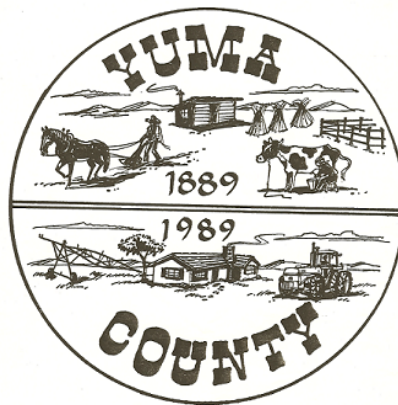


# Yuma County Land Use Code

THE BOARD OF COUNTY COMMISSIONERS  
OF  
YUMA COUNTY



REVISED EFFECTIVE OCTOBER 22, 2017  
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# YUMA COUNTY LAND USE CODE

## **ARTICLE 1      GENERAL PROVISIONS**

### **SECTION 1-101      TITLE AND SHORT TITLE.**

These Regulations shall be known as the Yuma County Land Use Code.

### **SECTION 1-102      AUTHORITY.**

Yuma County is authorized to regulate zoning, planning and the subdivision of land by *inter alia*, Section 30-28-101 et seq., C.R.S.; Section 30-28-201 et seq.; Section 29-20-101 et seq.; Section 24-67-104 et seq.; and Section 25-10-101 et seq.

### **SECTION 1-103      PURPOSES.**

The general purposes of this Land Use Code include:

- A.      PROTECT QUALITY OF LIFE.** To provide for protection of the public health, safety, and welfare of the residents of the County and to protect the environment.
- B.      PROVIDE FOR ORDERLY DEVELOPMENT OF THE COUNTY.** To provide for balanced, orderly growth patterns and to provide efficient, phased government services to accommodate existing and future residents.
- C.      PRESERVE PROPERTY VALUES.** To preserve and promote the value of property, to protect the tax base of the County, and to respect the property rights of citizens.
- D.      PROTECT AND ENHANCE AGRICULTURE.** To protect and enhance agricultural uses and the rural characteristics of the County.

### **SECTION 1-104      RIGHT TO FARM.**

It is the policy of the Board of County Commissioners that ranching, farming, and all manner of agricultural activities and operations throughout Yuma County are integral elements of and necessary for the continued vitality of the County's history, economy, landscape, lifestyle and culture. Given their importance to the County and the state, agricultural lands and operations are worthy of recognition and protection.

- A. AGRICULTURAL ACTIVITIES AND OPERATIONS WITHIN THE COUNTY SHALL NOT BE CONSIDERED TO BE NUISANCES.** Colorado is a “Right to Farm State” pursuant to C.R.S. 35-3.5-101, et seq. Landowners, residents, and visitors must be prepared to accept the activities, sights, sounds and smells of Yuma County’s agricultural operations as a normal and necessary aspect of living in a county with a strong rural character and a healthy agricultural sector. Those with an urban sensitivity may perceive such activities, sights, sounds and smells as inconveniences, eyesores, noises, and odors: however, state law and County policy provides that ranching, farming or other agricultural activities and operations within the County shall not be considered to be nuisances, so long as they are operated in conformance with the law and in a non-negligent manner. Therefore, all landowners, residents, and visitors must be prepared to encounter: noises, odors, lights, mud, dust, smoke, chemicals, machinery on public roads, livestock on public roads, storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides, and pesticides, any one or more of which may naturally occur as a part of legal and non-negligent agricultural operations.
- B. RIGHTS AND RESPONSIBILITIES OF ALL LANDOWNERS.** All owners of land, regardless of use, have obligations under state law and County regulations with regard to maintenance of fences. Irrigators have the right to maintain irrigation ditches through established easements that transport water for their use, and said irrigation ditches are not to be used for the dumping of refuse. Landowners are responsible for controlling weeds, keeping pets under control, and other aspects of using and maintaining property in accordance with County regulations. Residents and landowners are encouraged to learn about these rights and responsibilities and to act as good neighbors and citizens of the county.

**SECTION 1-105 APPLICABILITY.**

- A. UNINCORPORATED YUMA COUNTY.** This Land Use Code shall apply to all land within the unincorporated areas of Yuma County.
- B. COMPLIANCE WITH CODE REQUIRED.** No person may engage in any Land Use Change without first complying with this Code.
- C. EXISTING USES TO CONTINUE.** Land uses in effect at the time of enactment of this Land Use Code may continue as a “Nonconforming Use.” pursuant to Article 7 of this Land Use Code.

**SECTION 1-106 REPEALER, RE-ENACTMENT, AND EFFECTIVE DATE.**

- A. REPEAL OF COUNTY'S PRIOR LAND USE REGULATIONS.** The existing subdivision and 1041 regulations are hereby repealed on the date of the County's adoption of this Land Use Code.
- B. ENACTMENT.** This Land Use Code shall be enacted upon its approval by the Board of County Commissioners, after review and recommendation by the Yuma County Planning Commission, following public hearings.
- C. EFFECTIVE DATE.** This Land Use Code shall become effective thirty (30) days following the date of its adoption by the Board of County Commissioners unless adopted as an emergency resolution necessary for the immediate preservation of public health, safety, and welfare.

**SECTION 1-107 AMENDMENT TO THE TEXT OF THIS LAND USE CODE.**

- A. INITIATION.** Text amendments to this Land Use Code shall be initiated by the Board of County Commissioners, the Planning Commission, or the Administrator.
- B. PROPOSED AMENDMENT.** A proposal for text amendment shall state the precise wording of the proposed text amendment, and the reason for the proposed amendment.
- C. PUBLIC REVIEW.** Copies of the proposed text amendment shall be available at the County offices for review by the public.
- D. REVIEW AND RECOMMENDATION OF PLANNING COMMISSION.** Following the publication of notice of the proposed text amendment published at least fourteen (14) days prior to the public hearing, the Planning Commission shall conduct a public hearing. The Planning Commission may make modifications to the proposed amendment and transmit its recommendations on the proposed text to Board of County Commissioners.
- E. ACTION BY BOARD OF COUNTY COMMISSIONERS.** After receipt of the recommendation from the Planning Commission and following publication of a notice of the proposed text amendment published at least thirty (30) days prior to the public hearing, the Board of County Commissioners shall hold a public hearing and determine whether the text should be amended. Following the close of the hearing, the Board may direct the Administrator to make any such amendments to the official Land Use Code.

## **SECTION 1-108 SEVERABILITY.**

If any section, clause, or portion of this Code is found to be unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Code shall not be affected and shall remain in full force and effect.

## **SECTION 1-109 STATUTORY VESTED PROPERTY RIGHTS.**

- A. GENERAL.** Pursuant to C.R.S. §§ 24-69-101 *et seq.*, a vested property right shall be deemed established for a period of three (3) years with the approval of a Site-Specific Development Plan as defined in Section 1-109B. When a Site-Specific Development Plan is approved with a Land Use Permit, the Permit shall confer upon the landowner the right to undertake and complete the development and use of the property under the terms and conditions of the Site-Specific Development Plan. If the term of approval for the Site-Specific Development Plan is extended pursuant to these regulations, the term of vested property rights is extended to conform to the extended term of approval.
- B. SITE SPECIFIC DEVELOPMENT PLAN.** For the purposes of this Section, the following documents shall constitute a Site-Specific Development Plan establishing a vested property right: a site plan approved with a Minor Land Use Permit or a Major Land Use Permit; a Subdivision Final Plat; or an Exemption Plat. The document that triggers a vested property right shall be so identified at the time of its approval.
- C. DEVELOPMENT AGREEMENT AND EXTENSION OF VESTED PROPERTY RIGHTS.** The Board of County Commissioners may enter into a development agreement with the landowner for the extension of vested property rights beyond the three-year statutory period where, in the discretion of the Board, an extension is warranted due to project size and/or phasing of the development. The Board may also consider an extension of vested property rights for economic cycles and/or market conditions.
- D. APPROVAL AND PUBLICATION OF NOTICE.**

  - 1. Approval.** A Site-Specific Development Plan shall be deemed approved upon the effective date of the Board of County Commissioners' approval action, following a public hearing conducted in accordance with these regulations. The Board's approval of a Site-Specific Development Plan may include such terms and conditions as may be reasonably necessary to protect the public health, safety and general welfare. The approval shall result in a vested property right, although failure to abide by such terms and conditions will result in forfeiture of the vested property right.

2. **Publication of Notice.** Within fourteen (14) days of approval of the Site-Specific Development Plan by the Board of County Commissioners, the County shall publish a notice of Site Specific Development Plan approval and creation of a vested property right in a newspaper of general circulation. The period of time for exercise of vested property rights shall not begin to run until the date of publication of the notice.

**E. EXCEPTIONS TO VESTING OF PROPERTY RIGHTS.** Once established pursuant to these regulations, a vested property right precludes any zoning or land use action by the County during the period of time that the property right is established to be vested that would: alter, impair, prevent, diminish, or otherwise delay the development or use of the land subject to the Site-Specific Development Plan consistent with the terms and conditions of the Site-Specific Development Plan, except under one or more of the following conditions.

1. **Landowner's Consent.** With the consent of the affected landowner.
2. **Just Compensation Paid to Landowner.** The affected landowner receives just compensation for all costs, expenses, and liabilities incurred by the landowner; including but not limited to, all fees paid in consideration for financing and all architectural, planning, marketing, legal and other consultants' fees incurred after approval of the Site-Specific Development Plan by the County, together with interest at the current market rate until paid. Just compensation shall not include any diminution in the value of the property which is caused by such action.
3. **Hazards.** Upon the discovery of natural or man-made hazards on or in the immediate vicinity of the subject property, which hazards could not reasonably have been discovered at the time of the approval of the Site-Specific Development Plan, and which hazards, if uncorrected, would pose a serious threat to the public health, safety and welfare.
4. **General Ordinances and Regulations.** The establishment of a vested property right shall not preclude the application of ordinances, resolutions or regulations which are general in nature and are applicable to all property subject to land use regulations by the County, including but not limited to building, fire, plumbing, electrical and mechanical codes.

**ARTICLE 2      LAND USE PERMITS**

**SECTION 2-101      LAND USE PERMIT REQUIRED FOR LAND USE CHANGES.**

- A.      LAND USE PERMITS.** Unless otherwise exempt pursuant to Section 2-102 of this Code, any Land Use Change shall require a Land Use Permit. A Land Use Change is defined as: any development, grading, construction, activity or operation that changes the basic character, configuration, or use of land or structures after the enactment of this Land Use Code.
- B.      PERMIT APPLICATION.** An application for a Land Use Permit shall be filed with the County.
- C.      NO DEVELOPMENT PRIOR TO PERMIT ISSUANCE.** No development or Land Use Change for which a Land Use Permit is required may begin until a Land Use Permit has been approved and issued by Yuma County.
- D.      PERMITS RUN WITH THE LAND.** Any Land Use Permit issued under this Code shall run with the land.
- E.      COMMENCEMENT AND COMPLETION OF CONSTRUCTION.** The Board of County Commissioners, at its discretion, may establish the schedule for commencing and completing construction of the project. Unless otherwise established by the Board, any Land Use Permit issued under this Code shall expire after one year from the date of issuance if construction has not commenced, and within three years from the date of issuance if construction has not been completed.

  - 1.      Extension of Time.** The applicant may request one extension of time to begin or complete construction.
  - 2.      Written Request.** The applicant shall file a written request with the County and show good cause for extension of time, no less than thirty (30) calendar days prior to the original expiration date.
  - 3.      Board Approval of Request for Extension of Time.** The County may approve the request for extension of time based upon information provided by the permittee.
- F.      PERMIT AMENDMENT.** Any material change to the project from that set forth in the Permit approved by the County shall require a permit amendment. The permittee shall meet with the Administrator to discuss the proposed permit amendment and initiate the review process.

**1. Submittal Requirements for Review of Permit Amendment.**

The permittee shall submit an application for permit amendment to the Administrator that contains the following material.

- a. A copy of the current Permit and a written statement of the reasons for amending the Permit.
- b. A written report of how the proposed permit amendment satisfies the applicable approval criteria, and any additional or changed mitigation plans proposed to satisfy those criteria.
- c. Additional materials that the County determines necessary to properly review the request for permit amendment.

**2 Procedure for Review of Permit Amendment.**

a. **Amendment of Administrative Land Use Permit.** The Administrator shall consider the proposed amendment of an Administrative Land Use Permit.

(1) **Review by Referral Agencies.** The Administrator may send copies of the application to any referral agencies and consultants deemed necessary by the County for review of the proposed permit amendment.

(2) **Notice to Adjacent Property Owners.** Notice to adjacent property owners shall not be required unless the Administrator determines that the proposed permit amendment is likely to affect adjacent property owners. If notification is required, the notice shall be made by the County by sending a written notice to property owners within 500 feet of the boundaries of the site. The notice shall include a description of the proposed permit amendment and instructions for submitting comments to the Administrator.

(3) **Decision by Administrator.** The Administrator may approve, approve with conditions, or deny the application for amendment of Administrative Land Use Permit based upon compliance of the modified project with the applicable standards and criteria in Article 5 of these regulations.

- (a) **Approval.** The permit amendment may be approved if the modified project satisfies all of the applicable standards and criteria without additional conditions.
  - (b) **Conditional Approval.** The permit amendment may be approved with conditions if conditions are necessary to ensure compliance with this Code.
  - (c) **Denial.** The permit amendment shall be denied and the modified project shall require a new Land Use Permit if the modified project does not satisfy all of the applicable standards and criteria.
  - (d) **Notice of Administrator's Decision.** The Administrator shall inform the permittee and the Board of County Commissioners of the approval or basis for denial in writing within five (5) working days of the decision.
- (4) **Request for Review of Administrator's Decision.** Within five (5) working days of the written notice of decision by the Administrator, the permittee or adjacent property owner(s) may request review of the Administrator's decision by the Board of County Commissioners.
- (5) **Call-up of Administrator's Decision by the Board of County Commissioners.** Within fourteen (14) calendar days after receipt of notice of decision by the Administrator, the Board may, at its discretion, decide to reconsider the Administrator's decision at the next regularly scheduled meeting of the Board for which proper notice can be accomplished.
- (6) **Consideration of Amendment of Administrative Land Use Permit by the Board of County Commissioners.** Upon receiving the request for review of the Administrator's decision on the application for amendment of an Administrative Land Use Permit, or after call-up, the Board of County Commissioners shall consider the application at a regular meeting of the Board for which proper notice can be accomplished. The



Board of County Commissioners shall uphold the Administrator's decision, modify the decision, or reverse the decision based on the applicable standards and criteria in Article 5 of these regulations.

**b. Amendment of Minor Land Use Permit and Major Land Use Permit.** The Board of County Commissioners shall consider the proposed amendment of a Minor Land Use Permit or a Major Land Use Permit.

**(1) Public Hearing by Board of County Commissioners.** The Board of County Commissioners shall hold a public hearing to consider the application for amendment of a Minor Land Use Permit or Major Land Use Permit and shall hear evidence regarding compliance with the applicable standards and criteria before taking an action on the application.

**(2) Notice of Board of County Commissioners' Public Hearing.**

**(a) Publication of Notice.** The County shall arrange for notice of the Board's public hearing on the application for permit amendment to be published at least fourteen (14) days prior to the date of the public hearing in a newspaper of general circulation setting forth the time, date and place of the hearing.

**(b) Notice to Adjacent Property Owners.** Not less than 10 days prior to the date of the Board's hearing, the County shall notify property owners within 500 feet of the exterior boundary of the site by sending a written notice describing the proposed permit amendment and setting forth the time, date and place of the hearing.

**(c) Notice to Mineral Estate Owners.** Not less than 30 days prior to the date of the Board's hearing, the Applicant shall notify mineral estate owners on-site and within 500 feet of the boundaries of the site by sending a written notice by certified mail, return

receipt requested, describing the proposed permit amendment; site location and legal description by section, township and range; name of applicant; and setting forth the time, date and place of the hearing.

(d) **Posting on the Site.** At least fourteen (14) days prior to the date of the Board's hearing, the Applicant shall post a notice of the proposed permit amendment on the site describing the time, date and location of the hearing.

(3) **Decision by Board.** The Board may approve, approve with conditions, or deny the application for amendment of a Minor Land Use Permit or Major Land Use Permit based upon compliance of the modified project with the applicable standards and criteria in Article 5 of these regulations.

(a) **Approval.** The permit amendment may be approved if the modified project satisfies all of the standards and criteria without additional conditions.

(b) **Conditional Approval.** The permit amendment may be approved with conditions if conditions are necessary to ensure compliance with this Code.

(c) **Denial.** The permit amendment shall be denied and the modified project shall require a new Land Use Permit if the modified project does not satisfy all of the applicable standards and criteria in Article 5 of these regulations.

## **SECTION 2-102 EXEMPTIONS FROM LAND USE PERMIT REQUIREMENTS.**

The following Land Use Changes do not require a Land Use Permit

A. **SINGLE FAMILY DWELLING.** The construction of one single family dwelling and accessory uses that are incidental and secondary to the single-family dwelling on a single lot shall not require a Land Use Permit.

1. **Activity Notice Required.** For purposes of the County Assessor's Office, the Administrator shall process an Activity Notice, based upon review of a detailed site plan.

**B. AGRICULTURAL STRUCTURES AND ACTIVITIES.** The construction of agricultural structures and the conduct of activities associated with normal agricultural operations and any minor expansion of a concentrated animal feeding operation or livestock confinement facility that does not increase the capacity of the facility by more than 33% or 5,000 head, whichever is less, over the existing capacity as of the date of approval of this document, shall not require a Land Use Permit.

1. **Activity Notice Required.** For purposes of the County Assessor's Office, the Administrator shall process an Activity Notice, based upon review of a detailed site plan.

**C. HOME OCCUPATIONS.** The conduct of a home occupation shall not require a Land Use Permit so long as the home occupation complies with the following minimum standards. Failure to conduct the home occupation in compliance with the minimum standards shall be a violation of this Code and will be subject to enforcement proceedings. Should the Board of County Commissioners receive a complaint on a home occupation, exempt status may be reconsidered or nullified.

The following minimum standards shall apply to exempt home occupations:

1. Such use is incidental and secondary to residential use of the principal dwelling or accessory structure or addition and does not change the residential character thereof.
2. Such use will be conducted by the resident(s) of the principal dwelling and only within the principal dwelling or accessory structure or addition.
3. Such use does not generate traffic that significantly affects the residential character of the area.
4. Such use does not create excessive or offensive noise, vibration, smoke, dust, odors, heat, glare or light noticeable or extending beyond the property boundaries.
5. Such use shall not infringe upon the right of neighboring residents to enjoy the peaceful occupancy of their homes.

**D. EXISTING USES AND STRUCTURES.** Continuation of uses in existence as of the effective date of this Code shall not require a Land Use Permit. Uses and structures existing as of the effective date of this Code which are not in conformance with the provisions of this Code shall be treated as a nonconforming use subject to the requirements of Article 7 of this Code.

**E. DIVISION OF LAND INTO PARCELS 35 ACRES OR LARGER.** The division of land into parcels thirty-five (35) acres in size or larger shall not require a Land Use Permit.

**1. Land Use Changes on Parcels Greater than Thirty-Five Acres Not Exempt from Permit Requirements.** Even though the division of land into parcels thirty-five acres or larger in size does not require a Land Use Permit, other Land Use Changes on or to serve these parcels shall require a Land Use Permit including, without limitation, the construction of roads and utilities to serve those parcels, commercial or industrial uses, livestock containment facilities, confined animal feeding operations and other activities not exempt from the permit requirements of this Code.

**F. RESIDENTIAL WIND AND SOLAR ENERGY SYSTEMS.**

**1. Residential Wind Energy System.** An Activity Notice shall be required for the installation of a Residential Wind Energy System. See Section 5-101, G, *Additional Standards for Activity Notice-Wind Energy Systems*.

**2. Residential Solar Energy System.** An Activity Notice shall be required for the installation of a Residential Solar Energy System. See Section 5-101, H, *Additional Standards for Activity Notice-Solar Energy Systems*.

## **SECTION 2-103 CLASSES OF LAND USE PERMITS.**

Yuma County has adopted three classes of Land Use Permits: Administrative Land Use Permits, Minor Land Use Permits and Major Land Use Permits. The determination of the class of Land Use Permit that will be required for a Land Use Change shall be made at the time that an application has been filed with the County. See Section 4-101(B).

**A. ADMINISTRATIVE LAND USE PERMITS.** Administrative Land Use Permits may be issued by the Administrator under Section 4-102 of this Code for any of the following Land Use Changes:

1. **Construction of a second or third dwelling unit on a single parcel of land thirty-five (35) acres in size or larger.** An Administrative Land Use Permit shall be required for the construction of a second or third dwelling unit on a single parcel thirty-five (35) acres or larger in size.
  2. **Lot line adjustments.** An Administrative Land Use Permit shall be required for the adjustment of lot lines between lots.
  3. **Extension or Enlargement of a Non-Residential Structure.** An Administrative Land Use Permit shall be required for extension or enlargement of a non-residential structure allowed under the provisions of this Code, that adds less than 500 square feet of usable floor space to the square footage in compliance with the provisions of this Code.
  4. **Lot Mergers.** An Administrative Land Use Permit shall be required to eliminate the lot lines separating adjacent lots that are commonly owned.
  5. **Correction of Plat.** An Administrative Land Use Permit shall be required to correct a technical error in a subdivision plat that has been approved and recorded.
  6. **Distributed Wind Energy System.** A Modified Administrative Land Use Permit shall be required for the installation of a Distributed Wind Energy System. See Section 5-101, I, *Additional Standards for Administrative Land Use Permits-Distributed Wind Energy Systems*.
  7. **Distributed Solar Energy System.** A Modified Administrative Land Use Permit shall be required for the installation of a Distributed Solar Energy System. See Section 5-101, J, *Additional Standards for Administrative Land Use Permits-Distributed Solar Energy Systems*.
- B. MINOR LAND USE PERMITS.** Minor Land Use Permits may be issued by the Board of County Commissioners under Section 4-103 of this Code for any of the following Land Use Changes.
1. **Exempt Divisions of land into four parcels or less.** A Minor Land Use Permit shall be required for divisions of land resulting in the creation of four parcels or less for purposes of obtaining exempt small capacity well permits from the State Engineer.
  2. **Roads and Excavations.**
    - a. The design and construction of a road or excavation, other than a road or excavation that is part of a normal

agricultural operation, shall require a Minor Land Use Permit, except that:

- (1) The design and construction of a road or excavation associated with development shall be reviewed and considered as part of the Land Use Permit process for that development.
  3. **Cluster Subdivisions.** A Minor Land Use Permit shall be required for development of Cluster Subdivisions under Section 3-102(B)(2) to implement the requirements of C.R.S. 37-92-602.
  4. **Subdivision Plat Vacation.** A Minor Land Use Permit shall be required for vacation of a recorded subdivision plat.
  5. **Subdivision Final Plat.** A Minor Land Use Permit shall be required for approval of a subdivision final plat in compliance with an approved preliminary plan.
  6. **Roadway Vacation.** A Minor Land Use Permit shall be required for vacation of public roads and rights-of-way.
- C. **MAJOR LAND USE PERMITS.** All Land Use Changes that are not listed under Administrative Land Use Permits or Minor Land Use Permits require a Major Land Use Permit and may be issued by the Board of County Commissioners under Section 4-104 of this Code.

**ARTICLE 3      REVIEW AND CONSIDERATION OF DIVISIONS OF  
LAND**

**SECTION 3-101      SUBDIVISIONS.**

Colorado State Statutes empower counties to adopt regulations that govern certain divisions of land. Subdivision is defined by statute to include “any parcel of land...which is divided into two or more parcels, separate interests or interests in common, unless exempt...”

- A. COMPLIANCE WITH CODE REQUIRED.** No subdivision shall be approved under this Code unless it meets all of the County requirements contained in this Code.
  
- B. SALE OF LOTS IN UNAPPROVED SUBDIVISIONS PROHIBITED.** No land within a subdivision shall be sold unless a final plat for the subdivision has been approved and recorded in compliance with this Code.
  
- C. PRELIMINARY PLAN.** An applicant for subdivision must gain approval of a preliminary plan prior to consideration of a request for final plat approval. A preliminary plan requires a Major Land Use Permit under Section 4-104.
  
- D. FINAL PLAT.** An applicant for subdivision must gain approval of a final plat following the approval of the preliminary plan. A final plat requires a Minor Land Use Permit under Section 4-103.

**SECTION 3-102      EXEMPTIONS FROM DEFINITION OF SUBDIVISION.**

- A. STATUTORY EXEMPTIONS.**
  - 1. Thirty-five Acre.** Under State Statute, the term “subdivision” and “subdivided land” shall not apply to any division of land which creates parcels of land each of which comprises thirty-five (35) or more acres of land and none of which is intended for multiple ownership. These divisions do not require the approval of a subdivision plat, but *Land Use Changes* that occur on parcels of land larger than thirty-five acres require a Land Use Permit and are not exempt from compliance with the Code.
  
  - 2. Other Statutory Exemptions.** Section 30-28-101 (10) (c) lists other divisions of interests in land to which the term “subdivision” and “subdivided land” do not apply.

**B. YUMA COUNTY EXEMPTIONS.** Yuma County exempts from the definition of the term “subdivision” and “subdivided land” the following divisions of land but these divisions require a Land Use Permit and are not exempt from compliance with the Code.

**1. Exempt Divisions for Small Capacity Well Eligibility.** Yuma County finds that divisions of land that create twenty or fewer lots even though the lots are smaller than thirty-five acres in size are exempt from the definition of subdivision and therefore eligible to apply for an exempt small capacity well permit with the Office of the State Engineer. These divisions are not required to comply with Yuma County subdivision regulations, but a Land Use Permit shall be required as follows:

- a. Exempt Divisions to Create Four Lots.** The platting of exempt divisions of land that creates four lots or less shall require a Minor Land Use Permit under Section 4-103.
- b. Exempt Divisions into Five to Twenty Lots.** The platting of exempt divisions of land that creates five to twenty lots shall require a Major Land Use Permit under Section 4-104.
- c. No Determination of Water Availability.** Issuance of a Land Use Permit for an Exempt Division for small capacity well eligibility does not constitute any finding by the County regarding whether a well permit will be issued by the State Engineer or whether water is actually available.

**2. Cluster Developments.** Yuma County finds that the creation of a cluster development as that term is defined by state statute at C.R.S. §§ 30-28-401, 402 and 403 is exempt from the definition of subdivision.

- a. Minor Land Use Permit Required.** A Minor Land Use Permit under Section 4-103 is required for platting of a cluster subdivision.



**ARTICLE 4      APPLICATION AND REVIEW PROCESS FOR LAND USE PERMITS**

**SECTION 4-101      COMMON APPLICATION PROCEDURES.**

These procedures shall apply to any applicant for a Land Use Permit under this Code.

- A.      PREAPPLICATION MEETING.** Any person contemplating a Land Use Change shall first schedule a preapplication meeting with the Administrator to discuss the proposed Land Use Change.
  
- B.      DETERMINATION OF CLASS OF LAND USE PERMIT.** Within five (5) working days of the meeting with the Applicant, the Administrator shall determine if the Land Use Change requires an Administrative Permit, Minor Land Use Permit or Major Land Use Permit.
  - 1.      Notice of Determination of Class of Land Use Permit.** Within one (1) working day of the Determination of Class of Land Use Permit, the Administrator shall notify the applicant and the Board of County Commissioners of the determination by email or phone whether the Land Use Change is subject to the Administrative Land Use Permit, Minor Land Use Permit or Major Land Use Permit.
  
  - 2.      Reconsideration of Administrator's Determination of Class of Land Use Permit by Board.** The Board of County Commissioners may, at its discretion, review the Administrator's Determination of the class of Land Use Permit and decide that a different class of Land Use Permit is more appropriate, based upon the nature and scope of the impacts of the proposed Land Use Change. Such review and amendment of the Determination shall be made at the next regularly scheduled meeting of the Board following receipt of notice of the Determination.
  
- C.      APPLICATION FEE.**
  - 1.      Fee Established.** Any application shall be accompanied by an application fee in accordance with the Fee Schedule. (The application fee schedule will be proposed by the Administrator, and adopted by a Resolution of the Board.) The application fee schedule shall reflect the minimum cost of reviewing and processing the application package, including costs of copying, mailings, publications, and labor.
    - a.**      The Administrator shall add to the application fee the estimated costs of outside consultants, experts, and attorneys as the County deems necessary to advise it on the review and consideration of the application package.

2. **Accounting of fee.** The County will deposit that portion of the application fee that is not necessary to cover immediate costs and expenses in an account. The County will obligate, encumber or use such funds, from time to time, at its discretion, when necessary to cover the cost of review and consideration of the application. If costs associated with review and consideration of the application package exceed the funds available in the account, the Administrator shall notify the applicant of the additional fee required to proceed with review and consideration of the application package.
- D. SUBMITTAL OF PERMIT APPLICATION.** Following the determination of class of Land Use Permit and the Application Fee, the Application shall be submitted to the Administrator, together with the appropriate application fee.
- E. COMPLETENESS DETERMINATION.** Within 15 days following receipt of the permit application, the Administrator shall determine whether the application is complete. An application shall be deemed complete if it includes all information required.
1. **Notification of Incompleteness.** If the application is not complete, the Administrator shall notify the applicant in writing of any materials that must be submitted before the application can be deemed complete. The time to review the application shall not begin to run until the completeness determination has been made.
  2. **Completeness Date.** Once the Application is complete, the Administrator shall stamp the application with the date that it was determined to be complete and all time frames within this Code pertaining to review of the application shall be based on the completeness date.
- F. REVIEW AND APPROVAL.** Every Application may be approved, approved with conditions or denied by the County and will be reviewed according to the procedures in this Code for the particular class of permit.

#### **SECTION 4-102 ADMINISTRATIVE LAND USE PERMIT PROCEDURES.**

- A. APPLICABILITY.** The Administrative Land Use Permit process may apply only to those Land Use Changes that have been determined to fall within the Administrative Land Use Permit Class. See Section 2-103(A).

- B. SUBMITTAL OF PERMIT APPLICATION.** An applicant for an Administrative Land Use Permit shall submit the following information unless the Administrator decides that the information should be waived under Section 4-102 (B)(7).
- 1. Written Description.** A brief written description of the proposed Land Use Change shall be submitted to the Administrator. The written description shall include the type of Land Use Change, and the total number of acres of the site where the change will occur and how the Land Use Change complies with the applicable standards.
    - a. Applicant is not the owner.** If the applicant is not the owner of the land, or is a contract purchaser of the land, the applicant shall submit a letter signed by the owner consenting to the submission of the application.
    - b. Applicant is not the sole owner.** If the applicant is not the sole owner of the land, the applicant shall submit a letter signed by the other owners or an association representing the owners consenting to or joining in the application for Land Use Permit
  - 2. Vicinity Map.** An 8 ½ x 11 vicinity map locating the parcel in the County. The vicinity map shall clearly show the boundaries of the site, and the ownership and use of adjacent properties.
  - 3. Site Plan.** A site plan prepared at a scale acceptable to the Administrator, which best conveys the conceptual aspects of the plan. The site plan shall have the following elements:
    - a.** Date of preparation, revision box, written scale, graphic scale, and north arrow (designated as true north).
    - b.** Clearly identified boundary lines, corner pins, dimensions of the site, and distance of structures from the boundaries of the site.
    - c.** Location of lot lines.
    - d.** Size of the site, in acres or square feet.
    - e.** Existing uses of the site and the adjacent properties.
    - f.** Location, dimension of all structures, existing and proposed.

- g. Existing and proposed grading.
  - h. Existing and proposed roads, railroad tracks, irrigation ditches, fences, existing and proposed utility lines, and easements and rights-of-ways on or adjacent to the site, shown by location and dimension.
  - i. The location of wells, septic systems, leach fields and similar features.
4. **Wastewater System.** Description of any proposed wastewater treatment system, including location and size of leach field, that will serve proposed uses.
  5. **Water Supply System.** Description of the source and capacity of any water supply, including location and size of well(s) and/or water lines to serve the proposed use.
  6. **Elevations Drawings of Structures.** Where the proposed Land Use Change is for the construction of buildings or structures, the applicant shall submit elevation drawings of proposed structures showing existing grade, finished grade, and height of structure above existing grade.
  7. **Additional Information or Waivers.** The Administrator may request additional information that may be required to evaluate the proposed Land Use Change. The Administrator may waive or alter any of these application submittal requirements if they are determined to be inappropriate or unnecessary to determining if the application satisfies applicable standards.

**C. APPLICATION MATERIALS REQUIRED FOR DISTRIBUTED WIND AND SOLAR ENERGY SYSTEM.** The application for an Administrative Land Use Permit for a Distributed Wind or Solar Energy System shall include the following information. The Administrator may request additional information that may be necessary to evaluate the application. The Administrator may waive any part of the application material requirements when the information would not be relevant to determining whether the proposed Distributed Wind or Solar Energy System complies with the standards in Section 5-103 F & G.

**a. Written Description.** A written description of the proposed Distributed Wind Energy System including the manufacturer and model, rated kW capacity, overall height of the turbine (grade level to highest tip extension), total blade diameter, and rated maximum rotor RPM. A written description of the proposed Distributed

Solar Energy System including the manufacturer and model of the system to be installed.

**b. Site Plan.** The site plan for applications for a Distributed Wind or Solar Energy System shall include the following elements:

- (1) Date of preparation, revision box, written scale, graphic scale, and north arrow (designated as true north).
- (2) Clearly identified boundary lines, corner pins, and dimensions of the site.
- (3) Location of lot lines.
- (4) Size of the site, in acres or square feet.
- (5) Existing uses of the site and the adjacent properties.
- (6) Existing structures shown by location and dimension.
- (7) Location and dimensions of proposed Distributed Wind Energy System and distance from the boundaries of the site.
- (8) Location and dimensions of proposed ground-mounted solar collection panels, associated control and conversion electronics and distance from the boundaries of the site.
- (9) Dimensional drawing of roof-mounted solar collection panels showing height and orientation, and distance of structure housing the panels from the boundaries of the site.
- (10) Existing roads, railroads, utility lines, and easements and rights-of-way on the site, shown by location and dimension.

**c. Detailed Drawing or Photograph.** Detailed drawing of the Distributed Wind or Solar Energy System to be installed. The drawing shall include dimensions for wind tower footprint, tower height, hub height and blade tip height.

**d. Notice to FAA.** If the Distributed Wind Energy System is located within twenty thousand feet (20,000') of the runway of an

airport, the application shall be accompanied by a copy of the written notification to the Federal Aviation Administration (FAA).

**e. Notice to Operation of Communication Link.** If the Distributed Wind Energy System is located within two (2) miles of any microwave communications link and/or remote telemetry, the application shall be accompanied by a copy of the written notification to the operator of the communication link.

**D. ADMINISTRATIVE LAND USE PERMIT REVIEW PROCEDURE.**

Following the preapplication conference described in Section 4-101(A), and the determination that the application is complete under Section 4-101(E), the following process will apply to review an Administrative Land Use Permit. In addition to the application fee that reflects the minimum costs to process the application, the applicant is responsible for paying the direct costs of review of the application, including but not limited to costs of referral agencies and outside consultants.

- 1. Evaluation of Application by Administrator.** Upon determination of completeness, the Administrator shall review the application for compliance with the applicable General Standards set forth in Section 5-101, *General Standards*. All Distributed Wind and Solar Energy Systems shall be reviewed by the Yuma County Board of County Commissioners at a regularly scheduled meeting.
- 2. Review by Referral Agencies.** The Administrator may send copies of the application to any referral agencies and consultants deemed necessary by the County.
- 3. Notice to Adjacent Property Owners.** Notice to adjacent property owners shall not be required for an Administrative Land Use Permit unless the Administrator determines that the proposed use is likely to affect adjacent property owners. If notification is required, the notice shall be made by the County by sending a written notice describing the proposed Land Use Change to property owners within 500 feet of the boundaries of site to be developed. Notice to adjacent property owners shall be required for all Distributed Wind and Solar Energy Systems not less than 10 days prior to the Board Review.
- 4. Decision by Administrator.** Within 14 working days of the date that the application was determined to be complete, the Administrator may approve, approve with conditions or deny the application for an Administrative Land Use Permit based upon compliance of the application with general standards set forth in

Section 5-101, *General Standards*. The Administrator shall inform the applicant of the approval, conditions of approval or basis for denial in writing within 5 working days of the decision.

5. **Request for Review of Administrator's Decision.** The Applicant or adjacent property owner(s) may request review of the Administrator's decision by the Board of County Commissioners within 5 working days of the written notice of decision by the Administrator.
6. **Call-up of Administrator's Decision by the Board of County Commissioners.** Within fourteen (14) calendar days after receipt of the Notice of Decision, the Board may, at its discretion, decide to reconsider the Administrator's decision at the next regularly scheduled meeting of the Board for which proper notice can be accomplished.
7. **Consideration of Application by the Board of County Commissioners.** Upon receiving the request for review of the Administrator's decision on the Land Use Permit application, or after call-up, the Board of County Commissioners shall consider the application a regular meeting of the Board, no more than thirty (30) days from the receipt of the request. The Board of County Commissioners shall either uphold the Administrator's decision, modify the decision, or reverse the decision based on the general standards and criteria set forth in Section 5-101, *General Standards*.
8. **Notice to Mineral Estate Owners.** For all Distributed Wind and Solar Energy Systems, not less than 30 days prior to the date of the Board review, the County shall notify mineral estate owners on-site and within 500 feet of the boundaries of the site where the development will occur by sending a written notice describing the proposed change; site location and legal description by section, township and range; name of applicant; and setting forth the time, date and place of the Board review on the Administrative Land Use Permit application.
9. **Publication of Notice of Board of County Commissioner Public Review.** For all Distributed Wind and Solar Energy Systems, the County shall arrange for notice of the Board of County Commissioners public review on the application for an Administrative Land Use Permit to be published at least 14 days prior to the date of the public review in a newspaper of general circulation setting forth the time, date and place of the review.

**SECTION 4-103 APPLICATION SUBMITTAL REQUIREMENTS AND REVIEW PROCESS FOR MINOR LAND USE PERMITS.**

- A. APPLICABILITY.** The Minor Land Use Permit process may apply only to those Land Use Changes that have been determined to fall within the Minor Land Use Permit Class. See Section 2-103(B).
- B. SUBMITTAL OF PERMIT APPLICATION.** The Applicant for a Minor Land Use Permit shall submit an application that contains the following material unless the Administrator decides that the information should be waived under Section 4-103 B. 11.
- 1. Written Description.** A brief written description of the proposed Land Use Change shall be submitted to the Administrator. The written description shall include the type of Land Use Change, and the total number of acres of the site where the change will occur.
    - a. Applicant is not the owner.** If the applicant is not the owner of the land, or is a contract purchaser of the land, the applicant shall submit a letter signed by the owner consenting to the submission of the application.
    - b. Applicant is not the sole owner.** If the applicant is not the sole owner of the land, the applicant shall submit a letter signed by the other owners or an association representing the owners consenting to or joining in the application for Land Use Permit
  - 2. Vicinity Map.** An 8 ½ x 11 vicinity map locating the site in the County. The vicinity map shall clearly show the boundaries of the site, and the ownership and use of adjacent properties.
  - 3. Site Plan.** *(not required for exempt divisions, cluster divisions or subdivision final plats.)* A site plan prepared at a scale acceptable to the Administrator, which best conveys the conceptual aspects of the plan and for effective public presentation. The site plan must have the following elements:
    - a.** Date of preparation, revision box, written scale, graphic scale, and north arrow (designated as true north).
    - b.** Clearly identified boundary lines, corner pins, dimensions of the site, and distance of structures from the boundaries of the site.
    - c.** Location of lot lines.



- d. Size of the parcel, in acres or square feet.
  - e. Existing uses of the site and the adjacent properties.
  - f. Location, dimension of all structures, existing and proposed.
  - g. Existing and proposed grading.
  - h. Existing and proposed roads, railroad tracks, irrigation ditches, fences, existing and proposed utility lines, and easements and rights-of-ways on or adjacent to the parcel, shown by location and dimension.
  - i. Significant features on the site such as contours, natural and artificial drainage ways, wetland areas, ditches, hydrologic features (with flooding limits based on information available through the County), and aquatic habitat, geologic features and hazards, soil types; vegetative cover; dams, reservoirs, excavations, and mines; and any other on-site and off-site features that might influence the development.
4. **Additional Materials for Exemption Plat (Exempt Division and Cluster Development.)** Instead of a site plan and in addition to the other information required above, an applicant for a Minor Land Use Permit for an Exempt Division or Cluster Development shall submit a plat prepared by a professional engineer that contains, at a minimum, the following information:
- a. All boundary survey control points with monuments to locate lots, blocks, rights-of-way, and easements.
  - b. Purpose, width and location of all easements.
  - c. Location, identification and dimensions of lots and blocks.
  - d. Location, dimensions and identification of driveways, roads and trails. For roadways, curve radiuses shall be included.
  - e. Location and dimensions of any open space parcels and preserved areas, together with documentation as to how the area will be preserved, maintained and protected.
5. **Additional Materials for Subdivision Final Plat.** For those development projects where a Major Land Use Permit has been issued for a subdivision preliminary plan, a final plat containing the following information must be submitted instead of a site plan:

- a.** The name and address of the owner(s) of record of the land being platted and the same information for the applicant(s), if other than the owners, along with the name, address and seal of the certifying registered land surveyor and the other individuals preparing the Final Plat.
- b.** A copy of a current certificate from a title insurance company or an attorney licensed to practice law in the State of Colorado attesting to the accuracy and validity of the title to the property being platted and stating that the applicant is the land owner or is duly authorized by the land owner(s) to so plat such land.

  - (1)** The certificate or certification shall also list all mortgages, lien judgments, easements, contracts, and agreements of record regarding the land to be platted and the Board of County Commissioners may require, at its discretion, that the holders of such mortgages, liens, judgments, easements, contracts or agreements shall be required to join in and approve the application for Final Plat approval before such Final Plat is accepted for review.
- c.** A Final Plat on mylar sheets measuring 24 x 36 inches. The Final Plat shall include the following information:

  - (1)** The name or identifying title of the proposed subdivision.
  - (2)** The date of preparation of the Final Plat, a north arrow and a graphic scale.
  - (3)** A complete and accurate legal description of the property being platted and the total acreage and number of lots being platted.
  - (4)** Boundary lines, corner pins, and dimensions of the subject parcel(s), including land survey data to identify the subject parcel by section corners, distance and bearing to these corners, quarter corner and township range.
  - (5)** Existing and proposed topographic contours at vertical intervals sufficient to show the topography affecting the development, drainage, and grading plans.

- (6) The township, range, section and quarter section(s) showing the location and full description of all monuments as required by this Code and by Title 38, Article 51, C.R.S.
- (7) A lot and street layout with all lots and blocks numbered consecutively, the dimensions of all lots, the acreage of each lot shown to two decimal places and all street and road names.
- (8) The lengths of all arcs, radii and tangents for all curves.
- (9) Show design and layout of all water and sewer service lines, treatment facilities and other elements of the sanitary sewer system, including the location of soil percolation tests as applicable.
- (10) Location and width of existing and proposed roadways, sidewalks, or paths, road rights of way and parking areas within the site must be shown.
- (11) The boundary lines and dimensions, shown accurately, of all easements, alleyways, sidewalks and similar features, including all other rights-of-way not otherwise or explicitly mentioned.
- (12) The boundary lines and dimensions, shown accurately, of all property to be reserved and dedicated, with the means of access to such property clearly shown and its intended uses noted.
- (13) A legally acceptable land description and dedication block placed on the plat by the applicant dedicating streets, rights-of-way, public sites and other such features. The transfer to the County of dedicated land shall take place by a legally acceptable instrument prior to or concurrent with Final Plat acceptance, but before recording of the Final Plat.
- (14) Delineation of all known, identified or designated one hundred (100) year floodplains and localized areas subject to periodic inundation along the required stream setback lines, if any.

(15) **Additional Plat Notes.** Other plat notes and submittal items as the Planning Commission or the Board of County Commissioners may reasonably request to review and act upon the Final Plat.

6. **Drainage and Erosion Control Plan** (*not applicable to vacations or final plats*) For Land Use Changes that will require any excavation, grading or other surface disturbance, a plan showing existing and proposed grading for the site and practices to prevent erosion and run-off during and after construction.
7. **Noxious Weed Control Plan.**
8. **Wastewater System** (*not applicable to vacations or final plats*). For Land Use Changes that must be served by wastewater, a description of any proposed wastewater treatment system, including location and size of leach field, sewer service lines, and treatment facilities and certification by a professional engineer that the system is in compliance with state standards and adequate to serve the proposed development.
9. **Water Supply System.** (*not applicable to vacations or final plats*). For Land Use Changes that must be served by water, a description of the source and capacity of the water supply, including location and size of well(s) and/or water lines to serve the proposed use and proof of adequate physical and legal supply to serve the proposed Land Use Change.
10. **Impact Analysis** (*not applicable to vacations or final plats*). Description of the impacts that the proposed Land Use Change may cause, based upon the relevant standards and criteria of Sections 5-101, 5-102 and 5-103, and a complete description of how the applicant will ensure that impacts will be mitigated and standards will be satisfied.
11. **Additional Information and Waivers.** The Administrator may request additional information that may be required to evaluate the proposed Land Use Change. The Administrator may waive or alter any of these minimum requirements if they are determined to be inappropriate or unnecessary to determining if the application satisfies applicable standards.

C. **REVIEW OF MINOR LAND USE PERMIT APPLICATION MATERIALS BY ADMINISTRATOR.** Following the preapplication conference described in Section 4-101(A), and the determination that the application is complete under Section 4-101(E) the following process will apply to review a Minor Land Use Permit. In addition to the application

fee that reflects the minimum costs to process the application, the applicant is responsible for paying the direct costs of review of the application, including but not limited to costs of referral agencies and outside consultants.

1. **Evaluation of Application by Administrator.** The Administrator shall review the application for compliance with the relevant standards and criteria set forth in Article 5, *Standards and Criteria*. Within thirty (30) days of the date that the application was determined to be complete, the Administrator shall prepare a report that recommends approval, approval with conditions or denial of the application for a Minor Land Use Permit. The report shall be forwarded to the applicant and to the Planning Commission prior to the Planning Commission meeting when the application will be reviewed.
2. **Review by Referral Agencies.** The Administrator may send copies of the application to any referral agencies and consultants deemed necessary by the County.
3. **Schedule of Planning Commission Meeting.** Upon determination of completeness, the Administrator shall schedule the application for review by the Planning Commission at a regular meeting to be held not more than forty-five (45) days from the date that the application is deemed complete.

**D. REVIEW AND RECOMMENDATION BY PLANNING COMMISSION.** The Minor Land Use Permit Application shall be considered by the Planning Commission at a regular meeting scheduled not more than forty-five (45) days from the date that the application is deemed complete by the Administrator. No public hearing by the Planning Commission is required for a Minor Land Use Permit.

1. **Notice to Adjacent Property Owners.** Not less than five (5) days prior to the date of the Planning Commission meeting, the County shall notify property owners within five hundred (500) feet of the boundaries of the parcel where the development will occur by sending a written notice describing the proposed Land Use Change and setting forth the time, date and place of the Planning Commission meeting.
2. **Recommendation by Planning Commission.** Following the meeting, the Planning Commission shall recommend approval, approval with conditions or denial of the application for a Minor Land Use Permit based on the applicable standards and criteria in Article 5, *Standards and Criteria*.

**E. PUBLIC HEARING BY BOARD OF COUNTY COMMISSIONERS.**

**1. Schedule and Notice of Board of County Commissioners Public Hearing.**

- a. Schedule of Board of County Commissioner Public Hearing.** The Administrator shall schedule the Minor Land Use permit application for review by the Board at a public hearing to be held not more than 30 days from the date of the Planning Commission recommendation on the application.
- b. Publication of Notice of Board of County Commissioner Public Hearing.** The County shall arrange for notice of the Board of County Commissioners public hearing to be published at least fourteen (14) days prior to the date of the public hearing in a newspaper of general circulation setting forth the time, date and place of the hearing.
- c. Notice to Adjacent Property Owners by County.** Not less than 10 days prior to the date of the Board hearing, the County shall notify property owners within 500 feet of the boundaries of the site where the development will occur by sending a written notice describing the proposed Land Use Change; site location and legal description by section, township and range; name of applicant; and setting forth the time, date and place of the Board hearing on the Minor Land Use permit application.
- d. Notice to Mineral Estate Owners.** Not less than 30 days prior to the date of the Board hearing, the Applicant shall notify mineral estate owners on-site and within 500 feet of the boundaries of the site where the development will occur by sending a written notice by certified mail, return receipt requested, describing the proposed Land Use Change; site location and legal description by section, township and range; name of applicant; and setting forth the time, date and place of the Board hearing on the Minor Land Use permit application.
- e. Posting on the Site.** The Applicant shall post a notice of the proposed Land Use Change on the site at least fourteen (14) days prior to the Board hearing describing the time, date and location of the public hearing by the Board of County Commissioners.

**2. Public Hearing and Action by Board of County**

**Commissioners.** The Board of County Commissioners shall hold a public hearing to consider the application for a Minor Land Use Permit and shall hear evidence regarding compliance with the standards and criteria before taking an action on the application.

- a. Approval.** The application for a Minor Land Use Permit may be approved if the application satisfies all of the relevant standards and criteria contained in Article 5, *Standards and Criteria*.
- b. Conditional Approval.** The application for a Minor Land Use Permit may be approved with conditions if conditions are necessary to ensure compliance with this Code.
- c. Denial.** The application shall be denied if the application does not satisfy all of the relevant standards and criteria contained in Article 5, *Standards and Criteria*.

**SECTION 4-104 MAJOR LAND USE PERMIT PROCEDURES.**

- A. APPLICABILITY.** The Major Land Use Permit process shall apply to those Land Use Changes that do not fall within the Administrative or Minor Land Use Permit Class as described in Section 2-103, *Classes of Land Use Permits*.
- B. SUBMITTAL OF PERMIT APPLICATION.** The Applicant for a Major Land Use Permit shall submit an application that contains the following information. The Administrator may request additional information that may be necessary to evaluate the application. The Administrator may waive any part of the application material requirements when the information would not be relevant to determining whether the proposed land use change complies with the relevant standards in Section 5-101, *Minor and Major Land Use Permit Standards*, and Section 5-102, *Additional Standards for Certain Uses*.
  - 1. Written Description.** A brief written description of the proposed Land Use Change shall be submitted to the Administrator. The written description shall include the type of Land Use Change, and the total number of acres of the site where the change will occur.
    - a. Applicant is not the owner.** If the applicant is not the owner of the land, or is a contract purchaser of the land, the applicant shall submit a letter signed by the owner consenting to the submission of the application.

- b. **Applicant is not the sole owner.** If the applicant is not the sole owner of the land, the applicant shall submit a letter signed by the other owners consenting to or joining in the application for Land Use Permit.
    - c. **Corporate Ownership.** In the case of a corporate property owner or corporate applicant, evidence of registration or incorporation in the State of Colorado.
- 2. **Vicinity Map.** An 8 ½ x 11 vicinity map locating the site in the County. The vicinity map shall clearly show the boundaries of the site, and the ownership and use of adjacent properties.
- 3. **Site Plan.** *(not required for subdivision preliminary plans.)* A site plan prepared at a scale acceptable to the Administrator, which best conveys the conceptual aspects of the plan and for effective public presentation. The site plan shall have the following elements:
  - a. Date of preparation, revision box, written scale, graphic scale, and north arrow (designated as true north).
  - b. The name and address of the property owner (s) and of the applicant(s) if other than the owner or owners, and the person or persons preparing the submittal materials.
  - c. A list from the County Assessor’s office of current property owners of record, including their complete mailing address, for property both onsite and located within 500 feet of the exterior boundary of the site. This distance provision may be expanded up to two thousand five hundred (2500) feet by majority vote of the Planning Commission in the case of special circumstances that so warrant.
  - d. A list of the mineral estate owners and their complete mailing address, both onsite and located within 500 feet of the exterior boundary of the site. The list shall comprise mineral estate owners pursuant to C.R.S. § 24-65.5-103(1)(a)(I), as amended.
  - e. Clearly identified boundary lines, corner pins to the extent they exist, dimensions of the site, and distance of proposed structures and facilities from the boundaries of the site.
  - f. Location of lot lines.
  - g. Size of the parcel, in acres or square feet.



- h. Description of the current land use, both onsite and located within 500 feet of the exterior boundary of the site, including agricultural use, dwelling units, microwave communication links and airports.
  - i. Location and dimension of all structures and facilities, existing and proposed, both onsite and located within 500 feet of the exterior boundary of the site.
  - j. Existing and proposed grading.
  - k. Existing and proposed roads, railroad tracks, irrigation ditches, fences, utility lines and facilities, transmission lines and facilities, oil and gas wells, oil and gas facilities, pipelines, flowlines, and easements and rights-of-way of record on the site.
    - (1) Description of the ownership and purpose of easements and rights-of-way.
  - l. Description of proposed access route to and from the Wind Energy Facility including road surface material, proposed measures for dust control, and proposed road maintenance schedule or program.
  - m. Significant features on the site such as contours, natural and artificial drainage ways, wetland areas, ditches, hydrologic features (with flooding limits based on information available through the County), and aquatic habitat, geologic features and hazards, soil types; vegetative cover; dams, reservoirs, excavations, and mines; and any other on-site and off-site features that might influence the development.
4. **Materials Required for Subdivision Preliminary Plan.** Instead of a site plan and in addition to the other information required for a Major Land Use Permit, an applicant for a Major Land Use Permit for a Subdivision Preliminary Plan shall submit the following information:
- a. The name and address of the property owner (s) and of the applicant(s) if other than the owner or owners, and the person or persons preparing the Preliminary Plan submittal materials.

- b.** In the case of a corporate property owner or corporate applicant, evidence of registration or incorporation in the State of Colorado.
- c.** A list from the County Assessor's office of current property owners of record and their complete mailing address for property within five hundred (500) feet of the boundaries of the proposed subdivision. This distance provision may be expanded up to two thousand five hundred (2500) feet by majority vote of the Planning Commission in the case of large subdivisions and other special circumstances that so warrant.
- d.** A list of the mineral estate owners and their complete mailing address, both onsite and located within 500 feet of the exterior boundary of the site. The list shall comprise mineral estate owners pursuant to C.R.S. § 24-65.5-103(1)(a)(I), as amended.
- e.** Site data in chart form presenting the total number of proposed residential lots, the net size of the average (mean) lot, minimum lot size, maximum lot size, types of land use proposed and area of land proposed for each such land use.
- f.** The total number of projected square feet of non-residential floor space to be included within the proposed subdivision.
- g.** A Preliminary Plan map prepared by a professional engineer including the following:
  - (1)** The location and principal dimensions of all existing and proposed streets, alleys, roads, easements, off-street parking areas, watercourses, streams, ponds and other significant features of the natural and manmade landscape within and adjacent to the proposed subdivision. Such features should be labeled by their proper names, when such names exist or are known, and the use of all should be clearly shown.
  - (2)** Boundary lines with bearings and distances, and a legal description of the parcel to be subdivided certified by a registered land surveyor.
  - (3)** The lot and street layout with lots and blocks numbered consecutively with the dimensions of all

lots to the nearest foot and the acreage in each lot displayed.

- (4) The proposed sites, if any, for multi-family residential use, business use, commercial and industrial areas and other public and non-public uses exclusive of single family residential areas within the proposed subdivision.
- (5) The location of and preliminary engineering for any existing or proposed sewers, water mains, culverts, storm drains, sidewalks, gutters, fire hydrants and the sizes and types thereof, along with the width and depth of pavement or sub-grading to be provided, the depth of burial of all underground lines, pipes and tubing and typical cross sections of the proposed grading of roadways and sidewalks.
- (6) The preliminary engineering design and construction features for any bridges, culverts or other drainage structures to be constructed.
- (7) The topography of the proposed subdivision at five (5) foot contours. Upon request of and at the discretion of the Administrator, alternate contour intervals can be used for all or part of a site where special slope or other conditions prevail. Elevations shall be based on National Geodetic Survey sea level date.
- (8) The delineation of any known, identified or designated one hundred (100) year flood plains and localized areas subject to periodic flooding. Mitigation measures, if any, proposed to overcome the consequences of periodic inundation shall also be included in the submission. The distance between the mean identifiable high water mark of any creeks, streams or rivers and the nearest proposed development within the site shall also be shown.
- (9) The delineation of the geological characteristics of the area with evidence regarding the extent and intensity of any geological, radiological, seismic or other related hazards within or in close proximity to the proposed site. Mitigation measures, if any, proposed to overcome such geological, radiological,

seismic or other hazards shall also be included in the submission.

- (10) All areas to be reserved for community or public uses and all areas to be dedicated to Yuma County along with any other areas to be used for open space and a statement describing how such reserved, dedicated and open space lands shall be maintained.

- h. Soil suitability and interpretation information developed from National Cooperative Soil Survey data and accompanied by a table of interpretation for the soil types shown on the soils map or equivalent qualified private research sources, along with a narrative description of the mitigating measures, if any, proposed to overcome soils limitations present on the site of the proposed subdivision.

5. **Drainage and Erosion Control Plan.** For Land Use Changes that will require any excavation, grading or other surface disturbance, a plan showing existing and proposed grading for the site and description of practices that will be utilized to prevent wind erosion, water erosion, sedimentation, flooding and run-off during both construction and operation of the proposed Land Use Change.

6. **Noxious Weed Control Plan.** A description of the measures for controlling noxious weeds existing on the site or that may become established as a result of the development.

7. **Wastewater System.** For Land Use Changes that must be served by a wastewater treatment system, a description of the proposed wastewater treatment system, including location and size of leach field, sewer service lines, and treatment facilities. The Applicant shall provide proof that the system is in compliance with state standards and adequate to serve the proposed Land Use Change including:

- a. Certification of compliance with state standards, prepared by a professional engineer.

- b. Letter of approval from Northeast Colorado Health Department documenting that the wastewater system is adequate to serve the proposed use.

8. **Water Supply System.** For Land Use Changes that must be served by water, a description of the source and capacity of the

water supply, including location and size of well(s) and/or water lines to serve the proposed use. The Applicant shall provide proof of adequate physical and legal supply to serve the proposed Land Use Change, including a letter of approval from the State Engineer documenting that the proposed water supply is adequate to serve the proposed use.

**9. Road Maintenance and Improvement Agreement.**

- a. A long-term Road Maintenance and Improvements Agreement that includes provisions to address the applicable standards and a mitigation plan to address impacts to public roads caused by construction and operation of the proposed use.

**10. Impact Analysis.** Description of the impacts that the proposed Land Use Change may cause, based upon the relevant standards and criteria of Article 5, *Standards and Criteria*, and a complete description of how the applicant will ensure that impacts will be mitigated and standards will be satisfied. The impact analysis shall include, but is not limited to, the following information:

**a. Surface Water**

- (1) Description and map of surface water bodies in the area affected by the proposed use including existing water quality, and uses of those water bodies.
- (2) Description of impacts of the proposed use on surface water quality or quantity.
- (3) Description of mitigation techniques that will be used to prevent significant degradation of the quality and quantity of surface water resources.

**b. Ground Water**

- (1) Description and map of ground water affected by the proposed use including affected water wells, aquifers, designated uses of ground water and ground water quality.
- (2) Description of impacts of the proposed use on ground water quantity or quality.
- (3) Description of mitigation techniques that will be used to prevent significant degradation of the quality and quantity of ground water resources.

**c. Air Quality**

- (1) Description of air quality affected by the proposed use.
- (2) Description of impacts to air quality.
- (3) Description of mitigation techniques that will be used to prevent significant degradation of air quality.

**d. Wildlife and Wildlife Habitat**

- (1) Description of wildlife and wildlife habitat affected by the proposed use, including terrestrial and aquatic game and non-game species and livestock, and migration routes.
- (2) Description of impacts to wildlife and wildlife habitat.
- (3) Description of mitigation techniques that will be used to prevent significant degradation of wildlife and wildlife habitat.

**e. Glare, Dust and Noise.**

- (1) Description of existing levels of glare, dust and noise in the area affected by the proposed use.
- (2) Description of increase in levels of glare, dust and noise associated with the proposed use.
- (3) Description of mitigation techniques that will be used to prevent objectionable levels of glare, dust and noise.

**f. Agricultural Lands.**

- (1) Description of agricultural lands affected by the proposed use including a description of agricultural operations and levels of production.
- (2) Description of impacts to agricultural lands.
- (3) Description of mitigation techniques that will be used to prevent significant adverse impacts to agricultural lands and agricultural operations.

**g. Important Areas**

- (1) Description of areas of paleontological, historic or archaeological importance affected by the proposed use.
- (2) Description of the impacts to areas of paleontological, historic or archaeological importance affected by the proposed use.
- (3) Description of mitigation techniques that will be used to prevent significant degradation of areas of paleontological, historic or archaeological importance affected by the proposed use.

**h. Recreational Resources**

- (1) Description of recreational opportunities and experiences affected by the proposed use including fishing, hunting, hiking or other resources, the number of recreational user days and the revenue generated by a particular recreational use.
- (2) Description of the impacts to recreational opportunities and experiences affected by the proposed use.
- (3) Description of mitigation techniques that will be used to prevent significant adverse effects on the quality and quantity of recreational resources.

**i. Local Government Facilities and Services.**

- (1) Description of government services and capital facilities that will be affected by the construction and operation of the proposed use such as law enforcement, emergency response, water supply, roads and other facilities and services necessary to respond to or serve the proposed use.
- (2) Description of the impact of the proposed use on government services and capital facilities, the capability of local governments to provide the necessary facilities and services.
- (3) Description of planned mitigation to eliminate or minimize significant adverse effects on the capability of local government to provide services.

If impacts cannot be fully mitigated, the applicant may be required to pay a mutually agreed upon impact fee. The owner or operator shall provide all necessary training to ensure provision of emergency services during construction and operation of the proposed use.

11. The Administrator may request additional information consistent with the requirements of the Yuma County Land Use Code that may be required to evaluate the proposed Land Use Change. The Administrator may waive or alter any of these minimum requirements if they are determined to be inappropriate or unnecessary to determining if the application satisfies applicable standards.
12. **Materials Required for Concentrated Animal Feeding Operations Subject to Federal and State Confined Animal Feeding Operations Control Regulations.** Concentrated animal feeding operations subject Animal Feeding Operations Control Regulation 5 CCR 1002-81, and 5 CCR 102-61 must obtain the applicable state permits after receiving approval of an application for Major Land Use Permit from the County. Any changes in the original plan submitted to the county, needs to be brought back to the county for approval. The County may accept the state permit application and supporting materials in lieu of the permit application requirements for Major Land Use Permit set forth under this Section 4-104 B.
13. **Additional Materials Required for Utility Scale Wind or Solar Energy System.** In addition to the information required in Section 4-104 B 1-3 and B5-10, an application for a Major Land Use Permit for a Utility Scale Wind or Solar Energy System shall include the following information:
  - a. **Facility Owner/Operator Information and Written Description.** Contact information for facility owners and operators, and all other pertinent party associated with the Utility Scale Wind or Solar Energy System. The written description of the proposed Utility Scale Wind or Solar Energy System shall include the manufacturer and model of the system to be installed.
  - b. **Location Map.** In lieu of a vicinity map, the Applicant shall submit a location map, to scale, that illustrates the following:



- (1) Location of the proposed Utility Scale Wind or Solar Energy System in the County.
  - (2) Location of all property for which a permit is being requested and of property within 500 feet of the exterior boundary of the site of the proposed Utility Scale Wind or Solar Energy System.
- c. **Site Plan.** In addition to the site plan requirements in Section 4-104 B3, the site plan for applications for Utility Scale Wind or Solar Energy System shall include the following elements:
- (1) Distance of proposed ground-mounted solar collection panels from the boundaries of the site.
  - (2) Dimensional drawing of roof-mounted solar collection panels showing height and orientation, and distance of structure housing the panels from the boundaries of the site.
  - (3) Locations and dimensions for each Wind Turbine in the proposed Wind Energy System, to the extent known. Prior to final approval of the permit by the Board, Applicant shall designate the location and dimensions of each Wind Turbine.
  - (4) Setbacks of the Wind Turbines from boundaries of the site and the distance between each Wind Turbine.
  - (5) Location and dimensions of the associated control or conversion electronics, accessory buildings and structures, and distance from the boundaries of the site.
- d. **Detailed Drawing or Photograph.** Detailed drawing or a photograph of the Solar Energy System or Wind Turbine model to be installed as part of the Utility Scale Wind or Solar Energy System.
- e. **Phasing of Development.** An application proposing to phase development shall provide a description of each phase of development including the number of Wind Turbines, Solar Panels and the accessory structures, infrastructure and interconnection requirements for each

phase.

- f. Utility and/or Transmission Interconnection.**
  - (1) Description of utility interconnection or electric transmission system interconnection.
  - (2) Copy of feasibility study request to applicable electric utility or electric transmission entity of intent to interconnect the Utility Scale Wind or Solar Energy System to the electric utility or electric transmission entity.
  
- g. Geotechnical Report.** A Geotechnical Report that includes:
  - (1) Soils engineering and engineering geologic characteristics of the site based upon on-site sampling and testing.
  - (2) Foundation design criteria for all proposed structures.
  - (3) Slope stability analysis.
  - (4) Grading criteria for ground preparation, cuts and fills, and soil compaction.
  
- h. Notice to FAA.** If any Wind Turbine included in the proposed Utility Scale Wind Energy system has a system height over two hundred (200) feet or is located within twenty thousand (20,000) feet of the runway of an airport, the application shall be accompanied by a copy of the written notification to the Federal Aviation Administration (FAA).
  
- i. Notice to Operation of Communication Link.** If any Wind Turbine included within the proposed Utility Scale Wind Energy System is located within two (2) miles of any microwave communications link, and/or remote telemetry the application shall be accompanied by a copy of the written notification to the operator of the communication link.
  
- j. Notice to Mineral Estate Owners.** Evidence that mineral estate owners have been provided with notice of the proposed development in compliance with Section 4-104D1c of this Code and C.R.S. § 24-65.5-103(1).

- k. Decommissioning Plan.** A Decommissioning Plan that includes the following information and elements:
- (1) Anticipated life of the project.
  - (2) An estimate of the decommissioning costs certified by a Professional Engineer, to be updated every five (5) years following year fifteen (15) of operation.
  - (3) Description of financial security provisions relative to decommissioning process, in compliance with the requirements of Section 4-105, *Financial Security Requirements for Major Land Use*.
  - (4) Anticipated manner in which the project will be decommissioned and the site restored.
  - (5) Description of triggering events for decommissioning the Utility Scale Wind or Solar Energy System, or any aspect of the facility, upon eighteen (18) months of continuous non-operation of the facility or of any aspect of any facility, unless by force majeure.
  - (6) Provisions for the removal of structures, debris and cabling, including those below the soil surface down to twenty-four (24) inches.
  - (7) Provisions for the restoration of the soil and vegetation.
  - (8) A provision that decommissioning of the Utility Scale Wind or Solar Energy System will not interfere with surrounding land use.
  - (9) A provision that the terms of the Decommissioning Plan shall be binding upon the Owner or Operator and any of their successors, assigns, or heirs.
  - (10) A provision that the County shall have the right to review and reconsider the Utility Scale Wind or Solar Energy System Decommissioning Plan at the time of decommissioning
  - (11) A provision that the County shall have the right to review final decommissioning and reclamation to

confirm it is consistent with the Decommissioning Plan

(12) A provision that the County shall have access to the site, pursuant to reasonable notice, to effect or complete decommissioning if decommissioning does not proceed in compliance with the Decommissioning Plan or landowner agreement(s).

**l. Proof of Liability Insurance.** Proof of liability insurance in the form of a current general liability policy covering bodily injury and property damage with limits of at least \$1 million per occurrence and \$1 million in the aggregate.

**m. Third Party Certifications.** Certificates of design compliance with applicable industry standards obtained by the equipment manufacturers from Underwriters Laboratories, Det Norske Veritas, Germanischer Lloyd Wind Energie, or an equivalent third-party certification body with expertise in the wind energy field.

**C. REVIEW OF MAJOR LAND USE PERMIT APPLICATION MATERIALS BY ADMINISTRATOR.** Following the preapplication conference described in Section 4-101(A), and the determination that the application is complete under Section 4-101(E) the following process will apply to review of a Major Land Use Permit

**1. Evaluation of Application by Administrator.** Within thirty (30) days of the date that the application was determined to be complete, the Administrator shall prepare a report that recommends approval, approval with conditions or denial of the application for a Major Land Use Permit. The report shall be forwarded to the applicant and to the Planning Commission prior to the Planning Commission public hearing where the application will be reviewed.

**2. Review by Referral Agencies.** The Administrator shall request the professional analysis and recommendations of referral agencies, organizations, or technical consultants deemed appropriate and necessary to complete the review.

**a.** Upon determination of completeness, the Administrator shall cause the application materials or any portion thereof to be submitted for referral review and comment. The period for comment by the review agencies shall be 45 days from the date the application is deemed complete by the

Administrator, unless an extension has been requested by the agency. The Administrator may grant an extension if it is determined that good cause for the delay has been shown. The failure of any agency to respond within the 45-day review period or within the period of extension shall not be deemed an approval of such plan by the referral agency.

- b. Applicant shall be responsible for direct payment of review fees charged by consultants and referral agencies.
- c. The applicant shall have the right to review the comments and recommendations received from the review agencies. The applicant may submit additional information and make changes in the application to respond to the comments of the review agencies, under the following conditions:
  - (1) If the changes are substantial or significantly alter the nature, character or extent of the application, the Administrator may refer the information and revised application back to some or all review agencies for further comment; and
  - (2) The Administrator may extend the period for comment as appropriate for the review, however; the period of time for review and final action by the Board shall not to exceed six (6) months from the date the application was determined to be complete.

**D. PUBLIC HEARING AND RECOMMENDATION BY PLANNING COMMISSION.**

**1. Schedule and Notice of Planning Commission Public Hearing.**

- a. **Schedule of Planning Commission Public Hearing.** The Administrator shall schedule the Major Land Use Permit application for review by the Planning Commission at a public hearing to be held not more than forty-five (45) days from the date that the application is deemed complete.
- b. **Notice to Adjacent Property Owners.** Not less than 10 days prior to the date of the Planning Commission public hearing on the application for a Major Land Use Permit, the Applicant shall notify property owners within 500 feet of the exterior boundary of the site by sending a written notice describing the proposed Land Use Change; site location and legal description by section, township and range; name

of the Applicant; and setting forth the time, date and place of the Planning Commission public hearing.

- c. **Notice to Mineral Estate Owners.** Not less than 30 days prior to the date of the Planning Commission hearing, the Applicant shall notify mineral estate owners on-site and within 500 feet of the boundaries of the site where the development will occur by sending a written notice by certified mail, return receipt requested, describing the proposed Land Use Change; site location and legal description by section, township and range; name of applicant; and setting forth the time, date and place of the Planning Commission hearing on the Major Land Use permit application.
- d. **Publication of Notice of Planning Commission Public Hearing.** The County shall arrange for notice of the Planning Commission public hearing on the application for the Major Land Use Permit be published at least 14 days prior to the date of the public hearing in a newspaper of general circulation setting forth the time, date and place of the hearing.
- e. **Posting on the Site.** Not less than 14 days prior to the date of the Planning Commission public hearing on the application for a Major Land Use Permit, the applicant shall post a notice of the proposed Land Use Change on the site describing the time, date and location of the Planning Commission public hearing.

- 2. **Public Hearing by Planning Commission.** The Major Land Use Permit Application shall be considered by the Planning Commission at a public hearing to be held not more than 45 days from the date that the application is deemed complete by the Administrator. Following the public hearing, the Planning Commission shall recommend approval, approval with conditions, or denial of the application for a Major Land Use Permit based on the applicable standards and criteria in Article 5, *Standards and Criteria*.

**E. PUBLIC HEARING AND ACTION BY BOARD OF COUNTY COMMISSIONERS.**

- 1. **Schedule and Notice of Board of County Commissioners Public Hearing.**

- a. **Schedule of Board of County Commissioner Public Hearing.** The Administrator shall schedule the Major Land Use permit application for review by the Board at a public hearing to be held not more than 30 days from the date of the Planning Commission recommendation on the application.
  - b. **Notice to Adjacent Property Owners.** Not less than 10 days prior to the date of the Board public hearing on the Major Land Use Permit application, the County shall notify property owners and mineral estate owners within 500 feet of the exterior boundary of the site by sending a written notice describing the proposed Land Use Change and setting forth the time, date and place of the Board hearing.
  - c. **Notice to Mineral Estate Owners.** Not less than 30 days prior to the date of the Board hearing, the Applicant shall notify mineral estate owners on-site and within 500 feet of the boundaries of the site where the development will occur by sending a written notice by certified mail, return receipt requested, describing the proposed Land Use Change; site location and legal description by section, township and range; name of applicant; and setting forth the time, date and place of the Board hearing on the Minor Land Use permit application.
  - d. **Publication of Notice of Board of County Commissioner Public Hearing.** The County shall arrange for notice of the Board of County Commissioners public hearing on the application for a Major Land Use Permit to be published at least 14 days prior to the date of the public hearing in a newspaper of general circulation setting forth the time, date and place of the hearing.
  - e. **Posting on the Site.** The Applicant shall post a notice of the proposed Land Use Change on the site at least 14 days prior to the Board hearing on the application for the Major Land Use Permit describing the time, date and location of the Public Hearing by the Board of County Commissioners.
2. **Board of County Commissioners Public Hearing.** The Board of County Commissioners shall hold a public hearing to consider the application for a Major Land Use Permit and shall hear evidence regarding compliance with the relevant standards and criteria in Article 5, *Standards and Criteria* before taking an action on the application.

- a. **Approval.** The application for a Major Land Use Permit may be approved if the application satisfies all of the relevant standards and criteria contained in Article 5, *Standards and Criteria*.
  - b. **Conditional Approval.** The application for a Major Land Use Permit may be approved with conditions if conditions are necessary to ensure compliance with this Code.
  - c. **Denial.** The application for a Major Land Use Permit shall be denied if the application does not satisfy all of the relevant standards and criteria contained in Article 5, *Standards and Criteria*.
3. **Activity Notice Required for Construction of Any Wind Energy Facility.** An Activity Notice shall be obtained for all new buildings and structures comprising the Wind Energy Facility, including each Wind Turbine, prior to beginning construction. The Activity Notice will be processed only if the Administrator determines that the proposed activity is not a material change from the project approved under the Land Use Permit.

**F. MAJOR ELECTRICAL OR NATURAL GAS FACILITY SPECIAL REQUIREMENTS.** The following special requirements are imposed by state law, and shall apply to applications for a Land Use Permit for a Major Electrical or Natural Gas Facility subject to Public Utilities Commission jurisdiction, **as that term is defined by Section 29-20-108 C.R.S.** and in Article 10, *Definitions* of this Code.

1. **Notice.** A public utility or power authority shall notify the Administrator of its plans to site a Major Electrical or Natural Gas Facility prior to submitting the permit application, but in no event later than filing a request for a certificate of public convenience and necessity pursuant to Article 5 of Title 40, C.R.S., or the filing of any annual filing with the public utilities commission that proposes or recognizes the need for construction of a new facility or the extension of an existing facility. If a public utility or power authority is not required to obtain a certificate of public convenience and necessity pursuant to Article 5 of Title 40, C.R.S., or file annually with the public utilities commission to notify the public utilities commission of proposed construction of a new facility or the extension of an existing facility, then the public utility or power authority shall notify the County of its intention to site a Major Electrical or Natural Gas Facility when such utility or authority determines that it intends to proceed to permit and



construct the facility. During the pre-application meeting, the public utility or power authority shall consult with the Administrator to identify the specific routes or geographic locations under consideration and attempt to resolve land use issues that may arise from the contemplated permit application.

2. **Alternatives Analysis.** In addition to the alternatives described within its permit application, the public utility or power authority shall consider and present reasonable siting and design alternatives to the local government or explain why no reasonable alternatives are available.
3. **Certificate of Public Convenience and Necessity from PUC.** Applicant shall provide documentation that the public utility or power authority has applied for or obtained a certificate of public convenience and necessity from the Public Utilities Commission, pursuant to Article 5, Title 40, C.R.S. and Section 29-20-108, C.R.S.
4. **Statutory Timeframe for Approval of Major Electrical Facility.** Within one hundred twenty (120) days after submission of a completed application for a Major Electrical Facility, the County shall decide whether to approve, approve with conditions or deny the application. If the County does not take final action within such time, the application shall be deemed approved. Nothing in these provisions shall be construed to supersede any timeline set by agreement between the County and a public utility or power authority applying for approval of a Major Electrical Facility.
5. **Appeal of Denial of Application for Major Electrical or Natural Gas Facility.** If the County denies a permit or application of a public utility or power authority that relates to the location, construction, or improvement of Major Electrical or Natural Gas Facilities, or if the County imposes requirements or conditions upon such permit or application that will unreasonably impair the ability of the public utility or power authority to provide safe, reliable, and economical service to the public, the public utility or power authority may appeal the County action to the public utilities commission for a determination under Section 40-4-102, C.R.S., so long as one or more of the following conditions exist:
  - (1) The public utility or power authority has applied for or has obtained a certificate of public convenience and necessity from the public utilities commission pursuant to Section 40-5-101, C.R.S., to construct the Major Electrical or

Natural Gas Facility that is the subject of the local government action;

- (2) A certificate of public convenience and necessity is not required for the public utility or power authority to construct the Major Electrical or Natural Gas Facility that is the subject of the local government action; or
- (3) The public utilities commission has previously entered an order pursuant Section 40-4-102, C.R.S., that conflicts with the local government action.

6. **Notice of Approval by the County.** The County shall provide written notice of approval to the Public Utilities Commission and to the concerned electric utility and/or electric transmission entity.

#### **SECTION 4-105 FINANCIAL SECURITY REQUIREMENTS FOR MAJOR LAND USE**

The applicant may be required to provide financial security as the Board determines necessary to guaranty completion of Public Improvements, compliance with permit conditions, or completion of decommissioning of a Wind Energy Facility.

##### **A. FORM OF FINANCIAL SECURITY.**

1. The applicant shall provide financial security in any form and combination acceptable to the Board of County Commissioners. Evidence of the selected form(s) of financial security shall be included with the application materials.
2. The Board may reject the proposed forms of financial security if the evidence submitted does not adequately assure that the required funds will be available. The applicant shall be notified in writing within sixty (60) days of receipt of the evidence of financial security of the decision to accept or reject the proposed form(s) of financial security.

- B. **PUBLIC IMPROVEMENTS.** Where Public Improvements will be required to serve a Major Land Use, no Major Land Use Permit shall be issued until the applicant has submitted adequate financial security to guaranty completion of the Public Improvements. However, if a Major Land Use Permit holder must obtain an Activity Notice before commencing construction related activities, the posting of adequate financial security is not required until the Activity Notice is issued.

1. **Improvements Agreement and Financial Security.** The applicant shall provide an improvements agreement, agreeing to construct any Public Improvements required by the land use, together with financial security in an amount not less than 125 percent (125%) of the estimated cost of the required Public Improvements. The financial security shall be sufficient, in the judgment of the Board, to make reasonable provisions for completion of the Public Improvements in compliance with the plans and specifications and with the terms of the improvements agreement.
  2. **Request for Inspection.**
    - a. The County shall inspect completed Public Improvements following receipt of the permittee's request for inspection pursuant to terms of the improvements agreement.
    - b. If the County determines that any of the Public Improvements are not constructed in compliance with the plans and specifications or with terms of the improvements agreement, the County shall provide the permittee with a written explanation of the noncompliance and a deadline for coming into compliance. Failure to comply with the plans and specifications or with the terms of the improvements agreement shall be a violation of this Land Use Code and may be subject to the enforcement provisions of Article 9 of this Code.
  3. **Release of Financial Security for Public Improvements.** The permittee may apply to the Board for release of the financial security following inspection of completed Public Improvements.
    - a. The request for release of the financial security must be submitted in writing to the Board a minimum of ten (10) working days before the next regularly scheduled meeting at which the Board may consider the request.
    - b. The Board shall release the financial security once the Public Improvements have been accepted by the County.
    - c. If the Board determines that any of the Public Improvements are not constructed in substantial compliance with plans and specifications or with terms of the improvements agreement, it shall withhold financial security to guaranty substantial compliance.
- C. **PERMIT CONDITIONS.** Where permit conditions have been imposed to ensure compliance with this Code, the Board at its discretion may

require the applicant to provide financial security to guaranty performance of the permit condition(s), and no Permit shall be issued until the applicant has submitted the required guaranty.

1. **Financial Security.** The amount of the financial security shall be sufficient, in the judgment of the Board, to ensure performance of the permit condition(s).
2. **Request for Inspection.**
  - a. At any time the permittee believes that a permit condition(s) has been satisfied, the permittee may request that the County perform an inspection. The County shall conduct an inspection following receipt of the permittee's written request for inspection.
  - b. If the County determines that the permit condition(s) has not been satisfied, the County shall provide the permittee with a written explanation of the noncompliance and a deadline for coming into compliance with the permit condition(s). Failure to comply with the permit condition(s) shall be a violation of this Land Use Code and may be subject to the enforcement provisions of Article 9 of this Code.
3. **Release of Financial Security for Permit Condition(s).** The permittee may apply to the Board for release of the financial security for the permit condition(s) as the permit condition(s) is satisfied.
  - a. The request for release of the financial security must be submitted in writing to the Board a minimum of ten (10) working days before the next regularly scheduled meeting at which the Board may consider the request.
  - b. Upon inspection and determination that the permit condition(s) has been satisfied the Board may release the financial security for the permit condition(s).
  - c. If the Board determines that the permit condition(s) has not been satisfied, it shall withhold financial security to guaranty the permit condition(s) is satisfied.

- D. DECOMMISSIONING OF A UTILITY SCALE WIND OR SOLAR ENERGY SYSTEM.** The applicant shall provide adequate financial security to guaranty decommissioning of a Utility Scale Wind or Solar Energy System in compliance with the Decommissioning Plan and these

regulations. Unless otherwise established by the Board as a condition of the Permit, no Permit shall be issued until the applicant has submitted the required financial security.

**1. Financial Security.**

- a.** Financial security shall be in an amount equal to the decommissioning costs, based upon an estimate of the decommissioning costs certified by a professional Engineer and updated every five (5) years following year fifteen (15) of operation.
- b.** The Board, at its discretion, may waive its requirement for financial security if the applicant demonstrates to the Board's satisfaction that:
  - (1)** The landowner agreement(s) includes provisions that ensure decommissioning of the Utility Scale Wind or Solar Energy System in compliance with the Decommissioning Plan; and
  - (2)** The landowner has consented to a waiver of the financial security that would be required by the Board.

**2. Request Inspection.**

- a.** Following written request of the Owner or Operator, or at the Board's discretion the County shall review final decommissioning of a Utility Scale Wind or Solar Energy System to confirm compliance with the Decommissioning Plan and these regulations.
- b.** If the County determines that the decommissioning is not in compliance, the County shall furnish the Owner or Operator with a written explanation of the noncompliance and a deadline for coming into compliance.
  - (1)** Failure to decommission the Utility Scale Wind or Solar Energy System in compliance with the Decommissioning Plan and these regulations shall be a violation of this Land Use Code and may be subject to the enforcement provisions of Article 9 of this Code.
  - (2)** If decommissioning does not proceed in accordance with the Decommissioning Plan and these regulations, the County shall have the right to enter

the property at the Board's discretion and cause the appropriate abandonment and decommissioning measures to be completed.

**3. Release of Financial Security for Decommissioning Utility Scale Wind or Solar Energy System.** The Owner or Operator may apply to the Board for release of financial security once the decommissioning of the Utility Scale Wind or Solar Energy System has been completed.

- a.** The request for release of the financial security must be submitted in writing to the Board a minimum of ten (10) working days before the next regularly scheduled meeting at which the Board may consider the request.
- b.** Financial security for decommissioning of a Wind Energy Facility may be released under any of the following conditions.
  - (1)** Decommissioning of the Utility Scale Wind or Solar Energy System has been satisfactorily completed and accepted; or
  - (2)** The permit has been surrendered to the County before commencement of any physical activity on the site of the Utility Scale Wind or Solar Energy System; or
  - (3)** The land use has been abandoned and the site returned to its original condition or to a condition acceptable to the County.

**E. CANCELLATION OF BOND AFTER BOARD CONSENT.** Any bond or other form of financial security may be canceled by a surety upon consent of the Board of County Commissioners, after ninety (90) days written notice to the Board, when such cancellation will not detract from or otherwise diminish the purpose of the financial security.

**ARTICLE 5                    STANDARDS AND CRITERIA**

The applicant for a Land Use Permit must demonstrate to the satisfaction of the County that the Land Use Change will comply with the relevant standards and criteria in this Article 5.

## **SECTION 5-101 GENERAL STANDARDS.**

The following General Standards shall apply to all Land Use Permits.

- A. COMPATIBILITY.** The nature, scale, and intensity of the proposed use are compatible with adjacent land uses and will not result in an adverse impact to adjacent land.
  
- B. ROADWAYS AND ACCESS.**
  - 1. All lots and parcels shall have access to a public right-of-way or approved access agreement.
  - 2. Access to and from the use shall be safe and in conformance with access standards set forth in the County Road and Bridge Standards as adopted, and as amended from time to time (“Road and Bridge Standards”).
  - 3. Roads serving the proposed use shall have the capacity to accept the additional traffic generated by the use safely and efficiently.
  - 4. All new roads shall be constructed in conformance with the Road and Bridge Standards.
  - 5. The use shall not cause traffic congestion or unsafe traffic conditions
  - 6. The construction and operation of the use shall not cause damage to County roads or cause an increase in cost to the County to maintain the roads. The applicant shall work with Yuma County Road and Bridge to ensure the proper maintenance and repair of all County roads utilized by the proposed use.
  - 7. Adequate turning radii shall be installed at all entrances to accommodate large truck movement.
  - 8. Off-street parking and loading zones shall be surfaced with gravel or the equivalent and shall be graded to prevent drainage problems.
  - 9. Staging activities and parking of equipment and vehicles shall occur on-site and on private rights-of-way, and shall be prohibited on maintained County roads.
  
- C. COMPLIANCE WITH COMPREHENSIVE PLAN AND INTERGOVERNMENTAL AGREEMENTS.** The use is consistent with relevant provisions of the Yuma County Comprehensive Plan and any intergovernmental agreement between the County and a municipality that applies to the area where the use will occur.

**D. WATER AND WASTEWATER SERVICE.** The proposed use shall be served by adequate water and wastewater service. The applicant must provide a letter of approval from the State Engineer documenting that the proposed water supply is adequate to serve the proposed use. The applicant must provide a letter of approval from the Northeast Colorado Health Department documenting that the wastewater system is adequate to serve the proposed use.

**E. SERVICE DELIVERY SYSTEM CAPACITY.** The use shall not have a significant adverse effect on the capability of local government to provide services or exceed the capacity of service delivery systems.

**1. LAND DEDICATION.** If the application shows that the use will cause a need for parks or schools, the County may require the developer to dedicate to the County either land or a fee in lieu of land in an amount necessary to satisfy the need caused by the use.

**2. IMPACT FEES.** If the application shows that there will be unmitigated impacts to County roads or other County capital facilities caused by the use, the County may assess an impact fee in the amount necessary to offset the impact to roads or other capital facilities.

**F. EROSION.**  
Erosion and sedimentation control measures that ensure that disturbed areas and soil stockpiles are stabilized during construction shall be implemented. Disturbed areas shall be controlled within one growing season, pursuant to an approved vegetation plan by Natural Resource Conservation Service (NRCS).

**G. ADDITIONAL STANDARDS FOR ACTIVITY NOTICE-RESIDENTIAL WIND ENERGY SYSTEM.**

**1. SETBACKS.**

**a. Minimum Setback.** The Residential Wind Energy System shall be set back from any property boundary and ROW a minimum of 110% of the maximum height of the system.

**b. Guy-Wire Anchor Setback.** Guy wire anchors shall be set back from any property boundary a minimum of ten (10) feet.

**c. Waiver or Reduction of Setback.** The Applicant may request a waiver from the setback requirements at the time of the Land Use Permit application. The Board at its discretion may consider an applicant's proposal for waiver or reduction of setback in a regular meeting for which the request appears on the agenda. If the Land



Use Permit application is approved with a setback waiver or reduction, the approved setback shall be specified in the Land Use Permit approval. The burden is upon the applicant to demonstrate with clear and convincing evidence that:

- (1) The proposed waiver or reduction of setback is necessary to accommodate the Residential Wind Energy System; and
- (2) The public health, safety, welfare and the environment will not be harmed by the proposed waiver or reduction of setback; and
- (3) The proposed Residential Wind Energy System otherwise complies with the relevant standards.

## 2. **SYSTEM HEIGHT.**

**a. Located Within Airport Flight Path or Airport Influence Zone.** Residential Wind Energy System located on property within an airport flight path or airport influence zone shall comply with applicable FAA safety height requirements. The Residential Wind Energy System shall not interfere with established airport flight paths or structural height restrictions within the airport influence zones.

**b. Waiver from Height Restrictions.** The Applicant may request a waiver from maximum height restriction at the time of the Land Use Permit application. The Board at its discretion may consider an applicant's proposal for waiver from maximum height restriction in a regular meeting for which the request appears on the agenda. If the Land Use Permit application is approved with a waiver from maximum height restriction, the approved height shall be specified in the Land Use Permit approval. The burden is upon the applicant to demonstrate with clear and convincing evidence that:

- (1) The proposed site provides sufficient wind potential to justify a taller system, based on competent information such as anemometer data or National Renewable Energy Laboratory mapping; and
- (2) The proposed Residential Wind Energy System otherwise complies with the relevant standards.

## 3. **VISUAL IMPACTS.**

a. Colors and surface treatment of the Residential Wind Energy System shall be neutral and non-reflective.

b. Residential Wind Energy System shall not be located where it would substantially obstruct views from adjacent property.

c. Owner shall locate utility connections underground whenever practicable.

**4. SIGNS.** The Residential Wind Energy System shall not be used to display graphics and signs.

**5. LIGHTING.** The Residential Wind Energy System shall not be artificially lit except to the extent required by the FAA or other applicable authority.

**6. SAFETY SHUTDOWN.** Wind Turbine shall have an automatic braking, furling, or feathering system to prevent uncontrolled rotation, over-speeding and excessive pressure on the tower structure, rotor blades and turbine components. Owner shall maintain the ability to shut down turbines in an emergency.

**7. PHYSICAL AND ELECTROMAGNETIC INTERFERENCE.** The Residential Wind Energy System shall not interfere with any microwave communication link or remote telemetry.

**8. CERTIFICATION.**

a. All equipment and appurtenant facilities shall be certified by a registered structural engineer to be compliant with the applicable industry, state, federal and local regulations.

b. The electrical system shall be certified by a registered electrical engineer to be compliant with the applicable industry, state, federal and local regulations.

c. Prior to operation, the applicant shall provide the County with the required certifications.

**9. REMOVAL OF DISCONTINUED RESIDENTIAL WIND ENERGY SYSTEM.** If the Residential Wind Energy System ceases to perform its originally intended function for more than eighteen (18) consecutive months, the owner shall remove the Residential Wind Energy System and complete adequate site restoration no later than ninety (90) days after the end of the 18-month period. Adequate site restoration shall include removal of foundations and electrical equipment to below grade.

**H. ADDITIONAL STANDARDS FOR ACTIVITY NOTICE-RESIDENTIAL SOLAR ENERGY SYSTEM.**

**1. SETBACKS.**

**a. Minimum Setback.**

(1) Residential solar collection panels and equipment shall comply with the Residential Setbacks in Section 5-103, E, 2, a.

**b. Waiver or Reduction of Setback.** The Applicant may request a waiver from the setback requirements at the time of the Land Use Permit application. The Board at its discretion may consider an applicant's proposal for waiver or reduction of setback in a regular meeting for which the request appears on the agenda. If the Land Use Permit application is approved with a setback waiver or reduction, the approved setback shall be specified in the Land Use Permit approval. The burden is upon the applicant to demonstrate with clear and convincing evidence that:

(1) The proposed waiver or reduction of setback is necessary to accommodate the Residential Solar Energy System; and

(2) The public health, safety, welfare and the environment will not be harmed by the proposed waiver or reduction of setback; and

(3) The proposed Residential Solar Energy System otherwise complies with the relevant standards.

**2. MAXIMUM SYSTEM HEIGHT.** Roof-mounted systems shall be mounted as flush as possible to the roof. In order to achieve proper solar orientation, panels may exceed the roofline by up to five (5) feet.

**3. VISUAL IMPACTS.** The Residential Solar Energy System shall not have an adverse visual impact on the natural features or character of the surrounding area and shall be located to minimize glare on adjacent properties and roadways.

**4. LOCATION RESTRICTIONS.**

**a.** Ground-mounted solar energy collectors may not be located within utility easements or ditch easements unless authorized in writing by the easement holder.

b. Residential Solar Energy Systems with a rated capacity of more than 100 kW shall not be located in areas of critical wildlife habitat.

**5. CERTIFICATION.**

a. All equipment and appurtenant facilities shall be certified by a registered structural engineer to be compliant with the applicable industry, state, federal and local regulations.

b. The electrical system shall be certified by a registered electrical engineer to be compliant with the applicable industry, state, federal and local regulations.

c. Prior to operation, the applicant shall provide the County with the required certifications.

**6. REMOVAL OF DISCONTINUED RESIDENTIAL SOLAR ENERGY SYSTEM.** If the Residential Solar Energy System ceases to perform its originally intended function for more than eighteen (18) consecutive months, the owner shall remove the Small Solar Energy System and complete adequate site restoration no later than ninety (90) days after the end of the 18-month period. Adequate site restoration shall include removal of foundations and electrical equipment to below grade.

**I. ADDITIONAL STANDARDS FOR ADMINISTRATIVE LAND USE PERMITS-DISTRIBUTED WIND ENERGY SYSTEM.**

**1. Industry Standards, and State and Federal Requirements.**

Wind turbines, their components and appurtenant facilities shall conform to applicable industry standards, including those of the American National Standards Institute and National Electrical Commission, and shall comply with all relevant state and federal requirements.

**2. Artificial Lighting.** Wind turbines and appurtenant structures shall not be artificially lit except to the extent required by the FAA or other applicable authority.

**3. Setbacks for Distributed Wind Energy Systems.**

**a. Minimum Setback.**

(1) Distributed Wind turbines shall be set back from any property boundary or public road, highway or railroad right-of-way a minimum of 110% of the maximum height of the system.

(2) Distributed Wind turbines shall be set back from above ground public electric power lines or communication lines a minimum of 110% of the maximum height of the system.

(3) Distributed Wind turbines shall be set back from inhabited structures located outside of the site boundary a minimum of 110% of the maximum height of the system.

**b. Scenic Resource Setback.**

(1) The Distributed Wind Energy System shall be setback a minimum of ¼ mile from any highway eligible or designated to be a scenic highway or roadway by the Yuma County Comprehensive Plan or by the state.

(2) A scenic resource protection setback requirement may be reduced if the Board determines that the characteristics of the surrounding property eliminate or substantially reduce considerations of scenic value.

**c. Waiver or Reduction of Setback.** The Applicant may request a waiver from the setback requirements at the time of the Land Use Permit application. The Board at its discretion may consider an applicant's proposal for waiver or reduction of setback in a regular meeting for which the request appears on the agenda. If the Land Use Permit application is approved with a setback waiver or reduction, the approved setback shall be specified in the Land Use Permit approval. The burden is upon the applicant to demonstrate with clear and convincing evidence that:

(1) The proposed waiver or reduction of setback is necessary to accommodate the Distributed Wind Energy System; and

(2) The public health, safety, welfare and the environment will not be harmed by the proposed waiver or reduction of setback; and

(3) The proposed Distributed Wind Energy System otherwise complies with the relevant standards.

**4. Safety and Security.**

**a.** Fencing, or other barriers acceptable to the County, shall be installed to prevent unauthorized access to the Distributed Wind Energy Facility electrical interconnection facilities.

- b. All wiring between Wind Turbines and the Distributed Wind Energy Facility substation shall be underground.
  - c. Guy wires shall be distinctly marked and fenced on all permanent towers.
  - d. All access doors to Wind Turbine towers and electrical equipment shall be lockable and remain locked when unattended.
  - e. Signs warning of the electrical hazard and other hazards associated with the Wind Energy Facility shall be posted at the base of each Wind Turbine tower, electrical equipment, and at the entrance of the Wind Energy Facility.
  - f. A security patrol or other security measure may be required if it is determined to be necessary and appropriate to ensure public safety.
5. **Fire Protection.** The Wind Energy Facility shall have adequate fire control and prevention measures.
6. **Underground Location of Powerlines.** Unless geologic conditions prevent underground installation, electrical collection system wiring and power-lines shall be installed underground except where the Wind Energy Facility collector wiring is brought together for connection to the transmission or distribution network. All underground installations located within the public road easement or right-of-way shall comply with the applicable permit and design requirements of Yuma County Road and Bridge and should include the following elements:
- a. **Restoration.** Any disturbed portion of the right of way shall be restored as nearly as possible to its condition immediately prior to construction, improvements, location or relocation, and to the satisfaction of Yuma County Road and Bridge. Backfilling shall be made in six (6) inch lifts, mechanically tamped and packed, and the last twelve (12) inches shall be crushed rock or gravel.
  - b. **Safety.** Safety measures shall be implemented to the satisfaction of Yuma County Road and Bridge and in accordance with state and federal requirements to protect the public from harm during construction, improvements, location or relocation.
  - c. **Roadway Crossing.** When the installation crosses a

roadway, it shall be located as perpendicular to the roadway as physically practical and installed in compliance with the requirements of Yuma County Road and Bridge.

- d. As-built drawings.** Certified as-built drawings shall be provided to the County once the construction, improvements, location or relocation has been completed.
- e. Permit and Notice to Proceed.** No work associated with construction, improvements, location or relocation shall commence until the required permit(s) and notice to proceed have been issued by the County.

**7. Interconnection and Electrical Distribution Facilities.**

- a.** All distribution lines, electrical substations, and other interconnection facilities shall be constructed to the specifications of the American National Standard Institute (ANSI), National Electrical Code (NEC), Institute of Electrical and Electronic Engineers (IEEE), and National Utility Standards.
- b.** Interconnection shall conform to the requirements of the electric utility company, and applicable state and federal regulatory requirements.

**8. Interference with Navigational Systems.** The Applicant shall minimize or mitigate any interference with electromagnetic communications caused by the Wind Energy Facility, including radio, telephone or television signals.

- a.** Every Wind Turbine shall comply with Federal Aviation Administration regulations for sighting structures near an airport or VORTAC installation.

**9. Certification of Equipment and Appurtenant Facilities.**

- a.** All equipment and appurtenant facilities shall be certified by a registered structural engineer to be compliant with the applicable state, federal and local regulations and to conform with good engineering practices.
- b.** The electrical system shall be certified by a registered electrical engineer to be compliant with the applicable state, federal and local regulations, and to conform with good engineering practices.

**10. Signs.** Wind Turbines shall not be used for displaying any

advertising except for reasonable identification of the manufacturer or operator of the Wind Energy facility.

**11. Color and Finish.**

- a. All Wind Turbines shall be painted a non-reflective, non-obtrusive color.
- b. Design of accessory buildings and related structures shall, to the extent practicable, use materials, colors, textures, screening and landscaping that will blend the Wind Energy Facility to the natural setting and existing environment.

**12. Preservation of Land Use under Decommissioning Plan.**

Decommissioning of the Wind Energy Facility shall not interfere with surrounding land use.

**13. Dimension and Location of Each Wind Turbine.** Applicant has submitted a site plan that designates the location and dimensions of each Wind Turbine to be authorized by the final Land Use Permit.

**J. ADDITIONAL STANDARDS FOR ADMINISTRATIVE LAND USE PERMITS-DISTRIBUTED SOLAR ENERGY SYSTEM.**

**1. SETBACKS FOR DISTRIBUTED SOLAR ENERGY SYSTEM.**

**a. Minimum Setback.**

(1) Distributed solar collection panels and equipment shall comply with the Industrial/Commercial Setbacks in Section 5-103, E, 5, a.

**b. Scenic Resource Setback.**

(1) The Distributed Solar Energy System shall be setback a minimum of ¼ mile from any highway eligible or designated to be a scenic highway or roadway by the Yuma County Comprehensive Plan or by the state.

(2) A scenic resource protection setback requirement may be reduced if the Board determines that the characteristics of the surrounding property eliminate or substantially reduce considerations of scenic value.

**c. Waiver or Reduction of Setback.** The Applicant may request a waiver from the setback requirements at the time of the Land Use Permit application. The Board at its discretion may consider an applicant's proposal for waiver or reduction of setback



in a regular meeting for which the request appears on the agenda. If the Land Use Permit application is approved with a setback waiver or reduction, the approved setback shall be specified in the Land Use Permit approval. The burden is upon the applicant to demonstrate with clear and convincing evidence that:

- (1) The proposed waiver or reduction of setback is necessary to accommodate the Distributed Solar Energy System; and
- (2) The public health, safety, welfare and the environment will not be harmed by the proposed waiver or reduction of setback; and
- (3) The proposed Distributed Solar Energy System otherwise complies with the relevant standards.

**2. MAXIMUM SYSTEM HEIGHT.** Roof-mounted systems shall be mounted as flush as possible to the roof. In order to achieve proper solar orientation, panels may exceed the roofline by up to five feet.

**3. VISUAL IMPACTS.** The Distributed Solar Energy System shall not have an adverse visual impact on the natural features or character of the surrounding area and shall be located to minimize glare on adjacent properties and roadways.

**4. LOCATION RESTRICTIONS.**

- a. Ground-mounted solar energy collectors may not be located within utility easements or ditch easements unless authorized in writing by the easement holder.
- b. Distributed Solar Energy Systems shall not be located in areas of critical wildlife habitat.
- c. Distributed Solar Energy Systems are encouraged to locate on predominately (more than 60 %) non-prime farmland.

**5. CERTIFICATION.**

- a. All equipment and appurtenant facilities shall be certified by a registered structural engineer to be compliant with the applicable industry, state, federal and local regulations.
- b. The electrical system shall be certified by a registered electrical engineer to be compliant with the applicable industry, state, federal and local regulations.

- c. Prior to operation, the applicant shall provide the County with the required certifications.

**SECTION 5-102 RESOURCE AND ENVIRONMENTAL PROTECTION STANDARDS.**

The following standards shall apply **only** to Minor Land Use Permits and Major Land Use Permits.

- A. **WATER QUALITY PROTECTION.** The use shall not cause significant degradation of the quality of surface or ground water resources. Groundwater pollution control measures shall be implemented that prevent the discharge of pollutants from the activity into groundwater. If the applicable State or Federal Regulations governing the proposed use do not address the protection of ground water, the County may require a water quality monitoring plan and reporting plan designed for the early detection of an impact to water quality associated with the project.
- B. **VISUAL IMPACTS.** The use shall preserve views and vistas, and the design of the use shall be compatible with the surrounding natural environment.
- C. **AIR QUALITY.** The use shall not cause air quality to be reduced below levels established by the Colorado Air Pollution Control Division.
- D. **WILDLIFE.** The proposed use shall not significantly degrade the wildlife or wildlife habitat.
- E. **GLARE, DUST, ODOR OR NOISE.** The use shall not cause objectionable glare, dust, odor, or noise to surrounding properties. This section is not intended to alter CRS 35-3.5-102 which states an agricultural operation shall not be found to be a public or private nuisance if the agricultural operation alleged to be a nuisance employs methods or practices that are commonly or reasonably associated with agricultural production.
  - a. The proposed use shall comply with the statutory provisions for maximum permissible noise levels in Section 25-12-103, C.R.S.
  - b. Fugitive dust and particulate emissions shall be controlled on the site.
  - c. Waste materials shall be handled, stored, and disposed of in a manner that controls fugitive dust, fugitive particulate conditions, blowing debris and other potential nuisance conditions.

- F. **IMPORTANT AREAS.** The use shall not significantly degrade areas of paleontological, historic, or archaeological importance. If the site of the proposed use includes or potentially affects known areas of historic, paleontological or archaeological resources, applicant shall coordinate with the State Historic Preservation Office to minimize and or avoid impacts during construction.
- G. **RECREATION IMPACTS.** The use shall not have a significant adverse effect on the quality or quantity of recreational opportunities and experience within the County, including but not limited to hunting, fishing, hiking, and similar recreational activities.
- H. **DRAINAGE / STORMWATER RUN-OFF.** Run-off shall be managed in accordance with all applicable County, State, and Federal regulations. Run-off shall be kept on the site in a stormwater detention system approved by the County, and waters in excess of historic run-off shall be prevented from leaving the site during construction and after site development.
- I. **PROTECTION OF AGRICULTURAL LANDS.** The use will not have a significant adverse impact on agricultural lands and agricultural operations.

**SECTION 5-103 SITE DEVELOPMENT STANDARDS.**

The following Site Development Standards shall apply to Minor and Major Land Use Permits.

- A. **GENERAL SITE PLANNING STANDARDS.**
  - 1. A proposed site plan or preliminary plan shall design and locate roads, driveways, lot lines, building sites and utility corridors to preserve to the maximum extent feasible the natural features of the site, avoid areas of environmental sensitivity, and minimize adverse visual impacts.
  - 2. The site shall be adequate in size and shape to accommodate the proposed use and all appurtenant facilities.
- B. **STRUCTURAL LOCATION STANDARDS.** The location of structures shall complement the natural topography and use natural topography and existing vegetation.
- C. **LOT SIZE.** No Land Use Change shall be approved on a lot smaller than 2.5 acres in size unless the lot will be served by a public wastewater treatment system or the applicant demonstrates to the satisfaction of the County that a smaller lot size will not cause wastewater treatment and/or

environmental health concerns, taking into consideration the proposed technology, soil conditions and topography, the proximity of drinking water wells, and related factors.

**D. HEIGHT RESTRICTIONS.** Heights of structures shall comply with State and Federal Regulations, FAA & FCC Regulations. There shall be no interference with established airport flight paths or structural height restrictions within airport influence zones.

**E. SETBACKS FROM SITE BOUNDARIES.** Unless otherwise provided in these regulations, the following minimum setbacks from boundaries of the site shall be required for any structure regulated by this Code.

**1. Measurement.** Front setbacks shall be measured as the distance between the road right-of-way and the foundation of a structure, along a line at right angles to the right-of-way. Rear and side setbacks shall be measured as the distance between the nearest lot line and the foundation of a structure, along a line at right angles to the lot line. Where no minimum front, side or rear yards are specified for large parcels, a setback line shall parallel the corresponding lot line.

**2. Residential Setbacks**

**a. Residential - Single Family Dwellings**

**(1) Minimum setback requirements.**

**(a) front yard setback**

**(i) arterial** 20 feet

**(ii) major collector** 20 feet

**(iii) local** 20 feet

**(b) side yard setback** 10 feet

**(c) rear yard setback**

**(i) principal uses** 25 feet

**(ii) accessory uses** 5 feet

**b. Waiver from Residential Setback Requirements.** The Applicant may request a waiver from the setback requirements at the time of the Land Use Permit application. The Board at its discretion may consider an applicant's proposal for waiver or reduction of setback in a regular meeting for which the request appears on the

agenda. If the Land Use Permit application is approved with a setback waiver or reduction, the approved setback shall be specified in the Land Use Permit approval. The burden is upon the applicant to demonstrate with clear and convenient evidence that:

- (1) The owner(s) of the adjacent property agrees to the proposed setback waiver; and
- (2) The public health, safety, welfare and the environment will not be harmed by the proposed setback waiver; and
- (3) The proposed land use otherwise complies with the relevant standards.

### **3. Agricultural Structure Setback**

#### **a. All agricultural structures**

##### **(1) Minimum setback requirements.**

- (a) 10 feet from road right-of-way and 10 feet from adjoining property.

### **4. Confined Animal Feeding Regulations.** Confined Animal Feeding Operation design criteria must meet federal standards and meet or exceed Colorado's Confined Animal Feeding Regulations.

#### **a. CAFO Setbacks.**

- (1) Setback for any CAFO or industrial operation shall be one mile from the nearest regularly occupied structure unless a variance by all associated parties has been signed and filed with the County Recorder.
- (2) **Effluent Lagoons.** Effluent pits or lagoons shall be set back from all property lines by a minimum of fifty (50) feet. Setback requirement shall be measured from the high point of the nearest berm to the property line.

### **5. Industrial/Commercial Setbacks.**

#### **a. Industrial/Commercial Structure Setbacks**

##### **(1) Minimum setback requirements.**

- (a) front setback - 30 feet from road ROW.

- (b) side yard setback - 25 feet from adjacent residential/agricultural property.
- (c) side yard setback - 10 feet from adjacent commercial/industrial property.
- (d) rear yard setback - 25 feet from adjacent residential/agricultural property.
- (e) rear yard setback - 10 feet from adjacent commercial/industrial property.
- (f) When a property fronts on more than one road, the front setback is required from all roads.

**b. Waiver from Industrial/Commercial Setback Requirements.** Unless applicable Federal or State Regulations governing a proposed industrial use have specific setback requirements, the Applicant may request a waiver from the setback requirements at the time of the Land Use Permit application. The Board at its discretion may consider an applicant's proposal for waiver or reduction of setback in a regular meeting for which the request appears on the agenda. If the Land Use Permit application is approved with a setback waiver or reduction, the approved setback shall be specified in the Land Use Permit approval. The burden is upon the applicant to demonstrate with clear and convenient evidence that:

- (1) The owner(s) of the adjacent property agrees to the proposed setback waiver; and
- (2) The public health, safety, welfare and the environment will not be harmed by the proposed setback waiver; and
- (3) The proposed land use otherwise complies with the relevant standards.

**6. Excavation Setbacks.** Excavations associated with gravel pits or other mining operations shall not be permitted within 100 feet of the boundaries of the site or the setback established by the Mined Land Reclamation Board, whichever is greater.

**SECTION 5-104      ADDITIONAL STANDARDS FOR CERTAIN USES.**

- A.      ADDITIONAL STANDARDS FOR COMMERCIAL AND INDUSTRIAL USES.** In addition to the other applicable standards and criteria in this Article 5, the following standards shall apply to any commercial and industrial development.
- 1.      Outdoor Storage and Disposal.** Storage areas shall be screened from view by fencing or landscaping and all flammable or explosive materials shall be stored in accordance with state and federal laws.
  - 2.      Smoke and Particles.** Smoke and particulate emissions shall not exceed applicable air quality standards.
  - 3.      Vibration.** Every use shall be operated so that the ground vibration generated is not perceptible, without instruments, at the boundaries of the site.
  - 4.      Lighting.** Exterior lighting shall be designed so that rays are emitted downward onto the site.
  - 5.      Hours of operation.** Hours of operation shall be established to minimize impacts to adjacent land uses.
  - 6.      Roadway System.** Impacts to the County roadway system associated with hauling, truck traffic and equipment use shall be mitigated through roadway improvements or fees, or both.
- B.      Standards Applicable to Operations and Facilities Regulated by State and Federal Confined Animal Feeding Operations Control Regulations.**
- 1.      Compliance with State and Federal Laws, Permits and Requirements.** Concentrated animal feeding operations subject to the state Confined Animal Feeding Operations Control Regulation No. 81, 5 CCR 1002-81, and 5CCR 1002-61 must obtain the applicable state and federal permits and must be constructed and operated in compliance with the state and federal laws, permits and requirements, which shall be made a condition of approval of the permit application. Non-compliance with state or federal laws, permits and requirements shall be a violation of this Land Use Code and subject to the enforcement provisions.
  - 2.      Water Quality Monitoring.** The applicant may be required to submit a plan to the County for water quality monitoring for the life of the facility designed for early detection of an impact to

water quality associated with the project if the County can show a higher risk for the facility than Federal and/or State regulations has taken into account.

The use shall not cause significant degradation of the quality of surface or ground water resources. Groundwater pollution control measures shall be implemented that prevent the discharge of pollutants from the activity into groundwater. Should the associated State or Federal Regulations governing an activity not address the protection of ground water, the County may require a water quality monitoring plan for the life of the facility, designed for the early detection of an impact to water quality associated with the project.

3. **Location Restrictions.** Concentrated animal feeding operations shall be located at least one mile from any public place of assembly, from any existing residence or occupied commercial building, any county or municipal residential zone, or from any residential building site for which a building permit has been issued, as measured from the permitted building footprint; unless a variance has been signed by all affected parties and filed with the County Recorder.
4. **Additional Requirements for Facility Construction and Operation.** In addition to state and federal regulation and permit requirements for construction and operation of concentrated animal feeding operations, the County, after showing there is more risk than the Federal and/or State regulations has taken into account, may impose conditions that it deems necessary to protect the County's natural resources and prevent conditions which constitute a health and safety risk to neighboring land owners.

C. **ADDITIONAL STANDARDS APPLICABLE TO ALL MINING OPERATIONS.** In addition to the other standards and criteria in this Article, the following standards shall apply to mining operations unless the standard has been waived pursuant to Section 5-104(D)(8), *Technical Infeasibility Waiver*.

1. **Compliance with State and Federal Requirements.** All mining activities shall be conducted in accordance with applicable state and federal standards, conditions and permits, which shall be made a condition of approval of any mining operation.
2. **Roads.**
  - a. **Impact Mitigation.** The mining operator or owner shall bear the proportionate cost of all road and bridge improvements, repairs, and maintenance necessitated by the proposed mining operation.



- b. Vehicle Weight.** The weight of trucks shall not exceed federal, state or local government imposed road or bridge weight capacity on approved haulage routes.
    - c. Seasonal Traffic Limitation.** As a condition of approval, the County may impose limits on the number of trucks that may access the mine to avoid damage to roads caused by heavy vehicle use, weather conditions or water saturation.
- 3. Routing.** Designation of construction and haul routes for a specific mining operation application shall comply with the following:
  - a. Avoidance of Developed Areas.** Truck haulage and traffic routes shall be designed to the maximum extent feasible to avoid residential areas, commercial areas, environmentally and visually sensitive areas, schools and other civic buildings, municipalities and already congested locations. Alternative routes shall be identified.
  - b. Timing of Hauling.** Timing of truck traffic may be controlled to prevent congestion or adverse noise impacts or safety risks.
  - c. Load Control.** Applicant shall prevent loss of loads and fugitive dust emissions during transit, and shall be responsible to ensure that haul routes are maintained in accordance with dust-suppressant methods required by applicable state or federal agency.
- 4. Water Quality.** The quality of surface or ground water discharged from the mine or mining operation shall meet the standards set by the U.S. Environmental Protection Agency and the Colorado Department of Health and Environment, Water Quality Control Commission. Water quality monitoring results shall be submitted to the County at the same time results are submitted to state or federal agencies.
- 5. Air Quality.** All mining operations shall comply with the Colorado Department of Health Air Quality Control Commission's *Regulation 2* and all other state and federal air quality regulations.

Air quality monitoring results shall be submitted to the County at the same time results are submitted to state or federal agencies.

6. **Wildlife.** Mining operations shall not be located in significant wildlife habitat areas as defined by the Colorado Division of Wildlife.
7. **Technical Infeasibility Waiver.** One or more of the Standards for Mining Operations may be waived by the Administrator if the applicant demonstrates to the satisfaction of the County that it is technically impracticable to comply with the standard(s). To be granted a waiver from a standard for technical impracticability, the burden is on the applicant to demonstrate the following with clear and convincing evidence:
  - a. **No Technology Available.** There is no technology generally available to conduct the mining operation in compliance with the County standard, and the applicant will implement the best available technology to conduct the mining operation in compliance with the County standards to the maximum extent feasible; or
  - b. **Conflict with State or Federal Regulation.** Conduct of the mining operation in compliance with the County standard would result in an irreconcilable conflict with a mandatory state or federal mining regulation, condition or other requirement, and:
    - (1) The state or federal requirement cannot be waived; and
    - (2) Compliance with both the state or federal requirement and the County standard is not technically possible; and
    - (3) The applicant will design, construct and operate the mining operation in compliance with County standards to the maximum extent feasible.
  - c. **Additional Conditions Necessary to Obtain a Technical Infeasibility Waiver.** No Technical Infeasibility Waiver shall be granted unless:
    - (1) The waiver will not cause substantial injury to the owner or occupant of adjacent land(s).

- (2) The waiver will not cause substantial injury to the environment.

**D. ADDITIONAL STANDARDS APPLICABLE TO UTILITIES.** In addition to the other standards and criteria in this article, the following standards shall apply to utilities that are not Major Electrical or Natural Gas Facilities.

1. **Disruption of Services Avoided.** Areas around facilities of a public utility shall be administered so as to minimize disruption of the service provided by the public utility.
2. **Community Patterns.** Utilities shall be located so as to preserve desirable existing community patterns.
3. **Underground location.** Utilities shall be located underground unless geologic conditions prevent underground installation. Where utilities are installed underground, and if located in the right-of-way they shall be at a depth of at least twenty-four (24) inches, or as required by Yuma County Road and Bridge.
4. **Restoration.** Any disturbed portion of the right-of-way shall be restored as nearly as possible to its condition immediately prior to utility construction, improvements, location or relocation, and to the satisfaction of Yuma County Road and Bridge. Back filling shall be made in six-inch lifts, mechanically tamped and packed, and the last twelve (12) inches shall be crushed rock or gravel.
5. **Safety.** Safety measures shall be implemented to the satisfaction of Yuma County Road and Bridge, and in accordance with state and federal requirements to protect the public from harm during utility construction, improvements, location or relocation.
6. **Roadway crossing.** When the installation crosses a roadway, it shall be located as perpendicular to the roadway as physically practical and installed by boring or jacking beneath the road surface, or as required by Yuma County Road and Bridge.
7. **Cuts.** Open cuts across a roadway will be allowed, subject to conditions imposed by Yuma County Road and Bridge only if, in the opinion of Yuma County Road and Bridge, boring is not possible. Where a cut is allowed, it shall be filled with gravel compacted in 5-inch lifts to a density of ninety-five (95) percent of surrounding soils. Any compaction tests shall be conducted by Yuma County Road and Bridge at the expense of the applicant.

8. **As-built drawings.** Certified as-built drawings shall be provided to the County once the utility construction, improvements, location or relocation has been completed.
9. **Notice to Proceed.** No work associated with the utility construction, improvements, location or relocation shall commence until a permit and notice to proceed have been granted by the County.

**E. ADDITIONAL STANDARDS APPLICABLE TO TELECOMMUNICATIONS FACILITIES.**

1. **Telecommunications Act.** All telecommunications facilities shall comply with the standards of this Code, all applicable standards of the Federal Telecommunications Act of 1996, and all applicable requirements of the Federal Aviation Administration (FAA).
2. **Setbacks.**
  - a. **Setback from Residential Structures.**

Telecommunication facilities and transmission towers shall be set back from all residential structures by a minimum of one hundred (100) feet, or two hundred percent (200%) of the height of the proposed tower or facility; whichever is greater, but no closer than 50 feet to a property line. Setback requirements shall be measured from the outside perimeter of the base of the tower, and every other vertical component of the telecommunications facilities, or tower, higher than ten (10) feet, to any portion of the residential structure.
  - b. **Setback from Nonresidential Property Line.** All telecommunication facilities and transmission towers shall be set back a minimum one hundred ten percent (110%) of the height of the tower from a nonresidential property line.
  - c. **Waiver from Setback Requirements.** The Applicant may request a waiver from the setback requirements at the time of the Land Use Permit application. The Board of County Commissioners may grant a waiver from setback requirements if the owner(s) of the affected structure or property agrees to the proposed waiver and the Board determines that the waiver would be in the best interest of the County.

3. **New Towers and Facilities.** No new transmission tower or facility shall be permitted unless the applicant demonstrates to the satisfaction of the County that no existing tower, structure or utility facility can be used by the applicant. To gain approval to construct a new transmission tower or facility, the applicant must demonstrate that:
  - a. No existing transmission tower, facility or utility structure is located within a distance which meets the applicant's engineering requirements; or
  - b. No existing transmission tower, facility or utility structure is located within a distance which meets the applicant's engineering requirements and which has sufficient structural strength or space available to support the applicant's telecommunication facility and related equipment; or
  - c. Existing facilities would interfere with the applicant's uses such that co-location is not possible; or
  - d. No owner of existing towers, structures or utility structures within a distance that meets the applicant's engineering requirements will allow the applicant to place its telecommunication facility thereon.
4. **Structural and Engineering Standards.** The applicant shall submit evidence concerning structural and engineering standards prepared by a Colorado registered professional engineer. The safety of the property and the neighborhood shall be protected.
5. **Interference.** Every transmission tower and telecommunication facility shall meet the regulations of the Federal Communications Commission (FCC) regarding physical and electromagnetic interference.
6. **Health Standards.** Transmission towers and telecommunication facilities shall meet applicable health and safety standards for electromagnetic field (EMF) emissions as established by the FCC and/or any other federal or state agency having jurisdiction.
7. **Public Utility Structures.** Transmission towers or telecommunication facilities mounted on existing structures of public utilities that have a franchise or other written permission from the County and use concealed transmission towers and telecommunication facilities are permitted in all non-residential

areas, unless otherwise specified by this Code. The County may approve the placement, extension or replacement of a transmission tower or telecommunication facility on an existing public utility structure up to fifty (50) feet above the highest point on the same; the County may waive public notice and other submittal requirement if the Administrator believes that the public interest will not be harmed by such a waiver.

8. **Lighting and Signage.** The location of the lighting fixture(s) shall be such that the lights do not shine directly on any public right-of-way.
9. **Modification or Demolition.** Any transmission tower or telecommunications facility being modified, demolished or rebuilt shall be brought into compliance with the standards adopted in this Code.
10. **Maintenance.** Every owner of a transmission tower or telecommunications facility shall take special care to operate, repair and maintain all such facilities so as to prevent failures and accidents which cause damage, injuries or nuisances to the neighborhood and public. All wires, cables, fixtures and other equipment shall be installed in compliance with the requirements of the National Electric Safety Code and all FCC, FAA, state and local regulations, and in such a manner that will not interfere with radio communications, electronic transmissions or all other electromagnetic communications or otherwise cause a safety hazard.
11. **Abandonment.** The wireless telecommunication facility owner shall remove all wireless telecommunications facilities which are not in use for any six (6)-month period, within three (3) months of the end of such six (6) month abandonment. As a part of such removal, the owner shall re-vegetate the site so that it is compatible with the neighborhood. The Board of County Commissioners shall only determine abandonment after the owner has had notice and an opportunity to be heard.
12. **Federal Aviation Agency (“FAA”) Form.** The applicant shall submit FAA Form 7460-1, Notice of Proposed Construction or Alteration, except that such form shall not be required for the following:
  - a. An amateur radio antennae if owned and operated by a federally licensed amateur radio operator or used exclusively for a receive-only antennae.

- b. Any existing tower and antennae, provided a building permit was issued for a tower or antennae prior to the adoption of this Code.
- c. Any emergency telecommunications facilities used exclusively for emergency services including, but not limited to, police, fire and operation of governmental entities.
- d. Any antennae used for Federal Communications Commission (FCC) licensees engaged in AM, FM or television broadcasting.

**F. ADDITIONAL CRITERIA APPLICABLE TO SOLID WASTE DISPOSAL SITES.** In addition to the other standards in this Article 5, the following additional standards shall apply to solid waste disposal sites:

- 1. **Recycling and Conservation.** Solid waste disposal sites shall be developed in accordance with sound conservation practices and shall emphasize, where feasible, the recycling of waste materials.
- 2. **Certificate of Designation.** Solid waste disposal sites shall comply with state laws and regulations applicable to Solid Waste Disposal Sites and shall receive a Certificate of Designation from the County in accordance with state requirements.

**G. ADDITIONAL STANDARDS FOR CLUSTER DEVELOPMENT.** In addition to the other standards in this Article 5, the following additional standards shall apply to cluster development:

- 1. **Protection of Agricultural Land and Rural Character.** Proposed division and development of the land minimizes the impacts of residential development on agricultural lands and agricultural operations, and maintains the rural character of lands.
- 2. **Preservation of Productive Land.** Proposed division and development of the land maintains the opportunity for agricultural production on the most productive and viable parcels of land.
- 3. **Clustered Lots.** Buildable lots shall be clustered.
- 4. **Restoration of Topsoil and Landscape.** Topsoil shall be replaced and the landscape revegetated with native plant materials of adequate quantity and quality within one growing season after disturbance of the area.
- 5. **Roads, Water and Wastewater Services.** Where well water is used, the annual withdrawal rate shall not exceed the rate of one

acre-foot for each thirty- five acres within the cluster development unless a water augmentation plan is approved. One well shall be allowed per residential lot in accordance with section 30-28-404 C.R.S.

6. **Use and Density.** The proposed division of land is for single family purpose only, and residential density does not exceed two (2) residential units for every thirty-five (35) acres or one residential unit per seventeen and one-half (17 ½) acres.

#### H. **ADDITIONAL STANDARDS FOR MOBILE HOMES.**

1. **Mobile Homes Manufactured Prior to 1976.** If mobile homes manufactured prior to 1976 are brought into Yuma County the owner must place in escrow with the County Treasurer \$1,000 for possible removal costs if abandoned by the owner. Escrow shall be refunded if mobile home is moved from the county or properly disposed of.
2. **Approved Land Use.** The mobile home is located in compliance with the provisions of this Code.
3. **Installation of Mobile Home Unit Complies with Tie Down and Skirting Standards.** The proposed blocking and tie down will be adequate and safe.
  - a. All double-wide mobile homes shall be installed and secured in accordance with applicable state and County regulations and manufacturer requirements.
  - b. All single-wide mobile homes shall be installed and secured in accordance with applicable state and County regulations and manufacturer requirements.
  - c. Single-wide and double-wide mobile homes shall be equipped with skirting of a rigid material, which shall be installed within forty-five (45) days after the mobile home has been moved to its site.
4. **Utility Connections.** The proposed connections for water supply, sewage disposal, electricity and gas will be adequate and safe.
5. **Address.** The street address, or space numbers or letters, will be visible from the access street both during the day and at night.



6. **Steps.** There will be safe and approved steps, landings, handrails and guardrails.

**I. ADDITIONAL STANDARDS FOR UTILITY SCALE WIND ENERGY SYSTEM.** In addition to the standards in Sections 5-101, 5-102 and 5-103 of this Article, the following standards shall apply to Utility Scale Wind Energy System:

1. **Industry Standards, and State and Federal Requirements.** Wind turbines, their components and appurtenant facilities shall conform to applicable industry standards, including those of the American National Standards Institute and National Electrical Commission, and shall comply with all relevant state and federal requirements.
2. **Artificial Lighting.** Wind turbines and appurtenant structures shall not be artificially lit except to the extent required by the FAA or other applicable authority.
3. **Setbacks.**
  - a. **Measurement.** Front, rear and side setbacks shall be measured as the distance between the nearest lot line and center of the foundation of a structure, along a line at right angles to the lot line.
  - b. **Safety Setbacks.** Unless otherwise required by federal or state regulations, the following minimum setbacks shall apply to each Wind Turbine comprising the Wind Energy Facility.

	<b>MINIMUM SETBACK</b>
Setback of Wind Turbine from above-ground public electric power lines or communication lines <sup>1</sup>	2 times system height
Setback of Wind Turbine from public road or highway or railroad <sup>2</sup>	2 times system height
Setback of Wind Turbine from public road or highway with ADT of 7,000 or more <sup>3</sup>	2 times system height or 420 feet, whichever is greater
Setback of Wind Turbine from an inhabited structure located on-site, including residence, school, hospital, church or public library.	2 times system height, or 1000 feet, whichever is greater
Setback of Wind Turbine from an inhabited structure located outside the site boundary, including residence, school, hospital, church or public library.	2 times the system height or 2000 feet from the property line, whichever is greater
Setback from all other property lines, unless	2 times system height or

	<b>MINIMUM SETBACK</b>
appropriate easements are secured from adjacent property owners or other acceptable mitigation is approved by the Board.	1000 feet, whichever is greater
<ol style="list-style-type: none"> <li>1. Measured from the outer boundary of the public utility right-of way or easement [or from existing power line or telephone line]</li> <li>2. Measured from the outer boundary of the public road/highway right-of-way or railroad right-of-way</li> <li>3. Average daily trips, based on traffic field measurements [determined by CDOT or County]</li> </ol>	

c. **Scenic Resource Setback.** Wind Turbines comprising the Wind Energy Facility shall be setback a minimum of ¼ mile from any highway eligible or designated to be a scenic highway or roadway by the Yuma County Comprehensive Plan or by the state.

- (1) A scenic resource protection setback requirement may be reduced to 2 times the total Wind Turbine height if the Board determines that the characteristics of the surrounding property eliminate or substantially reduce considerations of scenic value.

d. **Waiver or Reduction of Setback.** The Applicant may request a waiver from the setback requirements at the time of the Land Use Permit application. The Board at its discretion may consider an applicant’s proposal for waiver or reduction of setback in a regular meeting for which the request appears on the agenda. If the Land Use Permit application is approved with a setback waiver or reduction, the approved setback shall be specified in the Land Use Permit approval. The burden is upon the applicant to demonstrate with clear and convincing evidence that:

- (1) The proposed waiver or reduction of setback is justified; and
- (2) The public health, safety, welfare and the environment will not be harmed by the proposed waiver or reduction of setback; and
- (3) The proposed Utility Scale Wind Energy System otherwise complies with the relevant standards.

4. **Minimum Ground Clearance.** The blade tip of any Wind Turbine shall, at its lowest point, have ground clearance of no less than seventy-five (75) feet.
5. **Safety and Security.**
  - a. Fencing, or other barriers acceptable to the County, shall be installed to prevent unauthorized access to the Wind Energy Facility electrical interconnection facilities.
  - b. All wiring between Wind Turbines and the Wind Energy Facility substation shall be underground.
  - c. Guy wires shall be distinctly marked and fenced on all permanent towers.
  - d. All access doors to Wind Turbine towers and electrical equipment shall be lockable and remain locked when unattended.
  - e. Signs warning of the electrical hazard and other hazards associated with the Wind Energy Facility shall be posted at the base of each Wind Turbine tower, electrical equipment, and at the entrance of the Wind Energy Facility.
  - f. A security patrol or other security measure may be required if it is determined to be necessary and appropriate to ensure public safety.
6. **Fire Protection.** The Wind Energy Facility shall have adequate fire control and prevention measures.
7. **Underground Location of Powerlines.** Unless geologic conditions prevent underground installation, electrical collection system wiring and power-lines shall be installed underground except where the Wind Energy Facility collector wiring is brought together for connection to the transmission or distribution network. All underground installations located within the public road easement or right-of-way shall comply with the applicable permit and design requirements of Yuma County Road and Bridge and should include the following elements:
  - a. **Restoration.** Any disturbed portion of the right of way shall be restored as nearly as possible to its condition immediately prior to construction, improvements, location or relocation, and to the satisfaction of Yuma County Road and Bridge. Backfilling shall be made in six (6) inch lifts,

mechanically tamped and packed, and the last twelve (12) inches shall be crushed rock or gravel.

- b. Safety.** Safety measures shall be implemented to the satisfaction of Yuma County Road and Bridge and in accordance with state and federal requirements to protect the public from harm during construction, improvements, location or relocation.
- c. Roadway Crossing.** When the installation crosses a roadway, it shall be located as perpendicular to the roadway as physically practical and installed in compliance with the requirements of Yuma County Road and Bridge.
- d. As-built drawings.** Certified as-built drawings shall be provided to the County once the construction, improvements, location or relocation has been completed.
- e. Permit and Notice to Proceed.** No work associated with construction, improvements, location or relocation shall commence until the required permit(s) and notice to proceed have been issued by the County.

**8. Interconnection and Electrical Distribution Facilities.**

- a.** All distribution lines, electrical substations, and other interconnection facilities shall be constructed to the specifications of the American National Standard Institute (ANSI), National Electrical Code (NEC), Institute of Electrical and Electronic Engineers (IEEE), and National Utility Standards.
- b.** Interconnection shall conform to the requirements of the electric utility company, and applicable state and federal regulatory requirements.

**9. Interference with Navigational Systems.** The Applicant shall minimize or mitigate any interference with electromagnetic communications caused by the Wind Energy Facility, including radio, telephone or television signals.

- a.** Every Wind Turbine shall comply with Federal Aviation Administration regulations for sighting structures near an airport or VORTAC installation.

**10. Certification of Equipment and Appurtenant Facilities.**

- a.** All equipment and appurtenant facilities shall be certified

by a registered structural engineer to be compliant with the applicable state, federal and local regulations and to conform with good engineering practices.

- b. The electrical system shall be certified by a registered electrical engineer to be compliant with the applicable state, federal and local regulations, and to conform with good engineering practices.

**11. Signs.** Wind Turbines shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the Wind Energy facility.

**12. Color and Finish.**

- a. All Wind Turbines shall be painted a non-reflective, non-obtrusive color.
- b. Design of accessory buildings and related structures shall, to the extent practicable, use materials, colors, textures, screening and landscaping that will blend the Wind Energy Facility to the natural setting and existing environment.

**13. Preservation of Land Use under Decommissioning Plan.** Decommissioning of the Wind Energy Facility shall not interfere with surrounding land use.

**14. Dimension and Location of Each Wind Turbine.** Applicant has submitted a site plan that designates the location and dimensions of each Wind Turbine to be authorized by the final Land Use Permit.

**J. ADDITIONAL STANDARDS FOR UTILITY SCALE SOLAR ENERGY SYSTEM.**

**1. SETBACKS.**

**a. Minimum Setback.**

(1) Utility Scale solar collection panels and equipment shall comply with the Industrial/Commercial Setbacks in Section 5-103, E, 5, a.

**b. Scenic Resource Setback.**

(1) The Utility Scale Solar Energy System shall be setback a minimum of ¼ mile from any highway eligible or

designated to be a scenic highway or roadway by the Yuma County Comprehensive Plan or by the state.

(2) A scenic resource protection setback requirement may be reduced if the Board determines that the characteristics of the surrounding property eliminate or substantially reduce considerations of scenic value.

**c. Waiver or Reduction of Setback.** The Applicant may request a waiver from the setback requirements at the time of the Land Use Permit application. The Board at its discretion may consider an applicant's proposal for waiver or reduction of setback in a regular meeting for which the request appears on the agenda. If the Land Use Permit application is approved with a setback waiver or reduction, the approved setback shall be specified in the Land Use Permit approval. The burden is upon the applicant to demonstrate with clear and convincing evidence that:

(1) The proposed waiver or reduction of setback is necessary to accommodate the Utility Scale Solar Energy System; and

(2) The public health, safety, welfare and the environment will not be harmed by the proposed waiver or reduction of setback; and

(3) The proposed Utility Scale Solar Energy System otherwise complies with the relevant standards.

**2. MAXIMUM SYSTEM HEIGHT.** Roof-mounted systems shall be mounted as flush as possible to the roof. In order to achieve proper solar orientation, panels may exceed the roofline by up to five feet.

**3. VISUAL IMPACTS.** The Utility Scale Solar Energy System shall not have an adverse visual impact on the natural features or character of the surrounding area and shall be located to minimize glare on adjacent properties and roadways.

**4. SAFETY AND SECURITY.**

**a. Fencing.** Fencing or other barriers acceptable to the County shall be installed to prevent unauthorized access to solar collectors and equipment.

**b. Fire Protection.** The Utility Scale Solar Energy System shall have adequate fire control and prevention measures.

**5. LOCATION RESTRICTIONS.**

- a.** Ground-mounted solar energy collectors may not be located within utility easements or ditch easements unless authorized in writing by the easement holder.
- b.** Utility Scale Solar Energy Systems shall not be located in areas of critical wildlife habitat.
- c.** Utility Scale Solar Energy Systems are encouraged to locate on predominately (more than 60 %) non-prime farmland.

**6. CERTIFICATION.**

- a.** All equipment and appurtenant facilities shall be certified by a registered structural engineer to be compliant with the applicable industry, state, federal and local regulations.
- b.** The electrical system shall be certified by a registered electrical engineer to be compliant with the applicable industry, state, federal and local regulations.
- c.** Prior to operation, the applicant shall provide the County with the required certifications.

**7. REMOVAL OF DISCONTINUED UTILITY SCALE SOLAR ENERGY SYSTEM.** If the Utility Scale Solar Energy System ceases to perform its originally intended function for more than eighteen (18) consecutive months, the system shall be removed and adequate site restoration performed no later than ninety (90) days after the end of the 18-month period. See the steps to decommissioning a Utility Scale Solar Energy System in Section 4-105 D.

**K. MARIJUANA CULTIVATION WITHIN PRIMARY RESIDENTIAL STRUCTURES** adopted by Ordinance 10-17-2016-01, in effect as of 12/1/2016:

**Marijuana Cultivation within Primary Residential Structures**

- Sec. 5-104 (J)(1) Authority.**
- Sec. 5-104 (J)(2) Applicability.**
- Sec. 5-104 (J)(3) Definitions.**
- Sec. 5-104 (J)(4) Cultivation within Primary Residential Properties Only.**
- Sec. 5-104 (J)(5) Restrictions and limitations.**
- Sec. 5-104 (J)(6) Violations and penalties.**

## 1. Authority.

The County's authority to adopt this Article is found in:

Article XX, § 6 of the Colorado Constitution;

The Colorado Medical Marijuana Code, C.R.S. § 12-43.3-101;

Article XVIII, § 14 of the Colorado Constitution;

Article XVIII, § 16 of the Colorado Constitution;

The Colorado Retail Marijuana Code;

The Local Government Land Use Enabling Act, C.R.S. § 29-20-101

The County Planning and Building Codes, C.R.S. § 30-28-101, *et seq.*

## 2. Applicability.

This Section applies to all property within unincorporated Yuma County, and to the growing, cultivating, and processing of marijuana on any lot, parcel, or tract of land by any person, including without limitation, patients, primary caregivers, or persons for personal use. Nothing in this section shall be interpreted to permit marijuana stores, cultivation centers, testing facilities, or dispensaries of any kind otherwise prohibited by Resolution # 6-16-2011 A and Ordinance No. 02-15-2013-01, or any other Yuma County ordinance. Nothing in this Section shall be deemed to prohibit the possession of marijuana as permitted by Sections 14 and 16 of Article XVIII of the Colorado Constitution.

## 3. Definitions.

***Accessory Structure*** shall mean a subordinate structure detached from but located on the same parcel as the primary residence, the use of which is incidental and necessary to that of the primary residence.

***Common Area*** as used in this Section means areas within a building or within a residential development that are available for common use by all owners, tenants, or occupants. Examples of common areas include but are not limited to: a clubhouse, courtyard, other shared recreation area, building lobbies, corridors, stairways, parking areas, laundry room, roof, or storage areas.

***Cultivation, Cultivate, and Cultivation Areas*** as used in this Section shall include areas within a primary residence used for cultivation and processing of the marijuana plant, including but not limited to the growth, cutting, clipping, drying, and curing of the plant and products.

***Marijuana Cultivation or Cultivation*** shall mean all growing stages of the marijuana plant. Unless otherwise stated, it shall also include all stages of cultivating, processing or preparing the plant material including, but not



limited to, cutting, trimming and clipping, drying, curing, and storing the marijuana plant materials.

***Primary Residence or Primary Residential Structure*** means the place that a person by custom and practice, makes his or her principle domicile and address to which the person intends to return, following any temporary absence, such as a vacation. Residence is evidenced by actual daily physical presence, use and occupancy of the primary residence, and the use of the residential address for domestic purposes, such as, but not limited to, slumber, preparation of meals, package delivery, vehicle and voter registration, or credit and utility billings. A primary residence shall include an attached garage and may include an accessory structure located no more than one hundred (100) yards from the primary residence. A person shall have only one (1) primary residence.

***Primary Residential Premises*** means the parcel on which the primary residential structure is located.

***Processing*** shall mean all stages of processing the plant material including, but not limited to, cutting, trimming, clipping, drying, curing, and storing the marijuana plant materials.

***Secure Area*** means an area within the primary residence accessible only to the user, patient or primary caregiver. The secure area shall be locked or partitioned off to prevent access by persons under the age of 21 not licensed by the State, visitors, casual passersby, or anyone not authorized to possess marijuana. The secure area means secured at all points of ingress with a locking mechanism designed to limit access such as with a key or combination lock.

#### **4. Cultivation within Primary Residential Premises Only.**

- a.** The cultivation, processing, production or possession of medical marijuana plants for personal use by a registered medical marijuana user or registered primary caregiver or marijuana plants for personal use shall be unlawful anywhere in the County other than in a secure area as defined here, within a primary residential structure.
- b.** The primary residential structure or accessory structure located on the primary residential premises used for cultivation, processing, production or possession of medical or personal use marijuana plants shall comply with all applicable building codes, including not limited to the health, building, electrical, plumbing, mechanical, signage, fire, and other codes, statutes, and ordinances.

- c. The cultivation, production, or possession of marijuana plants, accessories and marijuana products must be in full compliance with all applicable provisions of Article XVIII, § 14 and § 16 of the Colorado Constitution, the Colorado Medical Marijuana Code, C.R.S. § 12-43.3-101, *et. seq.*, the Medical Marijuana Program, C.R.S. § 25-1.5-101, *et. seq.*, and the Colorado Retail Marijuana Code, C.R.S. *et. seq.*, 12-43.4-101, *et. seq.*

**5. Restrictions and limitations.**

- a. Marijuana may only be grown, cultivated, or processed in a primary residence where residential use is the primary use of the structure or in an accessory structure located on the primary residential premises.
- b. Any cultivation, production, or possession of marijuana plants shall not exceed 18 plants per primary residential structure, regardless of the number of accessory structures within the primary residential premises in which cultivation, production or possession of marijuana plants occurs.
- c. The cultivation, production, or possession of any marijuana plants must not be perceptible from the exterior of the primary residence or any accessory structure on a primary residential premise, including, without limitation:
  - i. Common visual observation, which includes prohibition of any form of signage;
  - ii. Light pollution, glare, or brightness that disturbs the repose of another;
  - iii. Undue vehicular or foot traffic, including excess parking within the residential zone; and
  - iv. Noise from fans.
- d. The smell or odor of marijuana growing, cultivating, or processing at a primary residence shall not be detectable by a person with a normal sense of smell from any adjoining lot, parcel, tract, public right-of-way, or building unit.
- e. No marijuana plants shall be cultivated, produced, processed, or possessed:

- i. In the common areas of a multi-family or attached residential development;
  - ii. By a lessee or tenant of a rental property, without written, notarized permission from the property owner establishing the parameters of such use; or
  - iii. In any location that is not a primary residence.
- f. Marijuana plants shall not be cultivated, produced, possessed or processed in
- i. A kitchen in the primary residence that is used by the residents, their guests or invitees as the primary room or area in the residence for food preparation and/or consumption;
  - ii. A room in the residence with features and functions such as a basin, toilet, tub, shower, bidet or similar plumbing features that qualify the room or area as a bathroom and is regularly used as a bathroom by the residents, their guests or invitees; or
  - iii. A room in the residence which is regularly used as a bedroom or sleeping area.
- g. Outdoor grow operations and home cultivation in greenhouses are prohibited.

**6. Violations and penalties.**

- a. It is unlawful for any person to violate any of the provisions of this Section. Unless otherwise provided by law, all fines and penalties, and the surcharge thereon, for the violation of this ordinance shall be paid into the treasury of Yuma County. The fine for a first offense and for any subsequent offense shall be one thousand dollars (\$1000) per violation and each day shall be deemed a separate violation.
- b. This ordinance shall be enforced by the Yuma County Sheriff.

**L. FLOOD DAMAGE PREVENTION ORDINANCE** adopted by Resolution 09-22-2017 A, in effect as of 10/22/2017:

**Flood Damage Prevention Ordinance**

**Sec. 5-104 (L)(1) Title and Purpose.**

**Sec. 5-104 (L)(2) General Provisions.**

**Sec. 5-104 (L)(3) Administration.**

**Sec. 5-104 (L)(4) Provisions for Flood Hazard Reduction.**

**Sec. 5-104 (L)(5) Definitions**

**1. TITLE AND PURPOSE**

**A. STATUTORY AUTHORIZATION.** The Legislature of the State of Colorado has, in Title 29, Article 20 of the Colorado Revised Statutes, delegated the responsibility of local governmental units to adopt regulations designed to minimize flood losses. Therefore, the Board of County Commissioners of Yuma County, Colorado, does hereby adopt the following floodplain management regulations:

**B. FINDINGS OF FACT.**

(1) The flood hazard areas of Yuma County are subject to periodic inundation, which can result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the health, safety and general welfare of the public.

(2) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.

**C. STATEMENT OF PURPOSE.** It is the purpose of this ordinance to promote public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

1. Protect human life and health;
2. Minimize expenditure of public money for costly flood control projects;
3. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. Minimize prolonged business interruptions;
5. Minimize damage to critical facilities, infrastructure and other public facilities such as water, sewer and gas mains; electric and communications stations; and streets and bridges located in floodplains;

6. Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and
7. Insure that Applicants are notified that property is located in a flood hazard area.

**D. METHODS OF REDUCING FLOOD LOSSES.** In order to accomplish its purposes, this ordinance uses the following methods:

1. Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;
2. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
3. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;
4. Control filling, grading, dredging and other development which may increase flood damage;
5. Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

## **2. GENERAL PROVISIONS**

### **A. LANDS TO WHICH THIS ORDINANCE APPLIES.**

These regulations shall apply to all Special Flood Hazard Areas and areas removed from the floodplain by the issuance of a FEMA Letter of Map Revision Based on Fill (LOMR-F) within the jurisdiction of unincorporated Yuma County, Colorado.

**B. BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREA.** The Special Flood Hazard Areas identified by FEMA in a scientific and engineering report entitled, "The Flood Insurance Study for Yuma County, Colorado Unincorporated Areas," dated December 19, 1984, with accompanying Flood Insurance Rate Maps and/or Flood Boundary-Floodway Maps (FIRM and/or FBFM) and any revisions thereto are hereby adopted by reference and declared to be a part of this ordinance. These Special Flood Hazard Areas identified by the FIS and attendant mapping are the minimum area of applicability of this ordinance

and may be supplemented by studies designated and approved by the Yuma County Board of County Commissioners. The Floodplain Administrator shall keep a copy of the Flood Insurance Study (FIS), DFIRMs, FIRMs and/or FBFMs on file and available for public inspection.

**C. ESTABLISHMENT OF FLOODPLAIN DEVELOPMENT NOTIFICATION.** Floodplain Development notification shall be required to ensure conformance with the provisions of this ordinance.

**D. COMPLIANCE.** No structure or land shall hereafter be located, altered, or have its use changed within the Special Flood Hazard Area without full compliance with the terms of this ordinance and other applicable regulations. Nothing herein shall prevent the Yuma County Board of County Commissioners from taking such lawful action as is necessary to prevent or remedy any violation. These regulations meet the minimum requirements as set forth by the Colorado Water Conservation Board and the National Flood Insurance Program.

**E. ABROGATION AND GREATER RESTRICTIONS.** This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, nor deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

**F. INTERPRETATION.** In the interpretation and application of this ordinance, all provisions shall be:

1. Considered as minimum requirements;
2. Liberally construed in favor of the governing body; and
3. Deemed neither to limit nor repeal any other powers granted under State statutes.

**G. WARNING AND DISCLAIMER OF LIABILITY.** The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions, greater floods can and will occur and flood heights may be increased by man-made or natural causes.

This ordinance does not imply that land outside the Special Flood Hazard Area or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the County or any official or employee thereof for

any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

**H. SEVERABILITY.** This ordinance and the various parts thereof are hereby declared to be severable. Should any section of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.

### **3. ADMINISTRATION**

#### **A. DESIGNATION OF FLOODPLAIN ADMINISTRATOR.**

The Yuma County Land Use Administrator shall serve as the Floodplain Administrator to administer and implement the provisions of this Code pertaining to floodplain management and other appropriate sections of 44 CFR (National Flood Insurance Program Regulations) pertaining to floodplain management.

**B. DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR.** Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:

1. Maintain and hold open for public inspection all records pertaining to the provisions of this ordinance, including the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures and any floodproofing certificate required by Section 3, Sub-section C.
2. Review, approve, or deny all applications for Floodplain Development required by adoption of this ordinance.
3. Review Floodplain Development applications to determine whether a proposed building site, including the placement of manufactured homes, will be reasonably safe from flooding.
4. Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.

5. Where interpretation is needed as to the exact location of the boundaries of the Special Flood Hazard Area (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation.
6. When Base Flood Elevation data has not been provided in accordance with Section 2, Sub-section B, the Floodplain Administrator shall obtain, review and reasonably utilize any Base Flood Elevation data and Floodway data available from a Federal, State, or other source, in order to administer the provisions of Section 4.
7. For waterways with Base Flood Elevations for which a regulatory Floodway has not been designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the county's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one-half foot at any point within the county.
8. Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a county may approve certain development in Zones A1-30, AE, AH, on the county's FIRM which increases the water surface elevation of the base flood by more than one-half foot, provided that the county first applies for a conditional FIRM revision through FEMA (Conditional Letter of Map Revision), fulfills the requirements for such revisions as established under the provisions of Section 65.12 and receives FEMA approval.
9. Notify, in riverine situations, adjacent communities and the State Coordinating Agency, which is the Colorado Water Conservation Board, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to FEMA.
10. Ensure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

**C. APPLICATION PROCEDURES.** Application for Development shall be presented to the Floodplain Administrator on



forms furnished by him/her and may include, but not be limited to, plans drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to Special Flood Hazard Area. Additionally, the following information is required:

1. Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;
2. Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;
3. A certificate from a registered Colorado Professional Engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of Section 4, Sub-section B, *Specific Standards*;
4. Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development.
5. Maintain a record of all such information in accordance with Section 3, Sub-section B.

Recommendation of approval or denial of a Floodplain Development by the Floodplain Administrator shall be based on all of the provisions of this ordinance and the following relevant factors:

1. The danger to life and property due to flooding or erosion damage;
2. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
3. The danger that materials may be swept onto other lands to the injury of others;
4. The safety of access to the property in times of flood for ordinary and emergency vehicles;
5. The costs of providing governmental services during and after flood conditions including maintenance and repair of

streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;

6. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;
7. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
8. The relationship of the proposed use to the comprehensive plan for that area.

#### **D. VARIANCE PROCEDURES.**

1. The Appeal Board, as established by the County, shall hear and render judgment on requests for variances from the requirements of this ordinance.
2. The Appeal Board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this ordinance.
3. Any person or persons aggrieved by the decision of the Appeal Board may appeal such decision in the courts of competent jurisdiction.
4. The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
5. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this ordinance.
6. Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

7. Upon consideration of the factors noted above and the intent of this ordinance, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this ordinance.
8. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
9. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
10. Prerequisites for granting variances:
  - a. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
  - b. Variances shall only be issued upon:
    - i. Showing a good and sufficient cause;
    - ii. A determination that failure to grant the variance would result in exceptional hardship to the applicant, and
    - iii. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
  - c. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the Base Flood Elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

11. Variances may be issued by the County for new construction and substantial improvements and for other development necessary for the conduct of a Functionally Dependent Use provided that:
  - a. The criteria outlined in Section 3, Sub-section D *Variance Procedures*, 1.-9., are met, and
  - b. The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

**E. PENALTIES FOR NONCOMPLIANCE. Refer to Article 9 of this code for compliance enforcement.**

**4. PROVISIONS FOR FLOOD HAZARD REDUCTION**

**A. GENERAL STANDARDS.** In all Special Flood Hazard Areas, the following provisions are required for all new construction and substantial improvements:

1. All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
2. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
3. All new construction or substantial improvements shall be constructed with materials resistant to flood damage;
4. All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
5. All manufactured homes shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This

requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

6. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
7. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and,
8. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

**B. SPECIFIC STANDARDS.** In all Special Flood Hazard Areas where base flood elevation data has been provided as set forth in (i) Section 2, Sub-section B, (ii) Section 3, Sub-section B(7), or (iii) Section 4, Sub-section G, the following provisions are required:

**1. Residential Construction:** New construction and Substantial Improvement of any residential structure shall have the lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), elevated to one foot above the base flood elevation. Upon completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered Colorado Professional Engineer, architect, or land surveyor. Such certification shall be submitted to the Floodplain Administrator.

**2. Nonresidential Construction:** With the exception of Critical Facilities, outlined in Article 5, Section H, new construction and Substantial Improvements of any commercial, industrial, or other nonresidential structure shall either have the lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), elevated to one foot above the base flood elevation or, together with attendant utility and sanitary facilities, be designed so that at one foot above the base flood elevation the structure is watertight with walls

substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

A registered Colorado Professional Engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. Such certification shall be maintained by the Floodplain Administrator, as proposed in Section 3, Sub-section C.

**3. Enclosures.** New construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access, or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.

Designs for meeting this requirement must either be certified by a registered Colorado Professional Engineer or architect or meet or exceed the following minimum criteria:

- a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
- b. The bottom of all openings shall be no higher than one foot above grade.
- c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

**4. Manufactured Homes.** All manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the county's FIRM on sites (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a

permanent foundation such that the lowest floor of the manufactured home, electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), are elevated to one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

All manufactured homes placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A1-30, AH and AE on the county's FIRM that are not subject to the provisions of the above paragraph, shall be elevated so that either:

- a. The lowest floor of the manufactured home, electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), are one foot above the base flood elevation, or
- b. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

**5. Recreational Vehicles.** All recreational vehicles placed on sites within Zones A1-30, AH, and AE on the county's FIRM either:

- a. Be on the site for fewer than 180 consecutive days,
- b. Be fully licensed and ready for highway use, or
- c. Meet the permit requirements of Article 4, Section C, and the elevation and anchoring requirements for "manufactured homes" in paragraph (4) of this section.

A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

**6. Prior Approved Activities.** Any activity for which Floodplain Development was approved by unincorporated Yuma County or a CLOMR was issued by FEMA prior to

October 22<sup>nd</sup>, 2017 may be completed according to the standards in place at the time of the permit or CLOMR issuance and will not be considered in violation of this ordinance if it meets such standards.

### **C. STANDARDS FOR AREAS OF SHALLOW FLOODING (AO/AH ZONES).**

Located within the Special Flood Hazard Area are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of 1 to 3 feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

**1. RESIDENTIAL CONSTRUCTION.** All new construction and Substantial Improvements of residential structures must have the lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), elevated above the highest adjacent grade at least one foot above the depth number specified in feet on the county's FIRM (at least three feet if no depth number is specified). Upon completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered Colorado Professional Engineer, architect, or land surveyor. Such certification shall be submitted to the Floodplain Administrator.

**2. NONRESIDENTIAL CONSTRUCTION.** With the exception of Critical Facilities, outlined below, all new construction and Substantial Improvements of non-residential structures, must have the lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), elevated above the highest adjacent grade at least one foot above the depth number specified in feet on the county's FIRM (at least three feet if no depth number is specified), or together with attendant utility and sanitary facilities, be designed so that the structure is watertight to at least one foot above the base flood level with walls substantially impermeable to the passage of water



and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy. A registered Colorado Professional Engineer or Architect shall submit a certification to the Floodplain Administrator that the standards of this Section are satisfied.

Within Zones AH or AO, adequate drainage paths around structures on slopes are required to guide flood waters around and away from proposed structures.

#### **D. FLOODWAYS**

Floodways are administrative limits and tools used to regulate existing and future floodplain development. The State of Colorado has adopted Floodway standards that are more stringent than the FEMA minimum standard (see definition of Floodway in Section 5). Located within the Special Flood Hazard Area are areas designated as Floodways. Since the Floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles and erosion potential, the following provisions shall apply:

1. Encroachments are prohibited, including fill, new construction, substantial improvements and other development within the adopted regulatory Floodway *unless* it has been demonstrated through hydrologic and hydraulic analyses performed by a licensed Colorado Professional Engineer and in accordance with standard engineering practice that the proposed encroachment would not result in any increase (requires a No-Rise Certification) in flood levels within the area during the occurrence of the base flood discharge.
2. If Section 4, Sub-section 1 above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section 4.
3. Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Regulations, a county may permit encroachments within the adopted regulatory floodway that would result in an increase in Base Flood Elevations,

provided that the county first applies for a CLOMR and floodway revision through FEMA.

### **E. ALTERATION OF A WATERCOURSE**

For all proposed developments that alter a watercourse within a Special Flood Hazard Area, the following standards apply:

1. Channelization and flow diversion projects shall appropriately consider issues of sediment transport, erosion, deposition, and channel migration and properly mitigate potential problems through the project as well as upstream and downstream of any improvement activity. A detailed analysis of sediment transport and overall channel stability should be considered, when appropriate, to assist in determining the most appropriate design.
2. Channelization and flow diversion projects shall evaluate the residual 100-year floodplain.
3. Any channelization or other stream alteration activity proposed by a project proponent must be evaluated for its impact on the regulatory floodplain and be in compliance with all applicable Federal, State and local floodplain rules, regulations and ordinances.
4. Any stream alteration activity shall be designed and sealed by a registered Colorado Professional Engineer or Certified Professional Hydrologist.
5. All activities within the regulatory floodplain shall meet all applicable Federal, State and Yuma County floodplain requirements and regulations.
6. Within the Regulatory Floodway, stream alteration activities shall not be constructed unless the project proponent demonstrates through a Floodway analysis and report, sealed by a registered Colorado Professional Engineer, that there is not more than a 0.00-foot rise in the proposed conditions compared to existing conditions Floodway resulting from the project, otherwise known as a No-Rise Certification, unless the county first applies for a CLOMR and Floodway revision in accordance with the *Floodway* paragraph of this Article.
7. Maintenance shall be required for any altered or relocated portions of watercourses so that the flood-carrying capacity is not diminished.

## **F. PROPERTIES REMOVED FROM THE FLOODPLAIN BY FILL**

A Floodplain Development Permit shall not be issued for the construction of a new structure or addition to an existing structure on a property removed from the floodplain by the issuance of a FEMA Letter of Map Revision Based on Fill (LOMR-F), unless such new structure or addition complies with the following:

**1. RESIDENTIAL CONSTRUCTION.** The lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), must be elevated to one foot above the Base Flood Elevation that existed prior to the placement of fill.

**2. NONRESIDENTIAL CONSTRUCTION.** The lowest floor (including basement), electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork), must be elevated to one foot above the Base Flood Elevation that existed prior to the placement of fill, or together with attendant utility and sanitary facilities be designed so that the structure or addition is watertight to at least one foot above the base flood level that existed prior to the placement of fill with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.

## **G. STANDARDS FOR SUBDIVISION PROPOSALS**

1. All subdivision proposals including the placement of manufactured home parks and subdivisions shall be reasonably safe from flooding. If a subdivision or other development proposal is in a flood-prone area, the proposal shall minimize flood damage.

2. All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Floodplain Development Notification requirements of Section 2, Sub-section C; Section 3, Sub-section C; and the provisions of Section 4 of this ordinance.

3. Base Flood Elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which is greater than 50 lots or 5 acres, whichever is lesser, if not otherwise provided pursuant to Section 2, Sub-section B or Section 3, Sub-section B of this ordinance.

4. All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.

5. All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

## **H. STANDARDS FOR CRITICAL FACILITIES**

A Critical Facility is a structure or related infrastructure, but not the land on which it is situated, as specified in Rule 6 of the Rules and Regulations for Regulatory Floodplains in Colorado, that if flooded may result in significant hazards to public health and safety or interrupt essential services and operations for the county at any time before, during and after a flood.

**1. CLASSIFICATION OF CRITICAL FACILITIES.** It is the responsibility of the Board of County Commissioners to identify and confirm that specific structures within the County meet certain criteria:

Critical Facilities are classified under the following categories: (a) Essential Services; (b) Hazardous Materials; (c) At-risk Populations; and (d) Vital to Restoring Normal Services.

- a. Essential services facilities include public safety, emergency response, emergency medical, designated emergency shelters, communications, public utility plant facilities, and transportation lifelines.

These facilities consist of:

- i. Public safety (police stations, fire and rescue stations, emergency vehicle and equipment storage, and, emergency operation centers);
- ii. Emergency medical (hospitals, ambulance service centers, urgent care centers having emergency treatment functions, and non-ambulatory surgical structures but excluding clinics, doctors' offices, and non-urgent care medical structures that do not provide these functions);
- iii. Designated emergency shelters;
- iv. Communications (main hubs for telephone, broadcasting equipment for cable systems, satellite dish systems, cellular systems, television, radio, and other emergency warning systems, but excluding towers, poles, lines, cables, and conduits);
- v. Public utility plant facilities for generation and distribution (hubs, treatment plants, substations and pumping stations for water, power and gas, but not including towers, poles, power lines, buried pipelines, transmission lines, distribution lines, and service lines); and
- vi. Air Transportation lifelines (airports (municipal and larger), helicopter pads and structures serving emergency functions, and associated infrastructure (aviation control towers, air traffic control centers, and emergency equipment aircraft hangars).

Specific exemptions to this category include wastewater treatment plants (WWTP), non-potable water treatment and distribution systems, and hydroelectric power generating plants and related appurtenances.

Public utility plant facilities may be exempted if it can be demonstrated to the satisfaction of the Board of County Commissioners that the facility is an element of a redundant system for which service will not be interrupted during a flood. At a minimum, it shall be demonstrated that redundant facilities are available (either owned by the same utility or available through an intergovernmental agreement or other contract) and connected, the alternative facilities are either located outside of the 100-year floodplain or are compliant with the provisions of this Article, and an operations plan is in effect that states how redundant systems will provide service to the affected area in the event of a

flood. Evidence of ongoing redundancy shall be provided to the Board of County Commissioners on an as-needed basis upon request.

- b. Hazardous materials facilities include facilities that produce or store highly volatile, flammable, explosive, toxic and/or water-reactive materials.

These facilities may include:

- i. Chemical and pharmaceutical plants (chemical plant, pharmaceutical manufacturing);
- ii. Laboratories containing highly volatile, flammable, explosive, toxic and/or water-reactive materials;
- iii. Refineries;
- iv. Hazardous waste storage and disposal sites; and
- v. Above ground gasoline or propane storage or sales centers.

Facilities shall be determined to be Critical Facilities if they produce or store materials in excess of threshold limits. If the owner of a facility is required by the Occupational Safety and Health Administration (OSHA) to keep a Material Safety Data Sheet (MSDS) on file for any chemicals stored or used in the work place, AND the chemical(s) is stored in quantities equal to or greater than the Threshold Planning Quantity (TPQ) for that chemical, then that facility shall be considered to be a Critical Facility. The TPQ for these chemicals is: either 500 pounds or the TPQ listed (whichever is lower) for the 356 chemicals listed under 40 C.F.R. § 302 (2010), also known as Extremely Hazardous Substances (EHS); or 10,000 pounds for any other chemical. This threshold is consistent with the requirements for reportable chemicals established by the Colorado Department of Health and Environment. OSHA requirements for MSDS can be found in 29 C.F.R. § 1910 (2010). The Environmental Protection Agency (EPA) regulation “Designation, Reportable Quantities, and Notification,” 40 C.F.R. § 302 (2010) and OSHA regulation “Occupational Safety and Health Standards,” 29 C.F.R. § 1910 (2010) are incorporated herein by reference and include the regulations in existence at the time of the promulgation this ordinance, but exclude later amendments to or editions of the regulations

Specific exemptions to this category include:

- i. Finished consumer products within retail centers and households containing hazardous materials intended for household use, and agricultural products intended for agricultural use.
- ii. Buildings and other structures containing hazardous materials for which it can be demonstrated to the satisfaction of the local authority having jurisdiction by hazard assessment and certification by a qualified professional (as determined by the local jurisdiction having land use authority) that a release of the subject hazardous material does not pose a major threat to the public.
- iii. Pharmaceutical sales, use, storage, and distribution centers that do not manufacture pharmaceutical products.

These exemptions shall not apply to buildings or other structures that also function as Critical Facilities under another category outlined in this Article.

- c. At-risk population facilities include medical care, congregate care, and schools.

These facilities consist of:

- i. Elder care (nursing homes);
  - ii. Congregate care serving 12 or more individuals (day care and assisted living);
  - iii. Public and private schools (pre-schools, K-12 schools), before-school and after-school care serving 12 or more children);
- d. Facilities vital to restoring normal services including government operations.

These facilities consist of:

- i. Essential government operations (public records, courts, jails, building permitting and inspection services, county administration and management, maintenance and equipment centers);
- ii. Essential structures for public colleges and universities (dormitories, offices, and classrooms only).

These facilities may be exempted if it is demonstrated to the Board of County Commissioners that the

facility is an element of a redundant system for which service will not be interrupted during a flood. At a minimum, it shall be demonstrated that redundant facilities are available (either owned by the same entity or available through an intergovernmental agreement or other contract), the alternative facilities are either located outside of the 100-year floodplain or are compliant with this ordinance, and an operations plan is in effect that states how redundant facilities will provide service to the affected area in the event of a flood. Evidence of ongoing redundancy shall be provided to the Board of County Commissioners on an as-needed basis upon request.

**2. PROTECTION FOR CRITICAL FACILITIES.** All new and substantially improved Critical Facilities and new additions to Critical Facilities located within the Special Flood Hazard Area shall be regulated to a higher standard than structures not determined to be Critical Facilities. For the purposes of this ordinance, protection shall include one of the following:

- a. Location outside the Special Flood Hazard Area; or
- b. Elevation of the lowest floor or floodproofing of the structure, together with attendant utility and sanitary facilities, to at least two feet above the Base Flood Elevation.

**3. INGRESS AND EGRESS FOR NEW CRITICAL FACILITIES.** New Critical Facilities shall, when practicable as determined by the Board of County Commissioners, have continuous non-inundated access (ingress and egress for evacuation and emergency services) during a 100-year flood event.

## **5. DEFINITIONS - WORDS AND PHRASES PERTAINING TO FLOODPLAIN REGULATION.**

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

**100-YEAR FLOOD** - A flood having a recurrence interval that has a one-percent chance of being equaled or exceeded during any given year (1-



percent-annual-chance flood). The terms "one-hundred-year flood" and "one percent chance flood" are synonymous with the term "100-year flood." The term does not imply that the flood will necessarily happen once every one hundred years.

**100-YEAR FLOODPLAIN** - The area of land susceptible to being inundated as a result of the occurrence of a one-hundred-year flood.

**500-YEAR FLOOD** - A flood having a recurrence interval that has a 0.2-percent chance of being equaled or exceeded during any given year (0.2-percent-chance-annual-flood). The term does not imply that the flood will necessarily happen once every five hundred years.

**500-YEAR FLOODPLAIN** - The area of land susceptible to being inundated as a result of the occurrence of a five-hundred-year flood.

**ADDITION** - Any activity that expands the enclosed footprint or increases the square footage of an existing structure.

**ALLUVIAL FAN FLOODING** - A fan-shaped sediment deposit formed by a stream that flows from a steep mountain valley or gorge onto a plain or the junction of a tributary stream with the main stream. Alluvial fans contain active stream channels and boulder bars, and recently abandoned channels. Alluvial fans are predominantly formed by alluvial deposits and are modified by infrequent sheet flood, channel avulsions and other stream processes.

**AREA OF SHALLOW FLOODING** - A designated Zone AO or AH on a county's Flood Insurance Rate Map (FIRM) with a one percent chance or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**BASE FLOOD ELEVATION (BFE)** - The elevation shown on a FEMA Flood Insurance Rate Map for Zones AE, AH, A1-A30, AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/AO, V1-V30, and VE that indicates the water surface elevation resulting from a flood that has a one percent chance of equaling or exceeding that level in any given year.

**BASEMENT** - Any area of a building having its floor sub-grade (below ground level) on all sides.

**CHANNEL** - The physical confine of stream or waterway consisting of a bed and stream banks, existing in a variety of geometries.

**CHANNELIZATION** - The artificial creation, enlargement or realignment of a stream channel.

**CODE OF FEDERAL REGULATIONS (CFR)** - The codification of the general and permanent Rules published in the Federal Register by the executive departments and agencies of the Federal Government. It is divided into 50 titles that represent broad areas subject to Federal regulation.

**COMMUNITY** - Any political subdivision in the state of Colorado that has authority to adopt and enforce floodplain management regulations through zoning, including, but not limited to, cities, towns, unincorporated areas in the counties, Indian tribes and drainage and flood control districts.

**CONDITIONAL LETTER OF MAP REVISION (CLOMR)** - FEMA's comment on a proposed project, which does not revise an effective floodplain map, that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodplain.

**CRITICAL FACILITY** – A structure or related infrastructure, but not the land on which it is situated, as specified in Article 4, *Standards for Critical Facilities*, that if flooded may result in significant hazards to public health and safety or interrupt essential services and operations for the county at any time before, during and after a flood. See Article 4, *Standards for Critical Facilities*.

**DEVELOPMENT** - Any man-made change in improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

**DFIRM DATABASE** - Database (usually spreadsheets containing data and analyses that accompany DFIRMs). The FEMA Mapping Specifications and Guidelines outline requirements for the development and maintenance of DFIRM databases.

**DIGITAL FLOOD INSURANCE RATE MAP (DFIRM)** - FEMA digital floodplain map. These digital maps serve as “regulatory floodplain maps” for insurance and floodplain management purposes.

**ELEVATED BUILDING** - A non-basement building (i) built, in the case of a building in Zones A1-30, AE, A, A99, AO, AH, B, C, X, and D, to have the top of the elevated floor above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the flow of the water and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1-30, AE, A, A99, AO, AH, B, C, X, and D, "elevated

building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters.

**EXISTING MANUFACTURED HOME PARK OR SUBDIVISION -**

A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a county.

**EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION-**

The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**FEDERAL REGISTER** - The official daily publication for Rules, proposed Rules, and notices of Federal agencies and organizations, as well as executive orders and other presidential documents.

**FEMA** - Federal Emergency Management Agency, the agency responsible for administering the National Flood Insurance Program.

**FLOOD OR FLOODING** - A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of water from channels and reservoir spillways;
2. The unusual and rapid accumulation or runoff of surface waters from any source; or
3. Mudslides or mudflows that occur from excess surface water that is combined with mud or other debris that is sufficiently fluid so as to flow over the surface of normally dry land areas (such as earth carried by a current of water and deposited along the path of the current).

**FLOOD INSURANCE RATE MAP (FIRM)** – An official map of a county, on which the Federal Emergency Management Agency has delineated both the Special Flood Hazard Areas and the risk premium zones applicable to the county.

**FLOOD INSURANCE STUDY (FIS)** - The official report provided by the Federal Emergency Management Agency. The report contains the Flood Insurance Rate Map as well as flood profiles for studied flooding sources that can be used to determine Base Flood Elevations for some areas.

**FLOODPLAIN OR FLOOD-PRONE AREA** - Any land area susceptible to being inundated as the result of a flood, including the area of land over which floodwater would flow from the spillway of a reservoir.

**FLOODPLAIN ADMINISTRATOR** - The county official designated by title to administer the floodplain management regulations.

**FLOODPLAIN DEVELOPMENT NOTIFICATION** – Notification is required before construction or development begins within any Special Flood Hazard Area (SFHA). If FEMA has not defined the SFHA within a county, the county shall require notification for all proposed construction or other development in the county including the placement of manufactured homes, so that it may determine whether such construction or other development is proposed within flood-prone areas. Notification is required to ensure that proposed development projects meet the requirements of the NFIP and this floodplain management ordinance.

**FLOODPLAIN MANAGEMENT** - The operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

**FLOODPLAIN MANAGEMENT REGULATIONS** - Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

**FLOOD CONTROL STRUCTURE** - A physical structure designed and built expressly or partially for the purpose of reducing, redirecting, or guiding flood flows along a particular waterway. These specialized flood modifying structures are those constructed in conformance with sound engineering standards.

**FLOODPROOFING** - Any combination of structural and/or non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

**FLOODWAY (REGULATORY FLOODWAY)** - The channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. The Colorado statewide

standard for the designated height to be used for all newly studied reaches shall be one-half foot (six inches). Letters of Map Revision to existing floodway delineations may continue to use the floodway criteria in place at the time of the existing floodway delineation.

**FREEBOARD** - The vertical distance in feet above a predicted water surface elevation intended to provide a margin of safety to compensate for unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood such as debris blockage of bridge openings and the increased runoff due to urbanization of the watershed.

**FUNCTIONALLY DEPENDENT USE** - A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

**HIGHEST ADJACENT GRADE** – The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**HISTORIC STRUCTURE** - Any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - a. By an approved state program as determined by the Secretary of the Interior or;
  - b. Directly by the Secretary of the Interior in states without approved programs.

**LETTER OF MAP REVISION (LOMR)** - FEMA's official revision of an effective Flood Insurance Rate Map (FIRM), or Flood Boundary and Floodway Map (FBFM), or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the Special Flood Hazard Area (SFHA).

**LETTER OF MAP REVISION BASED ON FILL (LOMR-F)** – FEMA's modification of the Special Flood Hazard Area (SFHA) shown on the Flood Insurance Rate Map (FIRM) based on the placement of fill outside the existing regulatory floodway.

**LEVEE** – A man-made embankment, usually earthen, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding. For a levee structure to be reflected on the FEMA FIRMs as providing flood protection, the levee structure must meet the requirements set forth in 44 CFR 65.10.

**LEVEE SYSTEM** - A flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

**LOWEST FLOOR** - The lowest floor of the lowest enclosed area (including basement). Any floor used for living purposes which includes working, storage, sleeping, cooking and eating, or recreation or any combination thereof. This includes any floor that could be converted to such a use such as a basement or crawl space. The lowest floor is a determinate for the flood insurance premium for a building, home or business. An unfinished or flood resistant enclosure, usable solely for parking or vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of Section 60.3 of the National Flood Insurance Program regulations.

**MANUFACTURED HOME** - A structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

**MANUFACTURED HOME PARK OR SUBDIVISION** - A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**MEAN SEA LEVEL** - For purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD) of 1988 or other datum, to which Base Flood Elevations shown on a county's Flood Insurance Rate Map are referenced.

**MATERIAL SAFETY DATA SHEET (MSDS)** – A form with data regarding the properties of a particular substance. An important component of product stewardship and workplace safety, it is intended to provide workers and emergency personnel with procedures for handling or working with that substance in a safe manner, and includes information such as physical data (melting point, boiling point, flash point, etc.), toxicity, health effects, first aid, reactivity, storage, disposal, protective equipment, and spill-handling procedures.

**NATIONAL FLOOD INSURANCE PROGRAM (NFIP)** – FEMA’s program of flood insurance coverage and floodplain management administered in conjunction with the Robert T. Stafford Relief and Emergency Assistance Act. The NFIP has applicable Federal regulations promulgated in Title 44 of the Code of Federal Regulations. The U.S. Congress established the NFIP in 1968 with the passage of the National Flood Insurance Act of 1968.

**NEW MANUFACTURED HOME PARK OR SUBDIVISION** - A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a county.

**NO-RISE CERTIFICATION** – A record of the results of an engineering analysis conducted to determine whether a project will increase flood heights in a floodway. A No-Rise Certification must be supported by technical data and signed by a registered Colorado Professional Engineer. The supporting technical data should be based on the standard step-backwater computer model used to develop the 100-year floodway shown on the Flood Insurance Rate Map (FIRM) or Flood Boundary and Floodway Map (FBFM).

**PHYSICAL MAP REVISION (PMR)** - FEMA’s action whereby one or more map panels are physically revised and republished. A PMR is used to change flood risk zones, floodplain and/or floodway delineations, flood elevations, and/or planimetric features.

**RECREATIONAL VEHICLE** - means a vehicle which is:

1. Built on a single chassis;



2. 400 square feet or less when measured at the largest horizontal projections;
3. Designed to be self-propelled or permanently towable by a light duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**SPECIAL FLOOD HAZARD AREA** – The land in the floodplain within a county subject to a one percent or greater chance of flooding in any given year, i.e., the 100-year floodplain.

**START OF CONSTRUCTION** - The date the building permit was issued, including substantial improvements, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**STRUCTURE** - A walled and roofed building, including a gas or liquid storage tank, which is principally above ground, as well as a manufactured home.

**SUBSTANTIAL DAMAGE** - Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure just prior to when the damage occurred.

**SUBSTANTIAL IMPROVEMENT** - Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before "Start of Construction" of the improvement. The value of the structure shall be determined by the local jurisdiction having land use authority in the area of interest. This includes structures which have incurred "Substantial



Damage", regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary conditions or
2. Any alteration of a "historic structure" provided that the alteration will not preclude the structure's continued designation as a "historic structure."

**THRESHOLD PLANNING QUANTITY (TPQ)** – A quantity designated for each chemical on the list of extremely hazardous substances that triggers notification by facilities to the State that such facilities are subject to emergency planning requirements.

**VARIANCE** - A grant of relief to a person from the requirement of this ordinance when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by this ordinance. (For full requirements see Section 60.6 of the National Flood Insurance Program regulations).

**VIOLATION** - The failure of a structure or other development to be fully compliant with the county's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

**WATER SURFACE ELEVATION** - The height, in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

- M. HUMAN BURIAL ON PRIVATE PROPERTY** adopted by Resolution 09-22-2017-A, in effect as of 10/30/2017:

**Human Burial on Private Property**

**Sec. 5-104 (M)(1) General.**

**Sec. 5-104 (M)(2) Permit.**

**Sec. 5-104 (M)(3) Burial Requirements.**

**Sec. 5-104 (M)(4) Recording Requirements.**

1. **General.** This section is intended for personal, private burials and does not apply to the creation of a public cemetery. **The landowner shall not charge a fee for the burial.** This section does not apply to the disposal of cremated human remains.

**2. Permit.** Personal, private burial may take place in any area of unincorporated Yuma County after issuance of a Burial Notification Permit. This permit may be issued by the Land Use Administrator. A Burial Notification Permit does not relieve a person from the requirements of any applicable Colorado law or local health department regulations regarding human remains and cemeteries.

**3. Burial Requirements.**

- (a) Burial with at least three feet (3') of cover.
- (b) There shall be at least four feet (4') of suitable soil separation, (not gravel), from the bottom of the burial site to the maximum seasonal groundwater table.
- (c) Maintain a 100-foot (100') separation from edge of floodplain, streams, lakes, and/or any well.
- (d) The site shall be permanently identified with a marker on the ground. The Land Use Administrator shall determine whether any proposed marker is sufficiently permanent.
- (e) A burial container, coffin or vault, is not required.
- (f) Embalming is not required.

**4. Recording Requirements.** The owner of the land that is used to inter a dead human body shall record the burial within thirty days after the burial with the Yuma County Clerk & Recorder. The owner shall record the following:

- (a) Filing date and burial date;
- (b) The name of the deceased as it appears on the Death Certificate;
- (c) The date of birth of the deceased;
- (d) The age of the deceased at the time of death;
- (e) The cause of death;
- (f) The name of the owner(s) of the property where the deceased is interred;
- (g) The legal description of the property where the deceased is interred;
- (h) The reception number for the death certificate if recorded by the county clerk; and
- (i) The latitude and longitude coordinates, such as those given by a global positioning system, that are verified by two witnesses or the County Coroner, Sheriff, or a designee of the County Coroner or Sheriff.

**ARTICLE 6            COMMUNITY OVERLAY DISTRICT**

**SECTION 6-101     PURPOSE.**

The purpose of the Community Overlay District is:

- A.     IDENTIFY ESTABLISHED AREAS OF URBAN DENSITIES AND USES.** To acknowledge and identify County areas where urban densities and uses exist and are appropriate when consistent with this Code, and to establish development standards that promote compatible land use and growth within these areas.
  
- B.     PROVIDE FOR LAND USE PERMIT APPLICATION PROCEDURES AND REVIEW STANDARDS.** To provide consistent application procedures and review standards for proposed land use in existing unincorporated communities.
  
- C.     PROMOTE COMPATIBLE DEVELOPMENT.** To facilitate development activity compatible with existing land use and small lot development of unincorporated communities within the County.

**SECTION 6-102     APPLICABILITY.**

The provisions for Community Overlay District set forth in this Article 6 shall apply to Community Overlay Districts within unincorporated areas of Yuma County established by the Board under Section 6-103.

**SECTION 6-103     DESIGNATION OF COMMUNITY OVERLAY DISTRICT BY BOARD OF COUNTY COMMISSIONERS.**

The Board of County Commissioners may by Resolution designate an area to be a Community Overlay District. Each such Resolution shall include a description of the characteristics of the district that justify its designation, provide a review process and standards for development located in such district, and shall identify the location and boundaries of the district.

**SECTION 6-104     STANDARDS AND CRITERIA.**

Instead of the standards set forth in Article 5, lot size, setback requirements and height limitations applicable to a Community Overlay District may be varied at the discretion of the Board, taking into consideration the purpose and review standards of the Community Overlay District.

**A. GENERAL STANDARDS.**

1. **Lot Size.** Lots existing at the time a Community Overlay District becomes effective shall not be reduced in dimension or area below the minimum requirements set forth in this Code.
2. **Water and Sewer.** All uses constructed or expanded in a Community Overlay District must be properly served by water, sewer, utilities and access.

**B. NONCONFORMITIES IN COMMUNITY OVERLAY DISTRICTS.**

Uses, structures and lots that were lawfully established pursuant to the regulations in effect at the time of their development which do not conform with provisions of the Community Overlay District established by the Board shall be governed by the provisions of Article 7: *Nonconformities.*

**SECTION 6-105 REVIEW PROCEDURES FOR USES IN COMMUNITY OVERLAY DISTRICTS.**

Uses in Community Overlay Districts shall be reviewed and approved as Minor Land Use Permits pursuant to Section 4-103.

**ARTICLE 7 NONCONFORMITIES**

**SECTION 7-101 GENERAL**

A nonconforming use is any use existing as of the effective date of this Code that does not conform to this Code. Except as otherwise provided in this Section, a nonconforming use may be continued or “grandfathered” and normal or routine maintenance of a structure containing a nonconforming use shall be permitted

**SECTION 7-102 ENLARGEMENT OR ALTERATION OF A NONCONFORMING USE.**

- A. NO ENLARGEMENT OR ALTERATION OF NONCONFORMING USE.** The right to continue a nonconforming use terminates immediately when the nonconforming use is enlarged, expanded, extended, or altered in any of the following ways, and the property owner does not successfully pursue any of the options specified in these regulations within thirty (30) calendar days after the Administrator provides written notification of an alleged illegal enlargement or alteration to the owner:

1. **New Structure.** The addition of a new structure containing, or accessory to, the nonconforming use.

2. **Enlargement or Alteration of Structure or Use.** Enlargement or alteration of a structure containing, or accessory to, the nonconforming use including but not necessarily limited to an increase in floor area, an increase in height, or any other alteration or improvement in excess of normal or routine maintenance of the structure.
3. **Enlargement or alteration in the land area.** Enlargement or alteration in the land area occupied by the nonconforming use, unless the basic nature of the use, at the time it became nonconforming, clearly indicated or contemplated such an increase or alteration.
4. **Enlargement or Alteration Creating Hazard or Nuisance.** Any other enlargement or alteration of the nonconforming use which has the effect or threatened effect of creating a hazard or nuisance on-site or off-site, of adversely affecting the character of the neighborhood, or of intensifying the use of the land or its need for services.
5. **Removal or replacement of any structural member.** Removal or replacement of any structural member in a use for which the County is precluded from enforcing this Code specific to use on the basis of estoppel, laches, or waiver.

**B. ALLOWED ENLARGEMENT OR ALTERATION.** The following shall not be considered prohibited enlargement or alteration:

1. A change of ownership of the property.
2. An alteration or expansion which the Administrator determines is necessary to rectify a hazardous health or safety situation or to comply with the public health or safety requirements of another governmental entity having lawful jurisdiction over the structure.
3. An extension of the nonconforming use within the structure containing the use, provided that such extension is not accompanied by an alteration of the structure falling within category (b), above.
4. The addition of a solar energy device to a structure containing a nonconforming use.
5. Any replacement or upgrading of outmoded or worn equipment or supplies.

6. Any minor expansion of a State-permitted concentrated animal feeding operation or livestock confinement facility.  
Section 2-102 B

**SECTION 7-103 CHANGE OF A NONCONFORMING USE.**

- A. **CHANGE TO CONFORMING USE.** A nonconforming use may be changed only to a use which is conforming under the provisions of these Regulations.
- B. **TERMINATION OF NONCONFORMING USE.** Any change of a nonconforming use to any other use shall immediately terminate the right to continue the nonconforming use. Thereafter, the property shall be used only in conformity with the use provisions of these Regulations.

**SECTION 7-104 DESTRUCTION OF A STRUCTURE CONTAINING A NONCONFORMING USE.**

- A. **STRUCTURE DEEMED DESTROYED.** A structure containing a nonconforming use shall be deemed destroyed when either greater than fifty (50) percent of its floor area, or greater than fifty (50) percent of its actual value (as determined by the Yuma County Assessor) is destroyed.
- B. **TERMINATION OF NONCONFORMING USE.** The right to continue a nonconforming use terminates immediately when the structure containing that use is destroyed by an intentional act of the property or structure owner or their agent.
- C. **RESTORATION OF STRUCTURE.** In all other cases, when a structure containing a nonconforming use is destroyed, the structure may be restored, and the nonconforming use may be reestablished.
  1. **Timeframe for Restoration.** Restoration of the structure must be commenced within six (6) months after the date on which the nonconforming structure was destroyed and completed within one year after the date on which the restoration was commenced.
  2. **Extensions.** These times may be extended for a reasonable period, if approved by the County Commissioners at a public hearing upon a showing of extraordinary circumstances by the property owner or their agent.

**SECTION 7-105 ABANDONMENT OF A NONCONFORMING USE.**

- A. TERMINATION OF NONCONFORMING USE.** The right to continue a nonconforming use terminates as soon as the use is abandoned through the discontinuance of the use for an uninterrupted period of six (6) months or more, as a result of causes within the control of the property owner or their agent.
- B. TERMINATION OF SEASONAL NONCONFORMING USE.** If the nonconforming use is a seasonal use, the use shall be terminated if it is discontinued for an entire single season based upon the history and nature of the use.
- C. ABANDONMENT OF SEASONAL NONCONFORMING USE.** Any seasonal nonconforming use may be abandoned in less than six (6) months or a season, as applicable, if the property owner expressly states an intent to abandon the use, or engages in action which unambiguously expresses an intent to abandon.

**SECTION 7-106 NOTICE OF TERMINATION IN THE EVENT OF:  
UNLAWFUL ENLARGEMENT OR ALTERATION OF A  
NONCONFORMING USE, CHANGE OF USE,  
ABANDONMENT OF A NONCONFORMING USE, OR  
DESTRUCTION, OR DAMAGE TO A STRUCTURE  
CONTAINING A NONCONFORMING USE.**

- A. WRITTEN NOTIFICATION.** In the event that the Administrator receives information that the right to continue a nonconforming use has been or may have been terminated, the Administrator shall provide a written notification of this determination by first class mail to the property owner and to the parcel address, all as shown on the records of the County Assessor. The property owner shall have thirty (30) calendar days after the date of the notification within which to provide evidence satisfactory to the Administrator to show that the determination is in error, to abate the illegal enlargement or alteration, or to file an appeal of the Administrator's determination to the Board of County Commissioners. In any appeal, the property owner shall have the burden to show that the right to continue the nonconforming use was not terminated according to the applicable provisions of this Article, when judged in light of the history and nature of the use and the circumstances of the alleged termination.
- B. RIGHT TO BRING ENFORCEMENT ACTION.** Nothing in these regulations shall alter or diminish the County's right to take enforcement action against the unlawful continuation of a nonconforming use. Except in the case of an illegal enlargement or alteration for which the owner shall be provided with a thirty (30) day opportunity to abate, any failure by

the Administrator to provide a notification of a determination of termination as provided for in this regulation shall in no way entitle the property owner to continue or resume a nonconforming use terminated under provisions of these regulations.



**ARTICLE 8      VARIANCES AND APPEALS OF ADMINISTRATIVE INTERPRETATIONS**

**SECTION 8-101      BOARD OF ADJUSTMENT**

- A. ESTABLISHMENT.** There is hereby established a Board of Adjustment.
- B. POWERS AND DUTIES.** The Board of Adjustment shall have the following powers and duties under the provisions of this Code.
- 1. Variance.** To hear, review and approve, approve with conditions or deny applications for variance to standards and criteria for a Land Use Permit set forth in this Code.
  - 2. Appeal Interpretation of Administrator.** To hear, review, consider and affirm, modify, or reverse appeals of interpretations of these regulations made by Administrator
  - 3. Make Additional Studies.** To make studies as requested and authorized by the Board of County Commissioners, and to report the findings and recommendations.
- C. BOARD OF ADJUSTMENT MEMBERSHIP.**
- 1. Qualifications.** Members of the Board of Adjustment shall be residents of the County prior to appointment, and registered voters. No member of the Board of County Commissioners shall serve on the Board of Adjustment. Although no specific experience requirements shall be necessary as a prerequisite to appointment, consideration shall be given to applicants who have experience or education in planning, law, architecture, natural resource management, real estate, and related fields.
  - 2. Appointment.** The Board of Adjustment shall be composed of three (3) members, to be appointed by a majority vote of the Board of County Commissioners by Resolution.
- D. TERMS OF OFFICE.** All members serving on the Board of Adjustment on the effective date of these Regulations shall complete their terms according to their prior appointments. The term of at least one (1) member shall expire each year. The term of office of each member appointed under these Regulations shall be for two (2) years. There shall be no limit on the number of terms a person may serve on the Board of Adjustment. When a person is appointed to fill out the term of a departing member that person's term shall end at the time the departing member's term would have ended.

- E. REMOVAL FROM OFFICE.** Any member of the Board of Adjustment may be removed for cause by the Board of County Commissioners upon written charge.
- F. VACANCY.** Whenever a vacancy occurs on the Board of Adjustment, the member's position shall remain vacant until a new member can be appointed by the Board of County Commissioners.
- G. COMPENSATION.** The members of the Board of Adjustment shall serve without compensation, but may be reimbursed for such travel, mileage and continuing education expenses as may be authorized by the Board of County Commissioners.
- H. OFFICERS; QUORUM; RULES OF PROCEDURE.**
- 1. Chairman and Vice Chairman.** At the first meeting of each calendar year, the members of the Board of Adjustment shall elect a Chairman and Vice-Chairman from among its members. The Chairman's and Vice-Chairman's term shall be for one (1) year. No member shall serve as Chairman for more than two (2) consecutive terms. The Chairman shall administer oaths and shall be in charge of all proceedings before the Board of Adjustment.
  - 2. Secretary.** The Secretary shall keep full and complete minutes of all proceedings, which minutes shall be a summary of all proceedings before the Board of Adjustment, which shall include the vote of all members upon every question, its examination and other official actions, and be attested to by the Secretary. The minutes shall be approved by a majority of the Board of Adjustment members voting. In addition, the Secretary shall maintain all other records of the Board of Adjustment meetings, hearings, proceedings, and the correspondence of the Board of Adjustment, which shall be immediately filed and kept in the offices of the Board of Adjustment as public records.
  - 3. Staff.** The Administrator shall designate the professional staff of the Board of Adjustment.
  - 4. Quorum and Voting.** The presence of two or more members shall constitute a quorum of the Board of Adjustment necessary to take action and transact business. All actions shall require a vote of two concurring members of the Board of Adjustment.
  - 5. Rules of Procedure.** The Board of Adjustment shall, by a majority vote of the entire membership, adopt rules of procedure for the transaction of business, and shall keep a record of resolutions, findings and determinations, and a record of meetings.

- I. **MEETINGS OPEN TO PUBLIC.** All meetings and public hearings of the Board of Adjustment shall be open to the public in a place accessible to the public, except that meetings held in executive session pursuant to Colorado law shall not be open to the public.
- J. **NOTICE.** Public hearings shall be properly noticed in compliance with Section 8-102(B)(4).

## **SECTION 8-102 VARIANCES.**

Variations are deviations from the terms of this Code that would not be contrary to the public interest when, owing to special circumstances or conditions like exceptional topographic conditions, narrowness, shallowness or the shape of a specific piece of property, the literal enforcement of the provisions of this Code would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property.

- A. **INITIATION.** Applications for a variance may be submitted by the owner or the owners authorized agent.
- B. **APPLICATION SUBMITTAL AND REVIEW PROCEDURES APPLICABLE TO APPLICATIONS FOR VARIANCE**
  - 1. **Pre-application Conference.** A pre-application conference shall be held in accordance with Section 4-101(A).
  - 2. **Application.** The applicant for a variance shall submit to the Administrator an application that includes the following materials. Additional materials may be required by the Administrator.
    - a. **Site Plan.** A site plan for the property at which the variance is being requested.
    - b. **Written Narrative.** A written narrative explaining the standards from which a variance is being sought, and the reasons why a variance is necessary.
  - 3. **Review of Application Materials by Administrator.**
    - a. **Review.** The Administrator shall review the application for completeness, in accordance with the provisions of Section 4-101(E). Upon a determination of completeness, the Administrator shall schedule the application for review and approval by the Board of Adjustment.

- b. **Staff Report.** The Administrator shall prepare and submit a report to the Board of Adjustments regarding the proposed variance.

**4. Schedule and Notice of Board of Adjustment Public Hearing.**

- a. **Schedule of Board of Adjustment Public Hearing.** Public hearing by the Board of Adjustment shall be scheduled within forty-five (45) calendar days of the date of completeness determination.
- b. **Publication of Notice of Board of Adjustment Public Hearing.** The County shall arrange for notice of the Board of Adjustment public hearing on the application for variance to be published at least thirty (30) days prior to the date of the public hearing in a newspaper of general circulation setting forth the time, date and place of the Board of Adjustment public hearing.
- c. **Notice to Adjacent Property Owners.** Not less than thirty (30) days prior to the date of the public hearing, the County shall notify property owners within 500 feet of the boundaries of the property for which the variance is being requested by sending written notice describing the variance request and setting forth the time, date and place of the Board of Adjustment public hearing.
- d. **Posting on the Site.** Not less than fourteen (14) days prior to the date of the public hearing, the applicant shall post a notice of the application for variance on the site describing the time, date and location of the Board of Adjustment public hearing.

- 5. Review and Action by Board of Adjustment.** The application for variance shall be considered by the Board of Adjustment at a public hearing, after proper notice, in accordance with the provisions of Section 8-102(B)(4). The Board of Adjustment shall approve, approve with conditions or deny the application for variance based on the approval standards set forth in Section 8-102(C).

**C. STANDARDS FOR APPROVAL OF A REQUEST FOR VARIANCE.** The Board of Adjustment must find that all of the following standards are met before a variance can be granted.

- 1. Special Circumstances Exist.** One of the following circumstances or conditions exists with respect to the property:

- a. Exceptional narrowness, shallowness or shape of the property at the time of the enactment of the regulation in question.
  - b. Exceptional topographic conditions of the property.
  - c. Other extraordinary and exceptional situation or condition of the property.
2. **Not a Result of the Actions of Applicant.** The special circumstances and conditions have not resulted from any act of the applicant.
  3. **Strict Application Consequence.** Because of the special circumstances and conditions found pursuant to Section 8-102(C)(1), the strict application of the regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship on, the owner of the property.
  4. **Variance is Necessary for Relief.** The granting of the variance from the strict application of the provisions set forth in this Code is necessary to relieve the owner of the peculiar and exceptional practical difficulties or exceptional and undue hardship.
  5. **Not Detrimental to the Public Good.** Granting the variance will not cause substantial detriment to the public good.
  6. **Granting the variance will not substantially impair the intent and purpose of the County's adopted land use codes.**

**SECTION 8-103 APPEAL PROCESS FOR ADMINISTRATIVE INTERPRETATION OF THESE REGULATIONS.**

An appeal may be taken to the Board of Adjustment by any person aggrieved by a final interpretation by the Administrator of terms or requirements of this Land Use Code.

- A. **INITIATION.** The appeal shall be filed with the Administrator within thirty (30) calendar days of the date of the interpretation of the Administrator.

**B. STATEMENT OF APPEAL AND REVIEW PROCEDURES.**

- 1. Statement of Appeal.** The appellant shall submit a written statement of the Administrator's interpretation to be appealed, the date of that interpretation and the reasons why the appellant believes that the interpretation of the Administrator is incorrect, including any materials or evidence to support the appeal.
- 2. Public Hearing.** Public hearing by the Board of Adjustment shall be scheduled within forty-five (45) calendar days of the date the appeal was filed with the Administrator. The County shall arrange for notice of the Board of Adjustment public hearing to be published at least thirty (30) days prior to the date of the public hearing in a newspaper of general circulation setting forth the time, date and place of the Board of Adjustment public hearing. It is not necessary to post a notice of the hearing on the property or to mail notice of the hearing to adjacent property owners, and public notice shall be the responsibility of the County.
- 3. Review and Action by the Board of Adjustment.** The Board of Adjustment shall review the Statement of Appeal and testimony by the Administrator at the Public Hearing. The Board of Adjustment shall determine the proper interpretation of the provision of the Code being appealed.
- 4. Review Criteria for Appeal of Administrative Interpretation.** The Board of Adjustment shall consider the following criteria in hearing an appeal of an administrative interpretation.

  - a.** The technical meaning of the provision being appealed.
  - b.** Evidence as to the past interpretation of the provision.
  - c.** The effect of the interpretation on the intent of this Code and the implementation of the Comprehensive Plan.

**ARTICLE 9            ENFORCEMENT**

**SECTION 9-101      AUTHORITY TO INSPECT AND ADMINISTRATIVE ACTION AGAINST VIOLATIONS.**

- A.      ADMINISTRATOR AUTHORIZED TO INSPECT.** The Administrator is empowered to inspect and examine any building, other structure, or parcel or other area of land where there is reasonable cause to believe that a use exists or construction or alteration work is being performed, or has been performed, in violation of this Code.
  
- B.      NOTIFICATION OF VIOLATION.** If a violation exists, the Administrator shall send a notification to the violator in compliance with the Section 9-102, Enforcement Procedures.

**SECTION 9-102      ENFORCEMENT PROCEDURES.**

These procedures apply unless the particular provision, context and violation call for something different according to this Code or state law.

- A.      NOTIFICATION OF VIOLATORS.**
  - 1.      Requirement of Notice.** The County shall send notice of a violation of the Code to the occupant, developer, and owner (if not the same) by first class mail to each person's last known address and/or by hand delivery and by posting on the site in a clearly visible location near the entrance road to the property.
    - a.      Content of Notice.** The Notice shall contain the following information:
      - (1)**      A list and description of all violations with references to the section or sections of the Code violated.
      - (2)**      An order to the occupant, developer, and/or owner to cease all un-permitted or prohibited activities.
      - (3)**      An order to the occupant, developer and/or owner to attain compliance within thirty (30) days.
    - b.      Response.** Any person who receives notice of a violation of the Code, shall within thirty (30) days:
      - (1)**      Restore the site to compliance and request an inspection of the property by the County to demonstrate that compliance has been attained, or

(2) File a written request with the County for an extension of time to attain compliance, showing good cause for each extension. The extension(s) of time shall not exceed a total of ninety (90) days for any notice of violation.

- B. LEGAL ACTION.** In the event of a violation, the County may seek penalties and remedies through legal action against the occupant, developer or owner who fails to attain compliance within the specified time, or to show on appeal that a violation has not occurred.
- C. PUBLIC ENDANGERMENT.** The enforcement procedure may be accelerated where the County finds the public health, safety, welfare, or the environment could be endangered by a continuing violation. In such cases, the County Attorney shall take immediate action to end the danger to the public health, safety, welfare and the environment through, but not limited to ex-parte restraining orders as authorized under the Colorado Rules of Civil Procedure and/or action by local law enforcement or public safety agencies as deemed appropriate and necessary.

#### **SECTION 9-103 ADMINISTRATIVE REMEDIES.**

- A. ABATEMENT OF VIOLATIONS.** Violations of this Code may be abated under the procedures and standards of this Section, at the election of the County Attorney. However, this procedure shall not be the sole remedy available, and the County may enforce this Code in any manner provided by law.
- B. WITHHOLDING LAND USE PERMITS.** The County may withhold or deny future Land Use Permits, or any other administrative actions on any land where a notice of violation has been issued, and the violation has not been timely corrected.
- C. CEASE AND DESIST ORDERS.** After notice of a violation and an opportunity to correct the violation, the County may halt work on any land where there is an uncorrected violation . All work shall immediately halt upon issuance of such order. If work continues, the development shall be in violation of this Code.
- D. INJUNCTION.** In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered, maintained or used in violation of the provisions of this Code, the Board, the district attorney or any owner of real property within Yuma County, in addition to other remedies provided by law, may institute an injunction, mandamus, abatement or other appropriate action or proceeding to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alteration, maintenance or use.



- E. **SPECIFIC PERFORMANCE.** The County may seek specific performance of the terms or conditions of any agreement or permit issued under this Code.
- F. **CUMULATIVE REMEDIES.** All remedies provided for in this section are cumulative, are not exclusive, and shall be in addition to any other remedies provided by law. To the extent that Colorado law may limit the availability of a particular remedy for a particular violation or a part of a violation, such remedy shall remain available for other violations of other parts of the same violation, and all other remedies shall remain available for the same violations or part of a violation.

**SECTION 9-104 JUDICIAL REMEDIES.**

**A. JUDICIAL ACTION AGAINST VIOLATIONS.**

- 1. **Request for Civil or Criminal Action.** At the request of the Board, the County Attorney shall be empowered to bring either a civil or a criminal (or both) action against the owner of any premises or property on which a violation of this Code is alleged, and, following investigation, has been confirmed or is reasonably believed to exist.
- 2. **Criminal Remedy.** Criminal violations of this Code shall be punished by a fine in an amount not to exceed one hundred dollars (\$100.00) for each violation or by imprisonment in the County jail for not more than ten (10) days, or by both such fine and imprisonment, or by such other remedy as may be specified by amendment to C.R.S. § 30-28-124. Each day during which such illegal erection, construction, reconstruction, alteration, maintenance, or use continues shall be deemed a separate offense.
  - a. The Administrator shall comply with the requirements of C.R.S. 30-28-124(b)(II) by giving written notice to the alleged violator to correct the violation within thirty days after the date of the notice.
  - b. If the violation is not corrected within the thirty days, the Administrator may request the County Attorney to pursue criminal remedies in County Court against the violation.
- 3. **Civil Remedy.** Civil remedies against violations of this code may include injunction, mandamus, abatement or any other appropriate action or proceeding to prevent, enjoin, abate, or remove the violation; and the fine herein above provided for may be recovered in that same civil action wherein such injunction, mandamus and/or abatement is sought, or separate and district proceedings

may be instituted seeking varying forms of relief, as C.R.S. 30-28-124 or any other applicable provision of law may allow.

- a. The Administrator shall provide written notice of the alleged violation to the violator, including a reasonable time period (which may be less than thirty days) to correct, prior to initiating judicial enforcement action.

**SECTION 9-105      ADDITIONAL ENFORCEMENT REGULATIONS  
APPLICABLE TO SUBDIVISION.**

**A.      REQUIREMENT FOR COUNTY SUBDIVISION APPROVAL**

1. **Approval in Compliance with Code Required for Recording.**  
No plans of streets or highways for public use, or plans, plats, plots, and replats of land laid out in subdivision or building lots or the streets, highways, alleys, or other portions of the same intended to be dedicated to a public use or the use of purchasers or owners of lots fronting thereon or adjacent thereto, shall be recorded in any public office unless the same is approved in compliance with this Code.
2. **Criminal Remedy, Transfer or Sale Prior to Final Plat Approval and Recording.** Any subdivider or agent of a subdivider who transfers or sells land before a Final Plat for the land has been approved pursuant to the requirements of this Code and recorded or filed in the Office of Clerk and Recorder shall be guilty of a misdemeanor and upon conviction thereof shall be fined shall be punished by a fine of not more than one thousand dollars (\$1000.00) nor less than five hundred dollars (\$500.00) for each parcel or interest in subdivided land which is sold or offered for sale. All fines collected shall be credited to the General Fund of the County.
2. **Action to Enjoin.** The Board shall have the power to bring an action to enjoin any subdivider from selling proposed subdivided land before a Final Plat for such land has been approved by the Board and filed for recording in the Office of the County Clerk and Recorder. (C.R.S. § 30-28-110(4)(b))

**SECTION 9-106      ADDITIONAL ENFORCEMENT REGULATIONS  
APPLICABLE TO WIND ENERGY FACILITIES.**

- A. MONITORING.** Upon twenty-four hours notice, the Board or its official representative may enter the property on which a Wind Energy Facility has been permitted, for the purpose of ensuring compliance with the terms of permit approval and applicable County regulations, and of monitoring noise, environmental impacts and other impacts which may arise.
- B. REMOVAL OF UNSAFE AND INOPERABLE WIND TURBINES**
- (1) Any unsafe structure or inoperable Wind Turbine and Wind Turbines for which the Land Use Permit has expired shall be removed by the owner. All safety hazards created by the installment and operation of the Wind Turbine shall be eliminated and the site shall be restored to its natural condition to the extent feasible. A bond or other appropriate form of security may be required to cover the cost of removal and site restoration.
  - (2) Any unsafe or inoperable Wind Turbine deemed an unsafe structure, as defined in Article 10 of the Yuma County Land Use Code shall be considered a public nuisance subject to abatement by repair, rehabilitation, demolition or removal. A Wind Turbine shall not be considered unsafe or abandoned if the owner can demonstrate to the Board's satisfaction that modernization, rebuilding or repairs are in progress or are planned and will be completed within six months of the date of notice of violation issued by the County pursuant to Section 9-102 of the Land Use Code.

**SECTION 9-107 IMPLEMENTATION OF MITIGATION DOES NOT RELIEVE PERMITTEE OF RESPONSIBILITY FOR COMPLIANCE WITH STANDARDS.**

Implementation of mitigation does not relieve permittee's responsibility to comply with all County standards and criteria. Failure to conduct the project in compliance with standards and criteria at any time shall be deemed a permit violation and may result in enforcement and/or require a permit amendment to address whether standards and criteria can be satisfied with different mitigation or change in project operations.

## **ARTICLE 10      DEFINITIONS**

### **Section 10-101      Definition of Words and Phrases**

For the purposes of this Land Use Code, the following words and phrases are defined as follows:

**Accessory Use/Structure.** A use or structure that is:

1. Clearly incidental to and customarily found in connection with the principal use.
2. Subordinate in area, extent and purpose to the principal building or use.

**Adjacent.** Same as “abutting.”

**Adjacent Property Owner.** An owner of record, as recorded in the most current records on file in the County Assessor’s Office, of any estate, right, or interest in real property that immediately abuts, or is located immediately across a road or highway, waterway or other body of water from the site of a proposed Land Use Change.

**Administrator.** Yuma County Land Use Administrator, or his/her designee.

**Agriculture.** The use of land for farming, dairying, pasturage, agriculture, horticulture, floriculture, viticulture, and animal and poultry husbandry and the necessary accessory uses for packing, treating, or storing the produce; provided however, that the operation of any such accessory uses shall be secondary to that of normal agricultural activities and provided further that these uses shall not include uses that are Confined Animal Feeding Operations.

**Agricultural Structure.** A structure located on a farm or ranch and used in an agricultural operation for the storage, repair and maintenance of farm or ranch equipment and supplies, or for the raising and/or storage of crops and livestock. These include, but are not limited to, barns, corrals, silos, workshops, equipment sheds, greenhouses smaller than 2500 square feet, storage and shelter structures. An agricultural structure does not include greenhouses that are 2500 square feet or larger, enclosed arenas or other enclosed areas when the activities that occur there provide services and/or goods to the general public on site.

**Animal Feeding Operation.** As defined by State and Federal Regulations.

**Animal Unit.** A unit of measure to determine a comparable number of animals as defined by State and Federal Regulations.

**Applicant.** The owner or duly designated representative of land for which a Land Use Permit has been requested.

**Average Working Capacity.** The average occupancy of the animal feeding operation on a year-round basis defined as the sum of the end-of-month occupancy rates divided by the number of months during a calendar year the facility conducts animal feeding operations.

**Board of Adjustment.** The Board of Adjustment of Yuma County.

**Board or Board of County Commissioners.** The Board of County Commissioners of Yuma County.

**Building.** Any structure designed or intended for the support, enclosure, shelter, or protection of persons, animals, chattels, or property, excluding fences.

**Cluster, Cluster Development.** The concentration of development, including buildings, driveways, and water supply and wastewater treatment facilities on one or more compact areas of a development parcel, preserving the remainder as productive agricultural land or undeveloped open space, and avoiding impacting areas of identified value for wildlife habitat, scenic features of a rural landscape, historical agricultural uses, and significant environmental features. Clustering allows flexibility in layout and protection of identified valuable characteristics of a development parcel.

**Commercial Use or Activity.** Any use or activity primarily devoted to business purposes such as the purchase, sale, lease or exchange of goods and/or the provision of services.

**Commission.** The Yuma County Planning Commission

**Comprehensive Plan.** A plan, or any portion thereof, adopted by the Yuma County Board of County Commissioners establishing the goals, objectives and policies of the County.

**Concentrated Animal Feeding Operations.** As defined by State and Federal Regulations.

**County.** The County of Yuma, State of Colorado.

**Density.** A unit of measurement; the number of dwelling units per acre of land.

**Development.** Any activity or construction, excluding normal agricultural activities, that changes the basic character or use of the land.

**Distributed Solar Energy System.** Solar electrical power generation that occurs close to where the power is consumed and is primarily used on site by the system owner. A private on-site solar energy conversion system consisting of many ground-mounted solar arrays in rows or roof panels, and associated control or conversion electronics, occupying more than 2.5 acres and no more than 30 acres of land, and that will be used to produce utility power to on-site uses.

**Distributed Wind Energy System.** Wind electrical power generation that occurs close to where the power is consumed and is primarily used on site by the system owner. A wind energy conversion system consisting of Wind Turbine(s) and associated control or conversion electronics, with a rated capacity of not more than 100 kW per unit, that will be used to produce utility power to on-site uses.

**Dwelling Unit.** One or more rooms designed to accommodate one family and containing only one kitchen plus living, sanitary and sleeping facilities.

**FAA (Federal Aviation Administration).** The federal agency responsible for aircraft safety.

**Final Plat (Subdivision).** A map of a land subdivision prepared according to applicable laws of the State of Colorado and section 4-103(B)(5) of these Regulations having the necessary affidavits for filing, dedications and

**Flood or Flooding.** A general and temporary condition of partial or complete inundation of normally dry land areas from either the overflow of watercourses, or the unusual and rapid accumulation or runoff of surface waters from any source.

**Floodplain.** An area adjacent to the stream, which is subject to flooding as the result of the occurrence of an intermediate regional flood and which is so adverse to past, current, or foreseeable construction or land use as to constitute a significant hazard to public health and safety or to property. The term includes but is not limited to:

1. Mainstream floodplains;
2. Debris-fan floodplains; and
3. Dry wash channels and dry wash floodplains.

**Geologic Hazard.** A geologic phenomenon which is so adverse to past, current, or foreseeable construction or land use as to constitute a significant hazard to public health and safety or to property. The term includes but is not limited to:

1. Avalanches, landslides, rock falls, mudflows, and unstable or potentially unstable slopes;
2. Seismic effects;
3. Radioactivity; and
4. Ground subsidence.

**Grading of more than 500 Cubic Yards.** Movement of more than 500 cubic yards of material, except that the following are not considered to be grading of more than 500 Cubic Yards for purposes of this Land Use Code.

1. Normal grading activity associated with agriculture, allowed mining activity, or foundation construction.
2. Normal grading activity associated with trail or road construction by a governmental entity on publicly acquired open space land in accordance with an open space management plan approved by the Board of County Commissioners.

**Hazard.** A significant source of risk, danger or peril resulting from natural phenomena or conditions including those precipitated or caused by activities of man.

**Height (Building).** The vertical distance from the “grade” to the highest point of the coping of a flat roof, or to the deck line of a mansard roof, or to the average heights of the highest gable of a pitch or hip roof.

**Home Occupation.** An occupation carried on within a dwelling or accessory building by members of the family occupying the dwelling with no servant, employee or other person being engaged, provided the residential character of the building is maintained and the occupation is conducted in such a manner as not to infringe upon the right of neighboring residents to enjoy the peaceful occupancy of their homes.

**Hub Height.** The distance measured from ground level to the center of the turbine hub.

**Impact.** The direct and indirect effect or consequence of the proposed project.

**Industrial.** Any manufacturing operation or industrial use.

**Industrial Use or Activity.** Manufacturing, fabrication storage, processing and shipping facilities; mineral extraction and production or processing; auto body repair and maintenance shops; truck stops; facilities of public utilities; solid and hazardous waste disposal sites; airports and similar activities or uses commonly known as industrial in nature.

**ISDS System.** An individual sewage disposal system as defined by the State of Colorado and the County ISDS regulations.

**Land Use.** The purpose for which any building, land or structure is designed, maintained, renovated, occupied or used.

**Land Use Change.** Any development, grading, construction, activity or operation that changes the basic character, configuration or use of the land or structures after the enactment of this Land Use Change.

**Land Use Permit.** A permit, issued by the County, required for any land use activity subject to this Code.

**Lot.** A parcel, plot or tract of land which is the subject of a Land Use Permit application, land use activity proposal, or which is occupied by a structure, together with the yards and other open spaces required by these regulations.

**Major Electrical or Natural Gas Facilities.** Major electrical or natural gas facilities as defined by C.R.S. 29-20-108(3) that are subject to Public Utilities Commission jurisdiction.

**Meat Processing Facility.** Any establishment where meat is slaughtered, dressed, processed, cut, trimmed, wrapped, or packaged for delivery to consumers.

**MET Tower.** A meteorological tower used for the measurement of wind speed.

**Mine, Mining.** Any area of land from which minerals are extracted in nonliquid form or are extracted in a liquid form while workers are underground; private ways and roads appurtenant to such area; and lands, excavations, underground passageways, shafts, slopes, tunnels and workings, structures, facilities, equipment, machines, tools, or other property, including impoundments, retention dams, and tailing ponds, on the surface or underground, used in, or to be used in, or resulting from the work of extracting such minerals from their natural deposits in nonliquid form or, if in liquid form, used by workers underground or used or to be used in the milling of such minerals or the work of preparing coal or other minerals. "Mine" includes sand and gravel pits. "Mine" does not include clay pits, or rock and stone quarries, including surface limestone and dolomite quarries.

**Mineral Estate Owner.** The owner or lessee of a mineral estate underneath a surface estate that is subject to an application for development.

**Minor Expansion of Concentrated Animal Feeding Operations and Livestock Confinement Facilities.** Expansion of facilities that does not increase the capacity of the facility by more than 33% or 5000 head over the existing capacity, which ever is less, as of the date of approval of this document.

**Natural Hazards.** Mudslides, subsidence areas, floodplains, seismic faults, rockslides, erosion and other naturally occurring phenomena that can pose hazards to life or property.

**Nonconforming (Use/Structure).** A land division or lot, building or structure, or use of land legally existing at the time of enactment of these Regulations and which does not conform to these Regulations. Such land divisions, buildings or structures, or use of the land are "grandfathered" and subject to the terms and provisions of Article 7 of these Regulations.



**Outside Storage.** The outside placement of items, including but not limited to vehicles that are inoperable, and mobile homes not connected to utilities not on a permanent foundation, for a period of more than twenty-four hours.

**Parcel.** See Lot.

**Preliminary Plan (Subdivision).** A map of a proposed land subdivision, prepared in conformance with section 4-104(B)(5) of these Regulations, that shows the character and proposed layout in sufficient detail to clearly illustrate the proposal for development.

**Principal Use.** The primary use of the land.

**Private Utility.** A business or service which is engaged in regularly supplying the public with some commodity or service which is of public consequences and need, such as electricity, gas, transportation or communication.

**Public Hearing.** A meeting called by a public body for which public notice has been given and which is held in a place where the general public may attend to hear issues and express their opinions.

**Public Improvement.** Any drainage ditch, roadway, parkway, sidewalk, pedestrian way, tree, lawn, off street parking area, lot improvement, or other facility which benefits the public.

**Regularly Occupied Structure.** Schools, churches, businesses, and residences.

**Residential Solar Energy System.** A single residential or small business-scale solar energy conversion system consisting of roof panels, ground-mounted solar arrays, or other solar energy fixtures, and associated control or conversion electronics with a rated capacity of less than 500 kW , occupying no more than 2.5 acres of land, and that will be used to produce utility power to on-site uses.

**Residential Wind Energy System.** Wind electric power generation systems up to 50kW, used on site by the system owner to reduce or eliminate dependence on grid electricity.

**Road.** See Street.

**Significant.** Deserving to be considered; important; notable and not trifling.

**Single Family Dwelling.** A detached building which is occupied or which is arranged, designed, and intended to be occupied, by one family and containing only one kitchen plus living, sanitary and sleeping facilities, but not including hotels, motels, tents, seasonal vacation cabins, camper trailers, or other structures designed or used primarily for temporary occupancy. A single-family dwelling shall also include a mobile home that is installed and has received permits in accordance with the provisions of these

regulations. A single-family dwelling must have indoor plumbing and be serviced by adequate water, sewer and public utility systems.

**Site Plan.** A plan, prepared to scale, showing accurately and with complete dimensioning, the boundaries of a site and conceptual aspects of the plan for development of the site, prepared in compliance with these Regulations.

**Solid Waste Disposal Site and Facility.** The location and facility at which the collection, storage, treatment, utilization, processing, or final disposal of solid wastes occur.

**Street.** A county road, state highway, public road, street or alley, or private thoroughfare which affords primary access to abutting property.

**Structure.** Anything constructed or erected which requires location on the ground or attachment of something having a location on the ground. "Structure" shall include immobilized mobile homes and swimming pools.

**Subdivision.** Subdivision shall have the meaning given in CRS §30-28-101.

**System Height.** The combined height of the tower, the wind turbine and any blade extended at its highest point, measured from ground level.

**Telecommunications Facilities.** Includes but is not limited to facilities associated with the following types of telecommunications: cellular telecommunications, low power mobile radio service telecommunications facility.

**Unsafe Structure.** A structure, building or wind turbine which, in the determination of the Administrator is:

1. In a condition presenting a substantial danger or hazard to public health, safety, or welfare.
2. Is a dilapidated building which is unused by the owner or uninhabited because of deterioration or decay, and constitutes a fire hazard or subjects adjoining properties to a danger of damage by storm, soil erosion, or rodent infestation, or is a place frequented by trespassers and transients seeking a temporary shelter or hideout.

**Use.** The purpose for which any land, structure or building is designed, maintained or occupied.

**Utility Scale Solar Energy System.** A utility-scale solar energy conversion system consisting of many ground-mounted solar arrays in rows, and associated control or conversion electronics, occupying more than 30 acres and that will be used to produce utility power to off-site customers.

**Utility Scale Wind Energy System.** An electricity generating facility consisting of one or more Wind Turbines under common ownership or operating control, and includes substations, MET Towers, cables/wires and other buildings accessory to such facility, whose main purpose is to supply electricity to off-site customer(s).

**Vested Property Right.** The right to undertake and complete the development and use of property under the terms and conditions of a site-specific development plan.

**Wind Turbine.** A wind energy conversion system that converts wind energy into electricity through the use of a wind turbine generator. The term “Wind Turbine” shall include the turbine, blade, tower, base and pad transformer.

**Yard.** The space on the same lot as a building or structure that is unoccupied and open to the sky.