) Potential conflicts with past and or future mining activities
  - (5) Potential degradation of environmental and watershed health.
  - (6) Risks associated with wildfire hazards.
  - (7) Protection of significant wildlife habitat, including wildlife dependent on tundra.
  - (8) Preservation of historical and archeological resources.
- D.** To maintain the existing characteristics found in the High Alpine Area (such as the lack of improved or maintained roads, little or no utility or infrastructure

improvements, and very limited or sparse development other than historic mining remnants from past mining activities) by:

(24.1D)

- (1) Prohibiting both public and private improvements to existing public roads and to limit the construction of new roads within the High Alpine Area, while also preserving historic access methods.
- (2) Limiting residential development to cabins and small scale residential development consistent with the type of development that historically occurred in the High Alpine Area.

## **24.2 APPLICABILITY:**

A. These regulations **shall apply** to:

- (1) All residential, non-mining, and commercial development occurring on patented mining claims and patented mill sites at, or above, 9,480’.

B. These regulations **shall not** apply to:

- (1) Any residential structures that are accessory to an active state-permitted mine operation.
- (2) Lots previously approved by the County as a PUD, Final Development Plan, or combined Preliminary/Final Development Plan approved by the BOCC in accordance with Section 6 of this Code, or Final Subdivision Plat approved as part of a Development Agreement approved pursuant to Section 17 of this Code.
- (3) An active Site Development Permit issued three years prior to the date of adoption of this section of Code.
- (4) Any proposed Public Utility or Communications Facility as provided for in the Zoning section of this Code.
- (5) Excludes any existing historically significant structures.

## **24.3 HIGH COUNTRY DEVELOPMENT CRITERIA AND STANDARDS:**

A. For proposed non-mining development on patented mining claims and patented mill sites above 9480’ in elevation, a minimum of 35-acres is required in order to be eligible for issuance of a building permit. Multiple contiguous mining claims or mill site parcels may be combined through a boundary adjustment process in order to reach the required minimum acreage. The additional process for acquiring minimum acreage through *Trade Credits* for contiguous or non-contiguous parcels is described in Section 24.6.

Any patented mining claim or mill site that contains insufficient acreage to allow development and construction of a residential structure pursuant to this Section 24

shall not be considered a legal, non-conforming parcel for the purposes of Section 4.6 of the LUC. However, a structure existing prior to the date of adoption of this Section 24 on a patented mining claim or patented mill site with insufficient acreage to allow issuance of a new building permit is subject to Section 4.4 of the Land Use Code.

(24.3)

**B. Residential, Non-Mining and Commercial development is prohibited within the alpine tundra ecosystem.**

**C. The following additional regulations shall apply:**

- (1) Short Term Rentals are strictly prohibited, as defined by Ordinance 2016-002 and any subsequent amendments.
- (2) Any commercial use is prohibited unless specifically allowed under the Zoning Section of this Code.
- (3) Accessory dwelling units and detached employee housing structures are prohibited.

**D. High Alpine Site Development Permits:**

Prior to application for a building permit(s) for any residential, non-mining, or commercial structures, on patented mining claims and patented mill sites above 9480', applicants shall be required to apply for, and receive approval of, a High Alpine Site Development Permit. See Section 13.11 for submittal requirements.

**E. Structure Size:**

- (1) The maximum accessory structure size shall be: 200 SF. The maximum number of accessory structures shall be one (1).
- (2) The maximum structure size shall be: 700 SF, but may be increased pursuant to the allowances below:
  - (a) Excludes porches, decks, patios and terraces that do not have roofs or floors above and are open to the sky, if such improvement is equal to or less than thirty (30) inches above grade and is two hundred fifty (250) square feet or less.
  - (b) For porches, decks, patios, and terraces more than thirty (30) inches above grade or greater than two hundred fifty (250) square feet, then the square footage of these items is calculated as part of the dwelling floor area at fifty percent (50%) of the actual area.
- (3) Additional Structure Size Allowances:
  - (a) An additional 500 square feet of Floor Area may be allowed for each Trade Credit dedicated, as provided in Section 24.6 below.

**NOTE:** Where the applicant is the owner of both the surface and mineral estate on the property on which the development is proposed, as a condition of issuance of a High Alpine Development Permit, the owners shall execute a “merger covenant,” or deed restriction prepared by the County to be recorded in the chain of title for the property, that provides for the merger of the surface and mineral estate in perpetuity so these estates cannot be severed into separate estates by the current owner, and/or his heirs, successors or assigns.

(24.3E3)

- (b) An additional 250 square feet of Floor Area may be allowed where the owner enacts measures that preserve or enhance public trails or access. Granting of additional floor area is contingent upon the dedication of an easement to the County, and that easement shall run with the surface estate. Any such easement shall be agreed to in writing by the mineral estate holder.
- (c) An additional 300 square feet may be allowed for an attached garage within or as a part of the single-family residential dwelling if there is no detached accessory structure.
- (d) In no circumstance shall a non-mining residential or commercial structure have a Floor Area larger than 2,500 square feet.

**F. Structure Height:**

The maximum structure height shall be twenty-five feet (25’) for structures and sixteen feet (16’) for accessory structures.

**Note:** Height measurement is calculated pursuant to the definition of “Building Height” in Section 2 of this Code.

**G. Setbacks:** All development shall comply with the setback requirements listed in the Zoning section of this Code.

**H. Visual Impact:**

- (1) All structures within the High Alpine Area shall mimic and blend with those found in the surrounding natural landscape. Use of wood, stone and other natural looking materials is encouraged. Colors shall be earth-tone, dark and/or subdued. The Applicant shall provide a color board to the Land Use Department showing proposed colors as part of the Site Development Permit application. At the time that a building permit application is submitted, the Applicant shall confirm the colors to be used and such colors shall be approved by the Land Use Department/Building Official prior to approval of a building permit.
- (2) Highly reflective glass or metal surfaces are prohibited and instead the use of non-reflective glass or metal surfaces is required. Fire retardant materials will be

allowed provided that the materials have a natural appearance and are approved by the Land Use Department during the Site Development Permit review process.

(24.3H)

- (3) All structures located along a ridgeline or escarpment shall be set back a minimum of fifty (50) feet from the ridgeline or edge of escarpment.
- (4) If the proposed construction is within, and visible from, a view corridor (see Section 9), the construction must also comply with all standards of the Visual Impact Regulations.

**Note:** Mid-summer foliage and terrain conditions shall be used when determining blending requirements.

**I. Access:**

- (1) Private improvements to existing county roads and any private construction of new roads within the High Alpine Area are prohibited without prior approval by the County Commissioners. Said restrictions are imposed as a means of maintaining the areas existing character and as a means of preserving historic access methods.
- (2) Existing private roads within the high country area are considered to be pre-existing driveways. Driveways may be constructed or improved to access property not within the Tundra. However, property owners are not required to improve driveways accessing their property in this area to the driveway standards that are required throughout the remainder of the County. Rather, the intent of this regulation is to minimize the number of driveways and the impacts driveways may have on the scenic and environmental character of the area.
- (3) No driveway in the High Alpine Area may be paved or otherwise improved with an impermeable surface.
- (4) Public and private access, including access for emergency response, to parcels in the High Alpine Area may be limited or non-existent.
- (5) Property owners are encouraged to review the County Winter Road Policy.
- (6) Snowplowing of roads and/or driveways is prohibited.

**J. Parking:**

- (1) If accessing the property by motor vehicle, adequate parking shall be provided.
- (2) At no time shall parking be allowed for the benefit of structures subject to the provisions of this Code section, within the County rights-of-way without approval of the Board of County Commissioners.

**K. Driveways & Private Roads:**

(1) New driveways and new private roads shall:

(24.3K1)

- (a) Not be allowed in the tundra
  - (b) Be designed in a fashion that minimizes impacts to environmental and scenic qualities; and
  - (c) Be aligned to minimize the amount of cut/fill necessary to install the proposed driveway; and
  - (d) Be reviewed and approved by either the County Road and Bridge Department, or a consultant chosen by the County, prior to construction/installation.
  - (e) Not be snowplowed at any time.
- (2) If required by the County, the applicant shall be responsible for payment of any consultant review of a driveway or private road design/installation.
- (3) Applications for driveways and/or private roads may be referred to any other applicable agencies (such as neighboring counties, Forest Service, BLM) for review and comment.

**L. Utilities:**

- (1) All utility installations shall be installed in a fashion that minimizes impacts to the environment and scenic quality of the site. Staff shall make the final determination regarding proposed utilities and any potential impact.
- (2) Fuel tanks, water storage, water delivery systems, and fuel powered electric generators shall be placed in a permitted garage, accessory structure, underground, or alternatively, shall be entirely screened from view. Noise levels shall not exceed the limits defined within ordinance 1992-01 and any subsequent amendments.
- (3) Property owners in the High Alpine Area should be aware that solar, wind, or other alternatives to the extension of utility lines may be the only viable utility service available.

**24.4 VARIANCE AND APPEALS:**

- A.** Variances to the standards of this section may be applied for, pursuant to the standards of the Exceptions, Special Exceptions, Exemptions, and Variance Section and the Administration and Enforcement Section of this Code.
- B.** Any Decision or denial of any Staff member may be appealed pursuant to the standards of the Exceptions, Special Exceptions, Exemptions, and Variance Section of this Code.

## **24.5 LIABILITY AND DISCLOSURE**

Prior to issuance of a building permit, the property owner(s) shall be required to sign, notarize, and record, a County service statement acknowledging the following: “Ouray County is a small, rural county, and the implications of such, including; Ouray County does not have the resources (both financial and staffing) of larger, more urban counties and communities, and cannot provide the same level of services. Roads are primarily dirt and gravel, and may or may not be paved in the future, depending on future resources of the County. Some properties may not be accessible during the winter months except by snow cat, snowmobile, skis or snowshoes. I should consider year-round travel conditions when planning access to the property. Maintenance of roads, year round, has limitations based on available resources for staff and materials. Some County roads are not maintained during the winter months, and private maintenance of county roads, including snowplowing, is not permitted except by written agreement with the Board of County Commissioners, which permission may or may not be granted. My property is located in an area that has historically been mined, and an active mine may be currently operating, or may operate in the future. Operating mines may require the use of equipment, including trucks that may affect the peace and quiet of my property. By building a residential structure on my property, I assume for myself, and other occupants of the property, all health risks of high mineral content in soils and water as well as all risks inherent in the geology of the area, including avalanche, rockfall, and slides of land. The soil and water on, beneath, or near my property likely contains high mineral content which may, or may not, pose health risks. I further acknowledge that ownership of property with tailings and other remnants of historic mining activities may include financial and other legal liability related to reclamation and clean-up of mine wastes that may affect the environment. Emergency responses to medical situations, fires, and law enforcement requests may be slower than in urban areas, and may be more limited in remote parts of the County. Emergency responses may be totally unavailable during winter months. The County does not provide water, waste water, or firefighting services. These services may or may not be readily available in some parts of the County and I have inquired about the specifics of these services, as well as access to my property and understand how my property will be served.”

## **24.6 TRADE CREDITS**

- A. Surface estates of each patented mining claim or patented mill site, wholly or partially owned, shall have one (1) Trade Credit, for purposes of accumulating sufficient acreage to qualify for a development permit and/or building permit for a patented mining claim or mill site above 9480’ in the Alpine Zone, and/or for the purpose of qualifying for additional square footage in a proposed building permit as provided in Section 24. Any patented mining claim or mill site that contains insufficient acreage to allow development and construction of a residential structure pursuant to this Section 24 shall not be considered a legal non-conforming parcel for purposes of Section 4.6 of the LUC. Trade credits may be accumulated from any combination of patented mining claims or patented

mill sites in order to qualify for development and construction of a residential structure, and do not need to be contiguous to the parcel for which a development permit or building permit is being sought.

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- (1) An owner of a patented mining claim must own the entire patented mining claim, or if there are severed or fractional interests, must have written consent of the other owner or owners, in order to use and/or convey the Trade Credit for that patented mining claim.
- (2) At such time as the Trade Credit is used, the person using the Trade Credit must provide staff with documentation that a deed has been recorded conveying the Trade Credit from the owner of the patented mining claim or patented mill site being used as a Trade Credit to the owner of whatever patented mining claim or patented mill site is receiving the Trade Credit for purposes of a development permit or building permit.
- (3) Staff will maintain a file and index of Trade Credits which have been used for purposes of a development permit or a building permit.

**B.** A Trade Credit may be used only once.

**C.** Use of the Trade Credit does not extinguish other non-development uses of the property such as camping or other recreational use, nor does it extinguish any right to mine the patented mining claim.

**GENERAL NOTE:**

In addition to the requirements of this section, applicants must also comply with all applicable sections of this Code and any relevant County Resolution or Ordinances, including, but not limited to:

- Ouray County Road Map
- Ouray County Winter Maintenance Agreement
- Visual Impact Regulations
- Wildfire Mitigation Regulations
- High Alpine Site Development Permit Standards