

Colorado Court of Appeals 2 East 14 <sup>th</sup> Avenue Denver, CO 80203 Phone: 720-625-5150	
7 <sup>th</sup> Judicial District Court The Honorable J. Steven Patrick Case Number: 2012 CV 314	
<p><b>Plaintiffs-Appellees:</b></p> <p>Travis Jardon, Corinne Holder, Susan Raymond,          Mark Cool, and Andrea Robinsong,</p> <p><b>v.</b></p> <p><b>Defendants-Appellants:</b></p> <p>Edwin Hostetler, Eileen Hostetler, Greg          Hostetler, Carmen Hostetler, Anna Hostetler, and          Roland Hostetler,</p> <p><b>and</b></p> <p><b>Defendant-Appellee:</b></p> <p>Delta County Board of County Commissioners.</p>	
<p><i>Attorneys for the Hostetlers:</i>          Joshua A. Tolin (#42716)          Karen Budd-Falen (<i>pro hac vice</i>)          Budd-Falen Law Offices, LLC          300 East 18<sup>th</sup> Street          Post Office Box 346          Cheyenne, Wyoming 82003-0346          (307) 632-5105 Telephone          (307) 637-3891 Facsimile  <a href="mailto:joshua@buddfalen.com">joshua@buddfalen.com</a>  <a href="mailto:karen@buddfalen.com">karen@buddfalen.com</a></p>	<p><b>▲ COURT USE ONLY ▲</b></p> <hr/> <p>Case Number: 2013CA1806</p>
<p align="center"><b>OPENING BRIEF OF THE HOSTETLERS</b></p>	

## CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 28(g).

Choose one:

- ☒ It contains 9,477 words.
- ☐ It does not exceed 30 pages.

The brief complies with C.A.R. 28(k).

☒ For the party raising the issue:

It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record (R.\_\_\_\_, p.\_\_\_\_), not to an entire document, where the issue was raised and ruled on.

☐ For the party responding to the issue:

It contains, under a separate heading, a statement of whether such party agrees with the opponent's statements concerning the standard of review and preservation for appeal, and if not, why not.

☒ I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

/s/Joshua A. Tolin

Joshua A. Tolin

Budd-Falen Law Offices, LLC

## TABLE OF CONTENTS

STATEMENT OF THE ISSUES.....	1
STATEMENT OF THE CASE.....	1
STATEMENT OF THE FACTS .....	4
SUMMARY OF THE ARGUMENT .....	15
ARGUMENT .....	16
I. The district court erred in holding that no competent evidence of record existed before the Board that the Hostetlers’ family-run, one-barn egg-laying operations are compatible with their agricultural and rural-residential surrounding areas.....	17
A. Defining Compatibility .....	18
B. Evidence of the Nature of the Surrounding Area .....	20
C. Evidence of Compatibility with the Surrounding Area .....	24
D. More Specific Evidence of Compatibility .....	30
E. Evidence Limiting Weight and Credibility.....	34
F. Conclusion .....	38
II. The district court erred in holding the Master Plan creates individual regulatory requirements that applicants must affirmatively prove. ....	39
CONCLUSION .....	46

## TABLE OF AUTHORITIES

### Cases

<i>Bd. of Cnty. Comm’rs v. Bd. of Adjustment</i> , 768 P.2d 1250 (Colo. App. 1988) .....	34
<i>Bd. of Cnty. Comm’rs v. Conder</i> , 927 P.2d 1339, 1346 (Colo. 1996).....	passim
<i>Bd. of Cnty. Comm’rs v. O’Dell</i> , 920 P.2d 48 (Colo. 1996).....	passim
<i>Boles v. Bartruff</i> , 228 P.3d 183 (Colo. App. 2009) .....	34
<i>City &amp; Cnty. of Denver v. Bd. of Adjustment</i> , 55 P.3d 252 (Colo. App. 2002) .....	16, 20, 33, 39
<i>Empiregas, Inc. v. Cnty. Court</i> , 713 P.2d 937 (Colo. App. 1985).....	16
<i>Fedder v. McCurdy</i> , 768 P.2d 711, 713 (Colo. App. 1988) .....	16
<i>Norris v. Baxter Healthcare Corp.</i> , 397 F.3d 878 (10th Cir. 2005) .....	37
<i>Platte River Envtl. Conservation Org., Inc. v. Nat’l Hog Farm, Inc.</i> , 804 P.2d 290 (Colo. App. 1990).....	17, 43
<i>Theobald v. Bd. of Cnty. Comm’rs</i> , 644 P.2d 942 (Colo. 1982).....	40, 42, 43
<i>Thomas v. Colo. Dept. of Corrs.</i> , 117 P.3d 7 (Colo. App. 2004) .....	16
<i>Venard v. Dep’t of Corrs.</i> , 72 P.3d 446 (Colo. App. 2003).....	38
<i>Vick v. Bd. of Cnty Comm’rs</i> , 689 P.2d 699 (Colo. App. 1984).....	42
<i>Wilkinson v. Bd. of Cnty. Comm’rs</i> , 872 P.2d 1269 (Colo. App. 1993).....	17, 43, 46

### Other Authorities

<i>Black’s Law Dictionary</i> (9th ed. 2009).....	37
---	----

## **STATEMENT OF THE ISSUES**

I. Whether the district court erred in holding that no competent evidence of record existed before the Delta County Board of County Commissioners that the Hostetlers' family-run, one-barn egg-laying operations are compatible with their agricultural and rural-residential surrounding areas.

II. Whether the district court erred in holding the Delta County Master Plan (the "Master Plan") creates individual regulatory requirements that applicants must affirmatively prove.

## **STATEMENT OF THE CASE**

### *Nature of the Case*

This case is an appeal from the district court's C.R.C.P. 106(a) review of Defendant-Appellant Delta County Board of County Commissioners (the "Board")'s quasi-judicial decision to approve with conditions two specific development applications of Defendants-Appellants Edwin Hostetler, Eileen Hostetler, Greg Hostetler, Carmen Hostetler, Anna Hostetler, and Roland Hostetler (the "Hostetlers").

### *Course of Proceedings*

In early 2011, the Hostetlers requested permission to build and operate one-barn egg-laying operations on agricultural and rural-residential properties in rural

Delta County, Colorado. Plaintiffs-Appellees in this case are five Delta County residents (the “Opponents”) who are opposed to the chicken barns. The Hostetlers followed the lengthy public process in the submission of their applications, wherein the Board approved the Hostetlers’ applications on August 29, 2011, with pages of conditions to satisfy concerns raised during the public process.

Since the 2011 approval with conditions, Edwin and Eileen Hostetler constructed Western Slope Layers and began operations. The barn for Rocky Mountain Layers has not yet been constructed. Also since the initial oral approval, the Board and the Hostetlers have been entangled in litigation. The first case ended when a Rule 106(a)(4) claim resulted in the decision being remanded back to the Board to take additional evidence. On remand, the Board held another public hearing and again approved the applications. The Opponents filed a second Rule 106(a)(4) claim, and before hearing the merits, the district court again remanded to the Board to allow for comments on four pieces of evidence, three of which came into the record after the public hearing on remand. The Board then held another public hearing and again approved the applications, this time adding an additional condition. Because the Board granted approval again, the Opponents continued with their second Rule 106(a)(4) claim.

*Disposition Below*

The district court held that sufficient evidence was present in the record before the Board for three of the four issues on remand, and that the Opponents failed to establish bias of the Board. The Opponents have not appealed the district court's rulings in that regard. However, the district court also held that the record before the Board was devoid of evidence that the Hostetlers' chicken barns are compatible with their surroundings. The Hostetlers appeal this ruling. Additionally, the district court held that the Master Plan is regulatory, requiring the Hostetlers to affirmatively prove a requirement listed in the Master Plan as a policy. The Hostetlers also appeal that ruling.

Based on its rulings, the district court reversed and vacated the Board's approval with conditions on the single issue of compatibility. The district court also ordered the Board to issue a cease-and-desist order to the Hostetlers, some of whom had by then operating their chicken barn consistent with the Board-approved development agreements for more than eighteen months. On September 30, 2013, the district court entered final judgment on all claims, incorporating its rulings on the merits, and the Hostetlers timely noticed their appeal.

## STATEMENT OF THE FACTS

### *The Regulations*

The unincorporated areas of Delta County are regulated by land-use regulations adopted by the Board pursuant to its authority under C.R.S. § 29-20-101 *et seq.* (local government regulation of land use) and C.R.S. § 30-28-101 *et seq.* (county planning and building codes). CD2:773.<sup>1</sup> Pursuant to those land-use regulations, called the Delta County Regulation for Specific Developments (the “Regulations”), certain land uses (also referred to as specific developments) require prior approval by the Board (via a development agreement). CD2:773.

The Regulations list fourteen types of activities for which a specific development agreement is required. CD2:777-779 (oil and gas operations, airports, commercial uses, etc.). Specifically listed in those activities needing development agreements are two types of agricultural uses: “confined animal operations” and slaughterhouses. CD2:779. Under the Regulations, an applicant must submit a specific development application, which includes numerous requirements. CD2:780-783. Once submitted, an application is reviewed by three entities at

---

<sup>1</sup> The record consists of 12 CDs. Citations to court filings will be by case number and .pdf page number; citations to evidence will be by CD number and the red page number on the bottom right-hand corner of each page.



public meetings: the local Advisory Planning Committee, the Planning Commission, and the Board. CD2:788.

### *The Chicken Barns*

The Hostetlers' two applications are nearly the same, with the differences being the locations and other property-related characteristics. However, the overwhelming similarity of the applications renders it useful to discuss them jointly. The chicken barn known as Western Slope Layers, located on a 96-acre parcel on Powell Mesa Road, was built and operated from April 2012 until December 2013, after the district court ordered the Board to issue the Hostetlers a cease-and-desist order despite this pending appeal. *See* CD1:84; CD12:494. The chicken barn known as Rocky Mountain Layers, to be located on a 40-acre parcel on Redlands Mesa Road, has been waiting for resolution of the lengthy Board approval and litigation prior to beginning construction. *See* CD1:3.

Each barn itself measures 440'x50', with an outdoor pen of 300'x90' that the chickens may explore when weather is fair. *Id.* The chicken barn is professionally built heating and cooling and automated ventilation. CD1: 42, 443. The barn holds 15,000 brown laying hens that produce certified organic eggs sold within Colorado. CD1:42; CD2:610-611. The feed comes from a local farmer, who grows organic corn for the birds. CD1:43. At the end of a 14-month laying cycle,

the birds are depopulated from the chicken barn, and the manure is composted locally and used as organic compost for local operations. CD2:659.

Similar chicken barns have been operated by the Hostetlers' family and church members in Illinois and Iowa, without complaints from neighbors. *See* CD2:544; CD1:418. However, at the first word of the Hostetlers' applications, fears of all kinds came rushing in from the Opponents. CD1:39-40. The Hostetlers sought to waylay those concerns by agreeing to the numerous conditions in their development agreements, conditions that are not standard in the poultry industry, especially for such small barns. CD2:599.

The Hostetlers do not have or plan to have millions of birds; instead, a chicken barn only holds 15,000 birds. CD1:42. And because the chicken barn runs a dry manure handling system, only having 15,000 birds means the chicken barn is not regulated as a Confined Animal Feeding Operation ("CAFO"), which are known for potential harmful effects and regulated by the Colorado Department of Public Health and Environment. CD2:170.<sup>2</sup> The Opponents fear mongering has focused on all the potential problems with CAFOs. *See, e.g.*, CD1:34, 241.

---

<sup>2</sup> While the chicken barns are not CAFOs, they are considered "confinement animal operations" under the Regulations. CAFOs are regulated by the number of animals and other operation characteristics. CD2:170. The Regulations define a "confinement animal operation" as any "confined corral, pen, enclosure, building and/or structure in which animals are concentrated. For purposes of this regulation,

Even though the chicken barn is not a CAFO, the Hostetlers agreed to many conditions to satisfy the concerns of those afraid of the “unknown,” and more than one expert has explained that the conditions and the resulting plans of the Hostetlers are more than sufficient to satisfy the concerns that the chicken barns will cause harm. CD1:1027-1038; CD2:599, 602. Once Western Slope Layers began operations (and contrary to the vocal opposition of a noisy few), the overwhelming majority of the community’s residents have expressed their support: that these chicken barns are compatible with the agricultural and rural-residential character of their surroundings in Delta County. CD2:269-335.

### *The Applications*

On April 21, 2011, Greg and Carmen Hostetler submitted their specific development application (SD11-004) for Rocky Mountain Layers. CD1:2–9. On May 17, 2011, the Leroux Creek Advisory Planning Committee (the “Committee”) reviewed the Rocky Mountain Layers application and recommended denial. CD1:39, 1017. On June 14, 2011, Defendants-Appellants Edwin and Eileen Hostetler submitted their specific development application (SD11-006) for

---

rearing of livestock, where offspring raised on the ranch or farm fed out, is not considered a confinement animal operation.” CD2:793.

Western Slope Layers. CD1:41-66. On July 12, 2011, the Committee reviewed the Western Slope Layers application and recommended denial. CD1:578, 1017.

On July 21, 2011, both applications were reviewed by the Planning Commission, who took the matter under advisement until July 25, 2011, when it recommended denial of the applications. CD1:586-599, 601-607. In its decision recommending denial, the Planning Commission noted that the Regulations apply no matter the number of animals kept on a property, and even 4-H and FFA projects at the County Fair would require specific development agreements that it would have to recommend be denied under its understanding of the Regulations and Master Plan. CD1:607.

On August 15, 2011, the Board held a public meeting to review the applications. CD1:786-799. During that meeting, the Board took evidence and comments from the applicants, proponents, and opponents. *Id.* The Board took the applications under advisement, so it could review all the materials presented. CD1:795, 799. On August 29, 2011, the Board met again to discuss the applications, ultimately approving them with conditions. CD1:1012-1024 (listing numerous conditions, e.g., requiring applicants to obtain road access permits and maintenance agreements, obtain adequate water supplies, obtain proper permits, use best management practices, create and use plans for water quality control,

manure handling, fly control, odor, noise, air quality, solid waste removal, egg handling, stormwater and erosion control, bio-security, etc.). The conditions included numerous requirements, the purpose of which was to address the concerns raised by opponents, the Committee, and the Planning Commission. CD1:1018 (“[T]he preponderance of what is in the Master Plan . . . overwhelms the reasons for denial and the reasons for denial can be addressed, mitigated and minimized by conditions placed upon [the Hostetlers].”).

During discussion, individual commissioners on the Board referenced the advisory nature of the Master Plan, addressed numerous goals and policies listed in the Master Plan that preserve, protect, and promote agriculture and agricultural-related industries, and referenced the fact the applications were not for CAFOs, which are regulated by environmental laws for potential harmful effects.

CD1:1001-1012. On October 3, 2012, the Board met again to discuss some minor changes to three conditions discussed at the previous meeting. CD1:1025-1026.

The Board approved the minor changes and passed written resolutions approving the applications with conditions. CD1:1026, 1027-1032 (Resolution No.

2011-R-049 for Rocky Mountain Layers), 1033-1038 (Resolution No. 2011-R-050 for Western Slope Layers).

### *The Master Plan*

The Regulations require the Board to use the Master Plan in reviewing and evaluating specific development applications like those submitted by the Hostetlers. CD2:789. The Master Plan was adopted in 1990 by the Delta County Planning Commission “to guide future growth and development in the unincorporated area of Delta County.” CD2:759. In 1996, the Planning Commission updated its Master Plan, which provides its purpose is to “serve as an advisory document to guide both public and private entities in making sound decisions, based on a shared community vision for the future growth and development of Delta County.” *Id.* The Master Plan’s introduction concludes that it “is an advisory document only and has no regulatory or restrictive powers.” *Id.*

Part Two of the Master Plan contains the goals, policies and implementation strategies recognized by the Master Plan:

PART II contains the goals to realize Delta County’s vision for the future and represent the common concerns that were identified by the seven planning areas. These goals reflect the values that are important to the citizens of Delta County. They establish the direction to be followed in the future to protect and enhance our quality of life.

The specific policies provide a framework for achieving the goals. The implementation strategies are recommended actions that can be taken by the County's citizens, community and business leaders, and elected officials. They are not regulations or a final commitment but could lead to the adoption of the necessary regulatory tools after the Master Plan is approved.

CD2:763.

For each of the Master Plan's goals, it provides policies and implementation strategies to suggest how those goals and policies can be implemented. *See* CD2:763-770. For example, one goal is to: "[m]aintain Delta County as an agricultural community by preserving agricultural land, enhancing the viability of agricultural operations and encouraging a social, economic and political environment that reflects a positive attitude toward agriculture." CD2:763. One policy of that goal states: "An agricultural preservation program must include efforts to preserve and enhance the overall agricultural economy through programs that promote the County's agricultural products and provide support to those related industries and businesses' critical to agriculture." CD2:764. Finally, an implementation strategy of that policy and goal is to: "Encourage local economic development organizations to support and recruit value-added processing and food and fiber manufacturing opportunities." *Id.*

### *The Litigation*

Immediately after the Board's initial oral approval with conditions of the chicken barns on August 29, 2011, the Board's decision was challenged under Rule 106(a)(4). CD11CV282:8.<sup>3</sup> On July 5, 2012, the district court ruled that the Master Plan is regulatory (not advisory) and that the record before the Board lacked evidence to support four issues which the district court determined were required to be proven. CD11CV282:722, 725. The district court remanded to the Board for additional evidence on the following four issues: (1) "[c]ompatibility of the proposed uses with the character of the neighborhood pursuant to the Master Plan;" (2) "[i]mpact on property values"; (3) "[s]ufficiency of the conditions and the undertakings of the Applicants to address the concerns identified in the record;" and (4) "[c]apability of the [Delta] County staff to monitor compliance with the conditions and undertakings." CD11CV282:725.

The Board held a public hearing on remand on September 4, 2012. CD2:696. The County Attorney put into the record a number of documents showing how Delta County's staff dealt with Western Slope Layers after the initial approval to ensure compliance with the conditions. *Id.* Included in those documents was a report from an air quality test ordered by the Department of Health in response to

---

<sup>3</sup> The Opponents in this case include three of those plaintiffs, but five of the original plaintiffs removed themselves. CD12CV314:9.



complaints about Western Slope Layers. CD2:118. The Hostetlers presented evidence on the four issues to support approval. CD2:696-698. The Opponents presented evidence and comments seeking denial. CD2:698-700. Members of the public were also invited to speak. CD2:700. Neither the Hostetlers nor the Opponents had the opportunity to review any of the submissions prior to the public hearing or to cross-examine any evidence or testimony. *See* CD2:696-702. The Board took the evidence and comments under advisement, so each of the commissioners could have sufficient time to review all of the submissions. CD2:751. On October 22, 2012, the Board again approved with conditions the Hostetlers' applications. CD2:712.

The Opponents again sought legal review under Rule 106(a)(4) of the Board's decision approving with conditions the Hostetlers' applications. CD12CV314:13. Unbeknownst to the Hostetlers and the Opponents, after the September 2012 public meeting, the Environmental Health Director for the Delta County Health Department submitted to the Board a supplemental report concerning air quality that arrived after the public hearing, a memo from the Environmental Health Director concerning that supplemental report, and a University of Georgia document addressing myths of poultry operations. CD4:1082. The Opponents objected to the district court that they did not have the

opportunity to review those documents (and the original air quality report presented to the Board at the public hearing) or comment on them.

CD12CV314:80-81. On March 29, 2013, the district court again remanded to the Board to take additional comments only on those four pieces of evidence.

CD12CV314:181.

On May 1, 2013, the Board held another public meeting, which was specifically limited to public comment on the four pieces of evidence complained about by the Opponents. CD4:951. The Opponents submitted more evidence seeking denial and entered comments into the record. CD4:953-966. The Hostetlers submitted written comments concerning the four pieces of evidence and one email from the Environmental Health Director explaining how the air quality report and supplement came to be. CD4: 966-971. Again, the parties did not have the opportunity to review the others' submissions or cross-examine. *See* CD4:951-972. On May 28, 2013, the Board again approved with conditions the Hostetlers' applications. CD4:1089. However, in this approval, the Board specifically referenced its original 2011 conditions and added one condition suggested by the Environmental Health Director. *Id.*

After the latest approval with conditions, the Rule 106(a)(4) record was supplemented, and the Opponents continued their argument that there was no

evidence in the record to support the four issues in the district court's original remand. CD12CV314:249, 251. On September 5, 2013, the district court ruled against the Opponents and held that competent evidence existed in the record to support three issues on remand, but the district court also reversed the Board's decision, finding the chicken barns are incompatible with the surrounding areas. CD12CV314:379-380, 384.

### **SUMMARY OF THE ARGUMENT**

The district court erred by holding that the record before the Board contained no evidence to support the Board's approval with conditions of the Hostetlers' chicken barns. Instead, the Board had before it substantial evidence to support its finding that the Hostetlers' family-run, one-barn egg-laying operations are compatible with their surrounding agricultural and rural-residential areas. Moreover, the general requirement that specific developments be "consistent with" the Delta County Master Plan does not provide sufficient specificity for the provisions listed as goals, policies, and implementation strategies to create specific regulatory elements required to be affirmatively proven by applicants. Accordingly, the judgment of the district court should be reversed in its entirety.

## ARGUMENT

### *Standard of Appellate Review*

As both issues on appeal stem from a C.R.C.P. 106(a)(4) claim, appellate review of the district court's decision is de novo. *Thomas v. Colo. Dept. of Corrs.*, 117 P.3d 7, 8-9 (Colo. App. 2004). "An appellate court sits in the same position as the district court when reviewing an agency's decision." *Id.* (citing *Empiregas, Inc. v. Cnty. Court*, 713 P.2d 937 (Colo. App. 1985)). Rule 106(a)(4) mandates that "[r]eview shall be limited to a determination of whether the body . . . has exceeded its jurisdiction or abused its discretion, based on the evidence in the record before the defendant body . . . ." C.R.C.P. 106(a)(4)(I).

A presumption exists that the decision is proper, and those seeking review must overcome that presumption. *City & Cnty. of Denver v. Bd. of Adjustment*, 55 P.3d 252, 254 (Colo. App. 2002); *Fedder v. McCurdy*, 768 P.2d 711, 713 (Colo. App. 1988). The Colorado Supreme Court has "long held that in a Rule 106(a)(4) action, a reviewing court must uphold the decision of the governmental body unless there is **no competent evidence in the record** to support it." *Bd. of Cnty. Comm'rs v. O'Dell*, 920 P.2d 48, 50 (Colo. 1996) (quotations omitted and emphasis added). "No competent evidence means that the governmental body's decision is **so devoid of evidentiary support** that it can only be explained as an arbitrary and capricious exercise of authority." *Id.* (quotations omitted and

emphasis added). The court “is not the fact finder and may not substitute its own judgment for that” of the decisionmaker. *Id.* at 51. As such, this Court’s proper role is not to “weigh the evidence” or act as a “zoning board of appeals.” *Id.* at 50.

Additionally, the reviewing court may “consider whether the Board misconstrued or misapplied the law. If there is a reasonable basis for the Board’s interpretation of the law, the decision may not be set aside on that ground upon review.” *Wilkinson v. Bd. of Cnty. Comm’rs*, 872 P.2d 1269, 1277-1278 (Colo. App. 1993) (citing *Platte River Envtl. Conservation Org., Inc. v. Nat’l Hog Farm, Inc.*, 804 P.2d 290 (Colo. App. 1990)).

### *Discussion*

**I. The district court erred in holding that no competent evidence of record existed before the Board that the Hostetlers’ family-run, one-barn egg-laying operations are compatible with their agricultural and rural-residential surrounding areas.**

After its initial approval with conditions of the Hostetlers’ specific development applications for their family-run, one-barn egg-laying operations, the district court remanded back to the Board to take additional evidence on whether the chicken barns are compatible with their surrounding areas. CD11CV282:725. The Board took additional evidence and comments in two more public hearings, and again approved the Hostetlers’ applications with conditions. CD4:1089. The Opponents again challenged the Board’s approval, and the district court below

reversed the Board's decision based on incompatibility. CD12CV314:384. The Board's decision is only to be overturned on review if "no competent evidence" exists in the record to support the decision. *O'Dell*, 920 P.2d at 50. The district court erred, as the record is rife with evidence of the chicken barns' compatibility with the surrounding agricultural and rural-residential areas.

**A. Defining Compatibility**

The Regulations require a specific development to be compatible with its surrounding areas to be approved by the Board. CD2:789. Under the regulations, "compatible" is defined as "[a]ble to exist or act together harmoniously, considering noise levels, odors, potential fire hazard, visual impacts, effects to surface water and groundwater quality/quantity, adequacy of the road system, air quality and surrounding land uses." CD2:793. The Board's approval included with it conditions to address those considerations, as well as other concerns raised by the Opponents. *See* CD1:1027-1038 (listing numerous original conditions); CD4:1092-1093 (listing an additional condition).

The Regulations, article VI, § 2(A) state: "Comments received from surrounding property owners, other interested persons and existing land use shall be among the factors considered to determine compatibility." CD2:789. The Regulations also require the specific development to "be consistent with" the

Master Plan. CD2:789; *see also* CD11CV282:725 (requiring evidence of “compatibility . . . pursuant to the Master Plan” on remand).

The Master Plan itself does not have certain requirements about compatibility; instead, it lists five goals and numerous policies and implementation strategies for each goal. CD2:763-770. The first goal of the Master Plan is to: “[m]aintain Delta County as an agricultural community by preserving agricultural land, enhancing the viability of agricultural operations and encouraging a social, economic and political environment that reflects a positive attitude toward agriculture.” CD2:763.

In two implementation strategies listed in its fourth goal, the Master Plan explains:

In the implementation of the County’s land use regulations[,] the compatibility of a new development with the existing land uses should be given priority consideration. . . . In cases where there is incompatibility between an existing and a proposed land use, the property right of the existing use should be given priority.

CD2:769.

While the Master Plan does not further describe “compatibility,” it does describe “incompatibility” in its first goal:

**Incompatibility.** If maintaining a critical mass of agricultural land use is the County’s highest priority, the County must be willing to restrict other uses that are incompatible with agriculture and related business. This means residential subdivisions and other types of development

adjacent to agricultural operations may have to be denied or required to mitigate adverse impacts on existing agricultural land use.

CD2:763.

With the Master Plan's numerous references to promoting agriculture<sup>4</sup> and its definition of incompatibility in mind, we turn to whether the record contains any evidence that the Hostetlers' chicken barns are compatible with the surrounding areas.

**B. Evidence of the Nature of the Surrounding Area**

The Board's decision concerning the nature of the surrounding area is presumed proper. *See City & Cnty. of Denver*, 55 P.3d at 254. Moreover, reversal of the Board's decision is only appropriate when the record is "so devoid of evidentiary support" that there is "no competent evidence" to support the Board's findings. *See O'Dell*, 920 P.2d at 50. Here, however, substantial evidence in the record supports the Board's decision that the chicken barns' surrounding areas are agricultural and rural residential. Therefore, the Board's decision should be

---

<sup>4</sup> The Opponents have attempted to skew the compatibility of the Hostetlers' family-run, one-barn egg-laying operations to the area by referring to their agricultural operations as something other than "traditional farming and agriculture." *See, e.g.*, CD12CV314:106, 110. However, the Master Plan does not create subsets of agriculture. Instead, when discussing "Agricultural Land and Agricultural Operations," the Master Plan refers to "agricultural economy," "agriculture and related industries," "agriculture, including forestry, and agricultural related business." CD2:763.



affirmed. Some examples of the numerous pieces of supportive evidence in the record include the following:

- The Master Plan describes the county as “an agricultural County where the importance of the agricultural economy is real and not merely a symbol of a western life style.” CD2:763.
- The Master Plan explains that “agriculture, more than any other factor, defines the rural character of the County.” *Id.*
- More than 500 Delta County residents described the uses and surrounding areas as agricultural and rural residential in a petition supporting the Board’s decision finding compatibility. CD2:269-335.
- Resident described surrounding area in written public comment, stating, “Looks like agriculture to me.” CD2:246.
- Resident described agricultural nature of Delta County in written public comment. CD2:248.
- Colorado Farm Bureau described area as “rural and agricultural in nature” in written public comment. CD2:250.
- Delta County Farm Bureau described area as “rural and agricultural in nature” in written public comment. CD2:251.

- Neighbor described surrounding area as “traditionally rural, agricultural area” in written public comment. CD2:262.
- Neighbor described area as having “residences and small farms/orchards” in written public comment. CD2:265.
- Neighboring veterinarian described “agricultural community” in public comment during hearing. CD2:701.
- Neighbor described location as “agriculture related area” in opposing public comment. CD2:375.
- Neighbor described location as “traditional subsistence / low density agricultural neighborhoods” in opposing public comment. CD2:401.
- Resident described area’s “existing agricultural and domestic land uses” in opposing public comment. CD2:409.
- Individuals described “residential and traditional agricultural areas” in opposing petition. CD2:464-465, 467-468, 472-473, 481.
- Individual described “North Fork Valley [a]s a boutique farm and cattle ranch area with emphasis on healthy, sustainable, scenic, farms and ranches” in opposing public comment. CD3:840.
- Opponent described “adjacent agricultural uses on both Powell Mesa and Redlands Mesa” in public comment. CD2:963.

- The Hostetlers’ application described the surrounding: “The neighborhood is an agriculture area, with the raising of irrigated hay, orchards, and other irrigated crops. [The Hostetlers] have lived on the Mesa for the last 15 years and currently run a herd of cattle putting up hay to supplement the cows during the winter.” CD1:48.
- Photographs show the agricultural and rural nature of the surrounding areas. CD3:844-847 (depicting individual properties in surrounding area).
- Photographs submitted by the Opponents show the agricultural and rural nature of the surrounding areas. CD3:849, 895 (depicting aerial view of surrounding area during construction).
- Local real estate broker gave her professional opinion that the area is “RURAL/AGRICULTURAL” and describing area in detail. CD3:843.
- Opponents’ appraiser’s report described area as having “a strong rural, agricultural atmosphere with residential use combined.” CD2:557.

The evidence described above proves the record is not “so devoid of evidentiary support” for the Board’s decision that the nature of the Hostetlers’ surrounding areas are agricultural and rural residential. *See O’Dell*, 920 P.2d at 50. Therefore, the next question is whether evidence exists in the record that a family-

run, one-barn egg-laying operation is compatible with those agricultural and rural residential uses.

**C. Evidence of Compatibility with the Surrounding Area**

Again, the record is not “so devoid of evidentiary support” that there is “no competent evidence” to support the Board’s decision concerning compatibility. *See id.* Many of the same pieces of evidence that establish the nature of the surrounding area also support the fact that the Hosteters’ agricultural operations are compatible with their surroundings. Some of the numerous pieces of evidence in the record providing such support are as follows:

- More than 500 Delta County residents urged the Board to approve the applications concerning compatibility. CD2:269-335 (agreeing that the “operations are compatible with the existing agricultural and rural residential uses and character of the surrounding areas”).
- Resident discussed compatibility in written public comment. CD2:246 (“I really can’t see how anyone could say that the Hen House isn’t compatible. There is an orchard just across the road. It grows fruit, sells fruit, this is a business. The next neighbor has a farm that raises horses and sells them, raises hay and has a veterinarian practice and a dog kennel. (probably very noisy). As you continue down the road

you will find numerous farms raising and selling hay, some board horses and pasture cows. Looks like agriculture to me.”).

- Colorado Farm Bureau discussed compatibility in written public comment. CD2:250 (“The owners have used an existing agricultural operation and only changed the type of commodity that is produced. The laying operation has the appearance of being a well-designed, maintained, and managed operation that blends in with its surroundings.”).
- Delta County Farm Bureau discussed compatibility in written public comment. CD2:251 (“The Hostetler’s have used an existing agricultural operation and only changed the type commodity that is produced. The laying operation has the appearance of being a well designed, maintained, and managed operation that blends in with its surroundings.”).
- Resident discussed compatibility in written public comment. CD2:262 (“What could be more compatible in a traditionally rural, agricultural area of our county than an agricultural enterprise? . . . I live on Rogers Mesa and farm on Barrow Mesa and in both places would not object

to the neat, clean chicken operation I see on Powell Mesa being located next door.”).

- Neighbor discussed compatibility in written public comment.  
CD2:265 (“I am a resident of Hanson Mesa and a neighbor of the Western Slope Layers operation on Powell Mesa. While a group of neighbors has been very vocal in their opposition to Western Slope Layers, they do not speak for all neighbors of the facility. I would like to address some of the specific areas of concern. First, I feel that as an agricultural business the operation is compatible with the neighborhood. The neighborhood is primarily residences and small farms/orchards. One of the primary opponents has a veterinary business. If you find against Western Slope Layers on the premise that it is not compatible with the neighborhood I would request that you issue a cease and desist order to all other businesses in the neighborhood.”).

- Neighbor discussed compatibility in written public comment.  
CD2:738 (“I live less than a mile from the proposed facility on Redlands Mesa. . . . I have to say is that it is absolutely compatible with Redlands Mesa. In fact, within a mile, we’ve got 400 head of elk;

we've got a dairy with 300 head of cows; we've got a beef operation with 600 head of beef cows; and we have my operation with 250 head of bison and elk. So I think it's absolutely compatible.'').

- Neighboring veterinarian discussed compatibility in public comment. CD2:739 (describing Hostetlers as running an agricultural operation in an agricultural community, which is why residents live in the community).
- Resident discussed compatibility in public comment. CD2:740 (describing and providing pictures of egg-laying operations throughout the county, in various areas like those at issue, where the operations are compatible with their surroundings).
- Photographs show compatibility with the agricultural and rural nature of the surrounding areas, which make it difficult to tell which property is being claimed as incompatible. CD3:844-847 (depicting individual properties in surrounding area).
- Photographs submitted by the Opponents show compatibility with the agricultural and rural nature of the surrounding areas. CD3:849, 895, 920 (depicting view of surrounding area during and after construction).

- Professional opinion of local real estate broker who studied the Hostetlers' operations and surrounding area and gave her professional opinion of compatibility:

I based my research on an approximate 1 mile radius from this property but also have noted some observations in regard to the Hotchkiss area in general. I have also included an evaluation as to whether the subject property specifically "fits" with the surrounding properties.

Beginning with properties along Hanson Mesa Road as you exit Hotchkiss to the north the majority of the properties are small farm/residential properties. Acreages vary from 2 to 35 acres and most are older homes (some updated, some not) with the exception of the Brezonick property which is a single family residence built in 2009. The area however is still regarded as agricultural and rural. There are horses and cattle grazed on these properties and hay production and pasture. As you turn on to Powell Mesa Road and get to the mesa the acreage sizes increase and are more sparse. The first property on the right is an orchard/vineyard property with several outbuildings and a new garage/shop under construction. As you look to the north east you observe a contemporary home with a yurt and directly to the west is a tree farm with a small older outdated home. Across the road and to the west is the subject property which by observation is hay production, cattle and the chicken facility. Directly to the north is the property that is a Veterinary Clinic and horse facility. As you progress along Powell Mesa Road you find more of the same type of properties with acreages from 5 to 40 acres or more with hay production, pasture, cattle or horses. As you make the bend to the point where Powell Mesa Road loops around and re-joins Hanson Mesa Road you pass more 40-70 acre properties plus a property that has approximately 24 acres and an huge indoor arena that sits right next to Powell Mesa Road. Although this property is currently vacant it is obviously a larger horse facility. Please refer to the pictures on pages 3, 4 and 5 for a slides how of the properties.



...

There are several of the other surrounding properties that do NOT appear to be as well maintained or as clean. Notable issues on these other properties include old vehicles and junk cars, trailer houses, manure piles, delapidated buildings and fences, weeds that are overgrown and dry unmaintained pastures along with homes and shops and barns that appear to be in disrepair.

...

My professional opinion is also that the Hostetler property is absolutely conforming to the rest of the “neighborhood” and the surrounding area. This is a RURAL/AGRICULTURAL area including as I mentioned previously cattle, horses, hay production and pasture. There are also orchards, vineyards and most likely pig farms in the area. I would also venture to say that there are chickens and goats on these properties as well.

CD3:842-843.

Therefore, the record contains countless pieces of evidence that establish the Hostetlers’ family-run, one-barn egg-laying operations are compatible with their surrounding agricultural and rural areas. As the record is rife with this evidence, the Board did not act arbitrarily or capriciously. *O’Dell*, 920 P.2d at 50 (explaining government acts arbitrarily only when “no competent evidence” exists to support the decision).

#### **D. More Specific Evidence of Compatibility**

In addition to all the evidence cited above establishing compatibility in the general sense, more specific evidence exists in the record that the Hostetlers' family-run, one-barn egg-laying operations will not adversely impact the neighboring properties or landowners with the conditions imposed, thereby meeting the affirmative requirement imposed for the first time by the district court in its latest ruling.<sup>5</sup> The record is not "devoid" of such evidence. *See O'Dell*, 920 P.2d at 50. Instead, the following examples provide support for the Board's decision:

- Dr. Dwaine S. Bundy, Ph.D., P.E., an agricultural engineer who has designed ventilation systems for livestock and poultry facilities throughout the United States and worked with the Department of Health in Colorado concerning odors generated from anaerobic lagoons, provided a statement supporting the Board's finding of no harm. CD2:597-600.
- Dr. Bundy explained that the agreed-to conditions go above and beyond operations of this size in Colorado and in other states, and the

---

<sup>5</sup> Compare CD12CV314:381 (citing for the first time specifically one Master Plan policy discussing adverse impacts to property and neighbors), *with* CD11CV282:725 (requiring on remand applicants to provide evidence of compatibility generally "pursuant to the Master Plan").

conditions are not typically required for most other animal species.

CD2:599.

- Dr. Bundy more specifically explained with respect to health effects, that the ambient air quality generated is “not high enough to present health issues.” *Id.*
- Dr. Ken W. Koelkebeck, Ph.D., Professor and Poultry Extension Specialist in the Department of Animal Sciences at the University of Illinois at Urbana-Champaign, Illinois, also provided more specific evidence of compatibility. CD2:601-602.
- Dr. Koelkebeck explained that the Hostetlers’ operations are much smaller than other commercial poultry facilities in the country, and similar operations are located in Wisconsin and Northern Illinois, with no known impacts on neighbors concerning those similar operations. CD2:602.
- Dr. Koelkebeck opined the operations would not physically damage the surrounding properties; instead, the conditions of the development agreements are sufficient to address the concerns of negative impacts. *Id.*
- In response to the Opponents’ complaints about dust from the

operating chicken barn causing illness, the Department of Environmental Health ordered air quality testing. CD2:118; CD4:1082.

- Chris Lakin, P.E., Industrial Hygienist, of Plateau, Inc., handled the inspection and wrote the report, which thoroughly explains the testing and results. CD2:118-122.
- Ultimately, the report concluded that air quality might be a concern for those working inside the chicken barn, but provided **no evidence of harmful exposure to adjoining property owners**. CD2:122.
- After providing its initial report, Plateau further tested some samples, as described in its initial report. CD2:114, 121. After further testing, Plateau presented an amendment to the report, with findings that the air quality is normal for agricultural areas:

The presence of bioaerosols in the natural environment is common; most especially so in rural environments [where] farming activities are considerable sources of bioaerosols, chemicals, and particulates from virtually any of the activities common in this environment. **These exposures are consequent to common farming activities such as, tilling/plowing, hay and grass storage, feeding, harvesting, fertilizing, cleaning pens and other animal husbandry activities.**

CD2:115 (emphasis added).

- Additionally, Plateau explained that the results do not show that the chicken barn causes adverse health impacts:

The data from this testing does show that the facility is a generator of a variety of bio-aerosols, organic and non-organic dust, and small amounts of ammonia gas. **However, there is not sufficient information at this time to suggest that these conditions are contextually abnormal, nor that they are sufficient to induce health problems in normal healthy individuals.**

*Id.* (emphasis added).<sup>6</sup>

Therefore, the record is not “so devoid of evidentiary support” to constitute an abuse of discretion by the Board. *See O’Dell*, 920 P.2d at 50. Instead, the Board is presumed to have acted properly, *see City & Cnty. of Denver*, 55 P.3d at 254, and all the evidence discussed above supports the Board’s decision that the chicken barns are compatible with their surrounding agricultural and rural-residential areas. Accordingly, the Board’s decision should be affirmed, and the district court should be reversed.

---

<sup>6</sup> Plateau did continue the amendment by explaining its findings “should be approached with caution and with the input of a qualified medical practitioner. Any further evaluation of alleged health affects should at least consider confounding factors, individual medical history (including atopy), lifestyle, etc.” *Id.* Neither the public hearings before the Board nor the judicial review process provide for discovery of the Opponents’ medical histories, and when the Hostetlers requested them, the Opponents denied access.

#### **E. Evidence Limiting Weight and Credibility**

Instead of considering all of this evidence before the Board, the district court improperly weighed the evidence in the record, relying exclusively on the Opponents' "evidence of adverse health impacts" to reverse the Board's decision. *See* CD12CV314:384. A reviewing court, however, is not to "weigh the evidence" or act as a "zoning board of appeals." *O'Dell*, 920 P.2d at 50. Instead, "the weight and credibility of a witness's testimony are committed to the discretion of the [Board]." *Boles v. Bartruff*, 228 P.3d 183, 188 (Colo. App. 2009); *accord Bd. of Cnty. Comm'rs v. Bd. of Adjustment*, 768 P.2d 1250, 1252 (Colo. App. 1988); *see also* CD12CV314:262 (arguing the district court should "weigh[] the evidence" in the Opponents' supplemental opening brief).

Instead of reweighing the evidence, the reviewing court must only reverse if the record is "devoid of evidentiary support." *O'Dell*, 920 P.2d at 50. Here, sufficient evidence in the record supports the fact the "medical evidence" from Drs. Abuid and Knutson was properly given little weight by the Board (the only entity allowed to weigh the evidence):

- On its face, the document from Drs. Abuid and Knutson contradicts itself by first stating, "In the particular case of Susan Raymond, she

had never had asthma or respiratory symptoms and developed them shortly after the operation began.” CD2:338.

- In the *very next* sentence, Drs. Abuid and Knutson state, “She is a veterinarian with daily exposure to animals and *a previous reactive airways response to chicken.*” *Id.* (emphasis added).
- Drs. Abuid and Knutson’s letter did not relate to impacts on people outside a small barn. CD2:337-338 (quoting extensively without citation to HSE, *Respiratory Hazards of Poultry Dust*, <http://www.hse.gov.uk/pubns/web40.pdf>); *see* HSE, *supra*, at 2 (discussing risks to “poultry workers” inside “industrial large-scale confinement facilities”).
- The Environmental Health Director explained the differences in impacts from different exposures:

The reported health concerns from neighbors surrounding the Western Slope Layer facility generate concern by this Department. The complaints from citizens and letters received by the County include letters from doctors expressing concern for the health of persons in the community exposed to the emissions from the henhouse operation. While health problems from occupational exposure to poultry dust and confined animal feeding are documented in industrial hygiene and medical literature, the complainants have extrapolated the conclusions regarding occupational exposure to ambient environmental exposure.

However, [exposures inside and outside a barn] are quite different and in this department's limited literature review, deleterious health effects from environmental exposures are not well documented and should not be compared to an occupational exposure. The burden of proof is quite high and it is difficult to confirm an actual causable link between the henhouse emissions and a person's illness or pulmonary difficulties. There are many other environmental factors that could exacerbate allergic reactions, asthma, and COPD that have been reported by the complainants. Such causes would include prior exposure to dust, pollen, wildfire smoke, low humidity, and hot summer temperatures as experienced last spring and summer from a variety of other sources. Anxiety and fear of the poultry operation may also exacerbate asthma attacks and bronchitis episodes.

CD2:142.

The district court erred when relying on the letter from Drs. Abuid and Knutson, while at the same time stating that "there is a lack of any record to suggest the health concerns which arose subsequent to the commencement of the operations on Powell Mesa are not a result of the operation." *See* CD12CV314:381-382. The district court could have looked no further than the same exact document one sentence later to see evidence in the record that at least Susan Raymond had similar health concerns prior to the Hostetlers' operations. *See* CD2:338. Moreover, the evidence in the record only establishes an apparent time correlation between the health complaints and the Hostetlers beginning operations. However, as the Environmental Health Director noted, a causal link has not been established. *Id.*; *see also Norris v. Baxter Healthcare Corp.*, 397 F.3d 878, 885



(10th Cir. 2005) (“A correlation does not equal causation.”); *Black’s Law Dictionary* (9th ed. 2009) (“*Post hoc, ergo propter hoc* . . . the fallacy of assuming causality from temporal sequence.”).

Besides the record including evidence discrediting the “medical evidence,” additional evidence in the record puts the credibility of many statements made by the Opponents into question:

- Report by Environmental Health Director compared Susan Raymond’s claim of fugitive feathers to personal observation of no feathers northwest of the barn. CD3:818.
- Mark Cool blamed the Hostetlers for an infection contracted in his outdoor garden, while at the same time referencing thirty wild turkeys that regularly harass his garden. CD2:735.
- Travis Jardon and others continuously referred to harmful effects of CAFOs. *See, e.g.*, CD1:34, 421; CD2:384, 388, 401, 420, 445-454, 559-595, 638-639; CD3:884.
- Colorado Department of Public Health and Environment (the local regulating agency of CAFOs) explained the chicken barns are not CAFOs. CD2:170; CD1:421.

- Susan Raymond’s other words and actions. *E.g.*, CD1:39, 583 (seconding motions to recommend denials in her role on the Committee while not disclosing her conflict of interest); *see Venard v. Dep’t of Corrs.*, 72 P.3d 446, 450 (Colo. App. 2003) (recognizing impartiality of a decisionmaker with a personal stake in the outcome of an issue before it); *see also, e.g.*, CD2:438; CD3:909; CD4:979 (raising issues about Mennonites).

All of these references in the record provide evidence for the Board to reasonably discredit testimony and evidence presented by the Opponents; therefore, the record is not “so devoid of evidentiary support” as to find the Board acted arbitrarily.<sup>7</sup> *See O’Dell*, 920 P.2d at 50.

## **F. Conclusion**

Considering all the evidence and testimony presented to the Board, the district court erred by finding the record “so devoid of evidentiary support” as to constitute an abuse of discretion. *O’Dell*, 920 P.2d at 50. The Board’s decision is

---

<sup>7</sup> The district court also erred by giving great weight to the fact that the Hostetlers did not include in the record responses to the Opponents’ “medical evidence.” *See* CD12CV314:384. By the very nature of these proceedings, the Hostetlers were not privy to the evidence or comments presented by the Opponents to the Board beforehand. Not only were the Hostetlers unaware of what evidence the Opponents had planned to submit, the nature of the proceedings does not allow for cross-examination of any evidence or testimony or time to prepare rebuttal evidence, especially evidence requiring medical experts.

presumed proper and is only to be overturned if “no competent evidence exists in the record.” *Id.*; *City & Cnty. of Denver*, 55 P.3d at 254. The record before the Board in this case includes more than sufficient evidence that the Hostetlers’ operations are compatible with their surrounding agricultural and rural-residential areas. Accordingly, this Court should reverse the district court, thereby affirming and reinstating the Board’s decision to approve the Hostetlers’ applications with conditions.

**II. The district court erred in holding the Master Plan creates individual regulatory requirements that applicants must affirmatively prove.**

When the Board originally approved the Hostetlers’ specific development applications in 2011, it did so citing numerous provisions of the Master Plan for guidance in its decision. CD1:1005-1011. The Board recognized the Master Plan is advisory, but still utilized it in its decision making. CD1:1011; *see* CD1:1005-1011. In its initial order on remand, the district court reversed the Board’s initial decision, holding the Master Plan is regulatory and remanding for the Board to take evidence on the issue of compatibility “pursuant to the Master Plan.” CD11CV282:725.

After the Board’s second and third approvals with conditions, the district court again ruled the Master Plan is regulatory, but this time the district court ruled that the applicants were required to affirmatively prove one specific provision

listed in the Master Plan as a policy. CD12CV314:517 (“[T]he right to develop and improve private property does not constitute the right to physically damage or adversely impact the property or property value or neighboring landowners.”).

Based on its ruling that this particular Master Plan policy is regulatory, the district court reviewed evidence in the record and held that the Hostetlers failed to affirmatively prove the negative: that their proposed chicken barns will not impact the neighbors. *Id.* The district court erred in holding the Master Plan’s numerous general goals, policies, and implementation strategies create specific individual regulatory elements that applicants are required to affirmatively prove in order to obtain approval by the Board.

The general rule in Colorado is that “a master plan is merely advisory and does not affect legally protected interests of property owners.” *Theobald v. Bd. of Cnty. Comm’rs*, 644 P.2d 942, 950-951 (Colo. 1982). However, an advisory master plan can become regulatory if it is required by state statute or if the master plan’s “sufficiently specific” provisions are formally included “in a duly-adopted land use regulation by a board of county commissioners.” *Bd. of Cnty. Comm’rs v. Conder*, 927 P.2d 1339, 1346 (Colo. 1996)

In this case, there is no question that a duly-adopted land use regulation cites the Master Plan; however, neither the citation to the Master Plan in the Regulations

nor the provisions in the Master Plan are “sufficiently specific” to make applicants affirmatively prove a particular provision in the Master Plan.

In *Conder*, the Supreme Court of Colorado explained this requirement:

[T]he provisions that the county seeks to enforce must be sufficiently specific “to ensure that any action taken by a county in response to a land use proposal will be rational and consistent and that judicial review of that action will be available and effective,” *Beaver Meadows* [v. Bd. of Cnty. Comm’rs], 709 P.2d [928,] 936 [(Colo. 1985)] (citing *Cottrell* [v. City & Cnty. of Denver], 636 P.2d [703,] 709 [(Colo. 1981)]); accord *Beaver Meadows*, 709 P.2d at 938; *Tri-State Generation v. City of Thornton*, 647 P.2d 670, 678 (Colo.1982), and “to provide all users and potential users of land with notice of the particular standards and requirements imposed by the county” for approval, *Beaver Meadows*, 709 P.2d at 936. . . . In holding legislative bodies to this additional standard, courts “protect against unnecessary and uncontrolled exercise of discretionary power.” *Cottrell*, 636 P.2d at 709.

927 P.3d at 1348.

In this case, the Regulations reference the Master Plan generally, and do not require compliance with any specific provisions of the Master Plan. *See* CD2:789 (“The applicant and Board of County Commissioners shall use the performance standards contained herein and the Delta County Master Plan in designing, reviewing, evaluating and constructing new and expanding specific developments . . . .”); *id.* (“The specific development must be consistent with the Delta County Master Plan and Advisory Planning Committees’ addenda to the Delta County Master Plan.”). Therefore, the Regulations only vaguely require the Board to

ensure the specific development is “consistent with” the Master Plan and “to use the . . . Master Plan in designing, reviewing, evaluating and constructing” the specific development. *See id.*

This case differs from other cases involving master plan compliance, because here, **the Board approved the applications** citing numerous provisions in the Master Plan as guiding factors. *See, e.g.*, CD1:1001-1011; CD2:710-711. The cases where master plans are considered regulatory involved the respective boards of county commissioners denying land uses and citing provisions of their master plans to support denial. *See e.g., Conder*, 927 P.2d at 1348 (“The Board in this case rejected the proponents’ subdivision application based on noncompliance with the provisions in the master plan. In its written findings and resolution concerning the subdivision application, the Board specifically outlined the basis in the master plan for its denial.”); *Vick v. Bd. of Cnty Comm’rs*, 689 P.2d 699, 700, (Colo. App. 1984), *portion of holding disapproved in Conder*, 927 P.2d at 1347, (recognizing board’s denial of application for noncompliance with master plan); *see also Theobald*, 644 P.2d 942, 950 (“At such time as a property owner has applied for and been denied a proposed use for his land under existing zoning or future rezoning based upon the master plan, he may challenge the plan and the denial of his asserted right.”).

Here, the Board originally approved the applications after using numerous provisions of the Master Plan for guidance in its decision. CD1:1001-1011. Mandatory compliance with the Master Plan came from the district court in its original order remanding to the Board. CD11CV282:725. Even in that order, however, the district court only mandated the applicants generally prove compatibility “pursuant to the Master Plan.” *Id.* (referring generally to Master Plan and not citing any specific “compatibility” provision). After remand, the Board recognized the Master Plan’s contradictory provisions and argued they “may lack the ‘sufficient exactitude’ required by *Conder*.” CD12CV314:333.

This Court sits in the same position as the district court, and “[i]f there is a reasonable basis for the Board’s interpretation of the law, the decision may not be set aside on that ground upon review.” *Wilkinson*, 872 P.2d at 1277-1278 (citing *Platte River*, 804 P.2d 290). In the order being appealed in this case, the district court went a step further than its original remand order, mandating—only after the public hearings on remand where the Hostetlers could present evidence—that the Hostetlers were required to affirmatively prove there will be no adverse impacts on the neighbors, citing one specific Master Plan policy. CD12CV314:381. Originally, the district court mandated the applicants prove compatibility pursuant to the Master Plan, but not affirmatively prove a negative, listed in one specific

Master Plan policy out of its sometimes contradictory five goals, 20 policies, and 51 implementation strategies. *See* CD11CV282:725; CD2:763-769.

The Master Plan itself explains the purpose of its numerous goals, policies, and implementation strategies:

[This Master Plan] contains the goals to realize Delta County's vision for the future and represent the common concerns that were identified by the seven planning areas. These goals reflect the values that are important to the citizens of Delta County. They establish the direction to be followed in the future to protect and enhance our quality of life.

The specific policies provide a framework for achieving the goals. The implementation strategies are recommended actions that can be taken by the County's citizens, community and business leaders, and elected officials. They are not regulations or a final commitment but could lead to the adoption of the necessary regulatory tools after the Master Plan is approved.

CD2:763.

The Master Plan lists five goals, listed as follows:

[(1)] Maintain Delta County as an agricultural community by preserving agricultural land, enhancing the viability of agricultural operations and encouraging a social, economic and political environment that reflects a positive attitude toward agriculture.

...

[(2)] Preserve the rural character and natural environment, and protect the unique physical resources of Delta County through programs that provide an equitable balance of preservation and respect for individual property rights[.]

...



[(3)] The growth policies of Delta County should ensure that the financial impacts of new development are paid by those who benefit, and that development is directed to those areas where there [i]s adequate infrastructure and services.

...

[(4)] The right to use, enjoy and protect property should not be diminished by policies and regulations that are not consistent with the goals and objectives of this Master Plan[.]

...

[(5)] Promote and maintain a stable and diversified economic base that builds on local resources to sustain and expand existing businesses and create new business opportunities that are compatible with the quality of life valued by the residents of Delta County.

CD2:763-770.

Looking at these five goals and their respective policies and implementation strategies, it is reasonable to recognize that statements in the Regulations that decisions are to be “consistent with” the Master Plan and the Board is “to use” the Master Plan in its decision making *does not* “provide all users and potential users of land with notice of the particular standards and requirements imposed by the county for approval.” *Conder*, 927 P.3d at 1348. The Board itself recognized that its Master Plan provisions are advisory and not specific enough to be regulatory, both in its decision making and in defending its approval. CD12CV314:333; CD1:1001-1011; CD2:710-711. That interpretation is reasonable, and under Rule

106(a)(4), this Court should affirm the Board's reasonable interpretation of the law. *See Wilkinson*, 872 P.2d at 1277-1278.

Because it was district court who determined one particular policy of the Master Plan was a mandatory requirement for the applicants to affirmatively prove when neither its order on remand nor the Master Plan's provisions were sufficiently specific to be regulatory under *Conder*, this Court should reverse the district court's judgment and affirm the Board's approval of the Hostetlers' applications.

### **CONCLUSION**

The district court erred by holding that the record before the Board contained no evidence to support the Board's approval with conditions of the Hostetlers' chicken barns. Instead, the Board had before it countless pieces of evidence and comments from the public to support its finding that the operations are compatible with their surrounding agricultural and rural-residential areas. As such, the district court's judgment should be reversed, and the Board's decision should be affirmed and reinstated.

Moreover, the Regulations' general requirement that specific developments be "consistent with" the Master Plan does not provide sufficient specificity for the provisions of the Master Plan listed as goals, policies, and implementation

strategies to create regulatory elements required to be affirmatively proven by applicants. Accordingly, the district court's judgment should be reversed, and the Board's reasonable interpretation of the law and its decision should be affirmed and reinstated.

Respectfully submitted this 21st day of February, 2014.

/s/Joshua A. Tolin  
Joshua A. Tolin  
Karen Budd-Falen  
Budd-Falen Law Offices, LLC  
300 East 18<sup>th</sup> Street  
Post Office Box 346  
Cheyenne, Wyoming 82003-0346  
(307) 632-5105 Telephone  
(307) 637-3891 Facsimile  
[joshua@buddfalen.com](mailto:joshua@buddfalen.com)  
[karen@buddfalen.com](mailto:karen@buddfalen.com)

*Attorneys for the Hostetlers*

## CERTIFICATE OF SERVICE

I certify that on this 21st day of February, 2014, a copy of this *Opening Brief of the Hostetters* was served on the following via the E-Filing/Service System:

Earl G. Rhodes  
743 Horizon Court, Ste. 200  
Grand Junction, CO 81506  
[earl@youngelaw.com](mailto:earl@youngelaw.com)

Christine L. Knight, County Attorney  
320 W. 5th Street  
Delta, CO 81416  
[cknight@deltacounty.com](mailto:cknight@deltacounty.com)

Stephen G. Masciocchi  
Holland & Hart LLP  
555 Seventeenth Street, Suite 3200  
Denver, CO 80201  
[smasciocchi@hollandhart.com](mailto:smasciocchi@hollandhart.com)

I also certify that one original and one CD with a PDF copy of the brief was transmitted to the Court via Federal Express.

/s/Joshua A. Tolin  
Joshua A. Tolin  
Budd-Falen Law Offices, LLC

## **ADDENDUM**

Delta County Regulation for Specific Developments, CD2:773-817

Delta County Master Plan, CD2:759-772

---

# **DELTA COUNTY REGULATION FOR SPECIFIC DEVELOPMENTS**

AS AMENDED

Effective Date: August 1, 2009

---

## **Article I General Provisions**

---

### **Section 1. Title**

A regulation setting forth a public review process and performance standards for the administration of specific development activities within the unincorporated area of Delta County; providing for the requirements and issuance of a Development Agreement for specific developments; and setting forth the penalties for the violation thereof.

---

### **Section 2. Short Title**

This regulation shall be cited as the "Delta County Regulation for Specific Developments."

---

### **Section 3. Authority**

The Board of County Commissioners of Delta County is enabled by Article 28 of Title 30, C.R.S. and Article 20 of Title 29, C.R.S. to adopt and enforce the Delta County Regulation for Specific Developments within the unincorporated area of Delta County.

---

### **Section 4. Purpose**

It is the intent of the Board of County Commissioners of Delta County to plan for specific developments within the unincorporated area of Delta County to:

- A.** Promote the health, safety, and general welfare of the present and future residents of Delta County.
- B.** Manage changes to specific developments that may have an adverse effect on neighboring landowners and other residents of Delta County.
- C.** Achieve the goals and implement the policies of the Delta County Master Plan, especially to:
  - 1.** Preserve and protect property rights.
  - 2.** Preserve and protect the natural and cultural resources of Delta County including but not limited to wildlife, riparian areas, wetlands, sensitive lands, scenic byways and areas of significant scenic value.
  - 3.** Preserve the character of the existing rural and urban communities and neighborhoods in Delta County.
  - 4.** Create a local planning area review and develop standards for specific new developments.
  - 5.** Protect the agricultural land, lifestyle and economy of Delta County.

---

## **Section 5. Activities Exempt from the Regulation for Specific Developments**

Certain development or land use activities shall be exempt from this regulation as stated below. Exemption from this regulation does not exempt such activities from all applicable federal, state and county statutory or regulatory requirements.

**A.** All developments or land use activities that are in place as of the date of the adoption of this regulation may continue by right without need for review or a Development Agreement. The expansion of any such activity may require review if it meets the criteria of Article II. Section 4.B. of this regulation.

**B.** Agricultural uses of the land that produce agricultural and livestock products that originate from the land's productivity for the primary purpose of obtaining a monetary profit, except for new confined animal operations and commercial animal slaughter and rendering facilities.

**C.** Residential development or land use, except for multi-unit residential buildings of more than three units. (New subdivisions must comply with the Delta County Subdivision Regulations.)

**D.** Home occupations/businesses and cottage industries that met the following criteria:

Home Occupation: Any activity carried out for gain by a resident and conducted as a customary, incidental, and accessory use in the resident's dwelling unit and must comply with the following conditions:

1. The use shall operate in its entirety within the dwelling unit and only by persons residing in the dwelling.
2. The use shall not have a separate entrance from outside the building, unless otherwise required by State law or regulation.
3. The operator of the home occupation shall not display or create outside the building any external evidence of the operation of the home occupation except one unanimated, non-illuminated flat wall or window sign having an area of not more than one square foot.
4. The use shall not exclusively utilize more than twenty percent (20%) of the gross floor area of the dwelling, or three hundred (300) square feet, whichever is less. A garage shall not be utilized for, or in conjunction with, a home occupation.
5. The home occupation shall not employ, for a fee or otherwise, any person in the conduct of the home occupation who does not reside in the dwelling unit.
6. The home occupation shall clearly be incidental and secondary to the use of the dwelling for dwelling purposes and shall not change the character of the dwelling or of the neighborhood by excessive noise, lights, traffic, or other disturbances.

Cottage Industry: A home business that requires the use of an accessory structure and a limited number of employees. All cottage industries must comply with the following conditions:

1. Only one accessory structure may be used for the occupation and may not exceed 2000 square feet in size.

2. The number of employees is limited to five (5) people including the owner/operator.
  3. The occupation shall not be the primary use of the property and the owner must reside in a dwelling located on the property.
  4. Outside storage of materials shall be limited to an area no larger than 100 square feet and 6 feet in height. All material stored outside shall be screened from the public view.
  5. Deliveries to and from the property of materials and/or product shall be conducted upon the property to the greatest extent possible and cause the least possible interference with the normal flow of traffic for surrounding residents.
  6. Normal operations of the occupation shall not create excessive noise, dust, odors, light, or any other nuisance to adjacent property owners.
  7. Signage is limited to one unanimated, non-illuminated flat wall or window sign having an area of not more than two square foot.
  8. Cottage industries that have significant impacts to adjacent properties such as fumes, odors, noxious smells, excessive noise, dust, and/or traffic, shall require review and approval from the Board.
- E. With respect to oil and gas operations only, any activity which extends, expands or alters an existing well-bore which does not require the filing of an APD with the Colorado Oil and Gas Conservation Commission.
- 

#### **Section 6. Scope**

This regulation shall apply to the unincorporated area of Delta County.

---

#### **Section 7. Severability**

If any part of this regulation or the application thereof to any person or circumstance is held invalid, the remainder of the regulation shall not be affected.

---

#### **Section 8. Burden of Proof**

The burden of demonstrating compliance with these regulations, including the responsibility to submit complete and accurate application materials, rests with the applicant.

---

#### **Section 9. Intent to Not Duplicate Other Permit Processes or Requirements**

Delta County intends to avoid duplicative regulatory submittals or processes. Processing of applications for permits generally proceeds concurrently with other required state or federal agency permitting processes.

---



---

**Section 10. False or Inaccurate Information**

The Board may revoke approval of a development agreement if it is determined at a public meeting that the applicant provided information and/or documentation upon which approval was based, which the applicant, its agents, servants, or employees, knew or reasonably should have known was false, misleading, deceptive, or inaccurate; or if such false, misleading, deceptive, or inaccurate information and/or documentation was material to the decision of the Board (i.e., that the decision would have been different had the correct information been provided originally). The applicant and Planning Staff shall be provided with an opportunity to be heard at the public meeting prior to the Board rendering a decision whether or not to revoke a development agreement.

---

**Section 11. Amendments**

The Board of County Commissioners, the Planning Commission, Advisory Planning Committee(s), Planning Staff, or any individual may propose amendments to this regulation, including the performance standards. Proposed amendments may be adopted by the Board of County Commissioners following public meetings of the Advisory Planning Committees and Planning Commission and thirty (30) days notice by publication.

---

**Article II Applicability**

---

**Section 1. General**

From the date of adoption of this regulation, except as set forth below, no person or entity, including governmental entities, shall engage, cause, or permit any new or expanded specific development of the uses specified in Section 4 of this Article upon public or private land owned, controlled, occupied or used by such person or entity unless such proposal has been reviewed in accordance with the review procedures and performance standards outlined in this regulation and a Development Agreement has been issued by Board of County Commissioners. The Board may designate, by amendment to this regulation, certain developments which will be required to comply with separate specific performance standards, as set forth in appendices added to this regulation.

---

---

## **Section 2. Developments Upon Federal Lands**

An agency of the federal government developing on federal land shall be exempt from these regulations. With respect to all other developments on federal land which would constitute an activity requiring a development agreement, the developer shall comply with the requirements hereof for the purpose of identifying off-site impacts upon non-federal property within the unincorporated areas of Delta County. If, after review by the Planning Department, it is determined that such development would have no significant off-site impacts upon non-federal lands or resources, further review may be waived by the Board. If off-site impacts are identified, those off-site impacts must be mitigated to the extent possible within the County process, and the developer may be required to file an application for a specific development. The federal agency reviewing the proposed land use shall be notified with respect to those impacts as part of the National Environmental Protection Act (NEPA) process. This provision is not intended to grant the Board of County Commissioners the authority to deny a development agreement on federal land, nor to regulate activities or impacts for which no performance standards have been adopted or over which the County's authority is preempted by federal or state law.

---

## **Section 3. Developments within the Highway 92 and Highway 50 Overlay Districts**

Any proposed development other than single-family residential on lots greater than one (1) acre or more within the Overlay Districts as delineated by the Overlay District Maps attached to Appendix 2 shall comply with the corridor development standards specified in Appendix 2. Single-family residential developments with densities greater than one (1) dwelling unit per acre are to comply with "Section C. Utilities" and "Section E. Access and Parking" of the corridor development standards only. All structures within the Overlay Districts subject to compliance with the corridor development standards are required to be constructed to the 2003 International Building Code or the 2003 International Residential Code, whichever is applicable, as required by Delta County Resolution 2006-09. Proposed developments that engage in the commercial processing, fabrication, alteration, or manufacture of raw or semi-processed materials, manufactured goods or any component thereof or that are likely to create smoke, fumes, noise, odors, vibrations, or dust that have potential for negative impacts on any land use and are likely to be detrimental to the health, safety and welfare of the community are prohibited in the overlay district. Developments within the Overlay District will be processed as Minor Developments as delineated in Article IV Section 2 of this Regulation.

---

## **Section 4. Activities Requiring a Development Agreement**

### **A. Specific Development Activities**

1. Mineral resource extraction including, but not limited to, gravel pits, coal mines, oil and gas facilities operations. Oil and gas operations as defined herein shall be required to comply with the performance standards set forth in Appendix 1. Coal mine methane venting from a coal mine already permitted by the Colorado Division of Mined Land Reclamation shall be considered a minor development and processed under Article IV.

2. Minor oil and gas operation: A minor oil and gas operation, defined as follows, shall be required to comply with the performance standards set forth in Appendix 1, but will be subject to administrative review as set forth in Article IV, Review and Notice Procedures-Minor Developments. A minor oil and gas operation consists solely of one of the following:
  - (a) The installation or construction by one oil and gas operator of no more than two (2) wells, within one mile of each other, during the same calendar year, and there is no other well(s) existing or proposed within one mile of either of the proposed well(s); or
  - (b) The installation or construction by one oil and gas operator of no more than two (2) water collection lines or oil and gas gathering lines within one mile of each other during the same calendar year; or
  - (c) The installation or construction by one operator of storage yards and construction staging areas disturbing one acre or less, during the same calendar year.
  - (d) Any activity which extends, expands or alters the existing well-bore in a manner that requires the filing of an APD with the Colorado Oil and Gas Conservation Commission.

For purposes of determining if an oil and gas operation is a minor development, all proposed activities of the operator within unincorporated Delta County shall be taken into consideration.

3. Mineral processing including, but not limited to, reducing mills and oil refineries;
4. Airports and airstrips, both public and private;
5. Solid waste disposal sites;
6. Hazardous waste sites;
7. Salvage junk yards;
8. Utility facilities and major utility lines including, but not limited to, suppliers of electricity, water, sewer, natural gas, telephone and television. Facilities which shall be reviewed include, but are not limited to, substations, microwave towers, cell phone/PCS towers, wind generator towers, ham radio towers and wireless antennas (all towers under 40 feet tall are excluded from review), above ground storage tanks in excess of 40,000 gallons, underground storage tanks in excess of 50,000 gallons and electrical transmission lines of 46 kV and over. Service connections to residential homes including, but not limited to, underground telephone, water, sewer and electrical lines shall not be reviewed.
9. Commercial and/or industrial uses excluding home occupations/businesses and cottage industries as defined herein. A new commercial and/or industrial use located in a structure and/or land area where a commercial and/or industrial use has been operating shall require review if the impacts from the new use are substantially different than the impacts from the previous use;
10. Multi-unit buildings of more than three units;
11. Entertainment & recreational facilities including, but not limited to, movie theaters, public rodeo arenas, golf courses, public rifle ranges, outdoor music concerts, trap ranges and private big game hunting preserves excluding private guide and outfitting services;

12. Confined Animal Operations including but not limited to commercial feedlots, dairies, kennels, poultry and fur farms (Note – The rearing of livestock, where offspring are raised on the ranch or farm and are fed out is exempt from review.);
  13. Commercial slaughter and rendering facilities;
  14. Correctional facilities including, but not limited to, detention centers, halfway houses and alcohol-drug rehabilitation centers;
- B. Expansion of Listed Specific Development.** Any proposed expansion of specific developments listed in Section 4.A. of this Article shall be reviewed if any of the following criteria apply:
1. Expansion of the existing gross floor area of the building and/or structure by 25% or expansion of the land area of the actual business by 25% in any one year period or a total expansion of the existing gross floor area of the building and/or structure by 40% or expansion of the land area of the actual business by 40% in any continuous five year period.
  2. Subsurface or downhole expansions of coal mines which are already permitted by the Colorado Division of Mined Land Reclamation, a result of which the rate of production of said coal mine is anticipated to increase beyond the production rates which are presently permitted by the State; provided however, that such expansions shall be considered minor developments and subject to the administrative review provisions set forth in Article IV, below, so long as no additional surface area is disturbed.
- C. Abandonment of a Specific Development.** Any existing specific developments as listed in Section 4.A. of this Article that are not occupied or operated for a continuous period of two (2) years shall be considered to be abandoned. Any further use of the property shall be in compliance with all applicable provisions of this regulation.
- D.** Any activity listed in Section 4.A. of this Article that is temporary in nature and will not last more than one year may request a temporary use development agreement from the Board of County Commissioners. Application and submittal requirements shall be as outlined in Article III and Review and Notice shall be as outlined in Article IV of this regulation. All temporary use applications shall be processed administratively as outlined in Article IV Section 2.
- 

## **Article III Application and Submittal Requirements**

---

### **Section 1. Pre-Application Conference**

Any person who proposes a specific development in the unincorporated area of Delta County that includes any of the uses listed in Article II, Section 4 shall first request and attend a pre-application meeting with the Delta County Planning Department; this request can be fulfilled either in person or by phone. The Planning Staff shall explain the application, site plan requirements, performance standards and review procedures and estimate the time required to complete the process.

---

---

## **Section 2. Minor Specific Development**

With regard to activities that would otherwise be considered to be major specific development activities required for full Board consideration, the Delta County Planner may recommend to the Board that any proposed development should be considered as a minor development subject to the review and notice provisions set forth in Article IV, below, but such recommendation must be approved by the Board. With respect to any development that has been approved by the Board to be processed as a minor development, the Delta County Planner shall have the discretion to modify the requirements of the application consistent with the nature of the proposed development.

---

## **Section 3. Application**

The applicant shall submit an application which shall include, at a minimum, the following information. An applicant may substitute a copy of an application submitted to another federal, state or local agency for one or more of the following submittal requirements if it contains all of the information in those requirements and said information is highlighted.

Note: With respect to those submittal requirements that specifically relate to performance standards which will not be enforced by the County because of preemption or which do not have parallel performance standards, the applicant will be required to submit necessary documentation only as it becomes available to the applicant.

- A. A completed application cover sheet furnished by Delta County including the signatures of the applicant and property owner if different than that of the applicant.
- B. A description/operating plan of the specific development, including the general description of planned or future expansions, and a list of potential adverse and positive impacts on surrounding property owners and the community, along with a plan for how the adverse impacts will be mitigated. The applicant shall include a narrative which addresses each of the performance standards included in Article VI, Section 2, as well as performance standards included in any applicable appendix, specifically describing how each performance standard will be met, or why said standard is not applicable.
- C. A brief description of the existing land use and the general character of the use of land within ½ mile of the outside boundaries of the subject property.
- D. Description of land of the proposed specific development by legal description, street address and assessor parcel number that will readily identify and definitely locate the proposed site.
- E. Applicant's name, address and telephone number; if different than the applicant, the name of the owner of the property together with evidence that the owner is aware of, and consents to, the filing of the application. If applicable, the name, address and telephone number of the applicant's legally authorized representative, mortgagee and beneficiaries under deeds of trust shall also be given.
- F. The name and current address of the owner of the mineral rights upon which the proposed specific development is located.
- G. A brief description of any existing natural hazards on the land or within ½ mile thereof.

- H.** Copies of all local, state, and federal applications authorizing or required for the development, as well as any permits or approvals, when issued.
- I.** An analysis of existing wildlife and sensitive wildlife habitat, and evaluation of the impacts of the development on wildlife and sensitive wildlife habitat and proposed mitigation. If applicable, applicant will consult with the Colorado Division of Wildlife and the U.S. Fish and Wildlife Service.
- J.** A written description of the type, character, and density of existing and proposed vegetation on the development, and a summary of the impacts of the development on vegetation and proposed mitigation.
- K.** An assessment of wildfire hazards within one-half (1/2) mile of the development, and a plan for mitigating wildfire hazards.
- L.** An assessment of the geologic hazards within one-half (1/2) mile of the development, and a plan for mitigating geologic hazards.
- M.** An estimate of the construction costs and proposed method of financing of roads and related facilities, water and water distribution system, sewage and other waste handling facilities, storm drainage facilities and any other utilities as may be required of the developer for the proposed specific development.
- N.** An analysis of the impacts of the operation to public roadways within the County.
- O.** A map that identifies the ingress and egress route to, and within the parcel, and a narrative estimating the number and types of vehicles anticipated per day, including weights, that will travel over the route. The applicant shall furnish evidence of legal access for each development site.
- P.** If the development is one which could affect the quality or quantity of water in the general area of the development, the following information:
  - 1.** An inventory and location of all water wells, springs and streams within one (1) mile of the proposed development.
  - 2.** A description of existing water quality of all surface water, water wells and groundwater, if known, within one (1) mile of the development.
  - 3.** A description of potential impacts of the development to surface water, water wells and groundwater quality within one (1) mile of the development.
  - 4.** To the extent available, the following information:
    - (a)** Results of any quality or quantity baseline testing required by another governmental agency or otherwise performed by the applicant;
    - (b)** The hydrogeology of the area in which the development is to be located;
    - (c)** A description of any wastewater produced or to be removed from the development, and the process by which such wastewater shall be removed.
  - 5.** Identification of irrigation ditches and other water structures, ownership of water rights appurtenant thereto, and evaluation of any impacts to the structures, water rights or water quality.
- Q.** If applicable and not required under subsection G above, a copy of the applicant's proposed reclamation plan.
- R.** Visual Mitigation Plan.
  - 1.** A visual mitigation plan shall be required for any new development if:
    - (a)** The development is located within 350 feet of an existing residential dwelling, unless a waiver is obtained in writing from the homeowner; or



- (b) Public facilities, including public parks, schools, hospitals or similar facilities are within a 1000 foot radius of the facility; unless a waiver is obtained in writing from the County, school district, hospital association or other public entity; or
  - (c) The development is located within 200 feet of a maintained public road; or
  - (d) The development is visible from a designated scenic byway (West Elk Scenic Byway or Grand Mesa Scenic Byway).
2. The County Planner may waive the requirement for a visual mitigation plan if a plan is deemed unnecessary. Unless waived the plan should incorporate the following design information:
- (a) Scale drawing.
  - (b) Site boundary dimensions and descriptions.
  - (c) Existing and proposed contours and elevations.
  - (d) Existing conditions and site features that incorporate and surround said site to be developed.
  - (e) Existing and proposed access.
  - (f) Cross-section of existing and proposed contours, if applicable.
  - (g) Orientation and dimensions of proposed structures.
  - (h) Description of existing and proposed vegetation.
  - (i) Location, height and extent of perimeter berms, if applicable.
  - (j) Type, location and amount of mulch materials, if applicable.
  - (k) Type, location and height of fencing, if applicable.
  - (l) Drainage and run-off patterns and mitigation.
  - (m) Direction and type of lighting, if applicable.
- S. An emergency response plan that addresses fire protection and hazardous spills, including the name and contact information for the applicant's incident commander, proposed signage, access/evacuation routes, and health care facilities anticipated to be used. The plan shall include a provision to reimburse the appropriate emergency response service providers for costs incurred in connection with the emergency.
- T. A plan that identifies existing and proposed drainage patterns and the methods for controlling erosion during the construction and operation of the development.
- U. A written description identifying the type and density of noxious weeds on the development, and a mitigation plan listing control methods.
- V. A written description specifying all utilities and associated utility easements required for the development.
- W. Request for and documentation and support of any technical infeasibility waiver from the performance standards that the applicant may request pursuant to Article III, Section 7, below.
- X. A verified statement of the applicant with respect to its interests in the property, together with one of the following:
- 1. A current commitment for title insurance
  - 2. An Owner's and Encumbrances Report issued by a title company
  - 3. A copy of the deed, lease or permit under which the applicant proposes to conduct its activities plus documentation with respect to any other person or entity which may claim a legal or equitable interest in said property.
- Y. The applicant shall estimate the approximate time needed to complete the construction and development including the installation of all infrastructure.

- Z. Applicable to oil and gas gathering systems, transmission pipelines, compressors and other related equipment (service connection for residential homes/business not included): The applicant shall file with the application detailed descriptions of the pipelines, compressors and associated equipment, which include their anticipated size and specifications, together with a map and other drawing showing the location of the pipeline routes and associated equipment. Prior to construction of such facilities, the applicant shall file a copy of engineered plans and specifications with the size of pipelines, compressors and other related equipment. Such plans and specifications shall be consistent with the equivalent class location unit standards pursuant to DOT CFR 49, Part 192.5.
- 

#### **Section 4. Site Plan**

The applicant shall file with the application a site plan, which shall contain at a minimum the following:

- A. The total acreage and total development area.
  - B. The location, number and approximate dimensions of all buildings and other structures, storage yards, waste disposal areas, parking areas, major utility installations and other major features of the proposed specific development.
  - C. Roads, street, highways, easements, right-of-ways and utilities that will serve, cross or adjoin the proposed development.
  - D. Major physical features including irrigation and wastewater ditches, watercourses, drainages and location of natural hazards and their relationship to the proposed specific development.
  - E. Any additional requirements for the site plan that shall be determined during the pre-application conference.
- 

#### **Section 5. Site Visit**

Planning Staff shall complete an onsite inspection of the subject property at some time during the review process.

---

#### **Section 6. Additional Requirements**

The applicant shall address any additional items the Planning Department deems necessary to further clarify the proposed specific development or to mitigate a natural hazard or adverse impact.

---

#### **Section 7. Technical Infeasibility Waiver (Including Preemption)**

One or more of the performance standards set forth in Article VI, Section 2, and/or the performance standards included in any applicable appendix, may be waived if the applicant demonstrates to the satisfaction of the Board that it is technically infeasible to comply with the standard(s), or that the application of the standard by the County is preempted pursuant to state or federal law. To be granted a waiver from a standard for technical infeasibility, the burden is on the applicant to demonstrate the following by a preponderance of the evidence:



- A. No Technology Available: There is no technology generally available to conduct the development in compliance with the County standard, and the applicant will implement the best available technology to conduct the development in compliance with the County standard to the maximum extent feasible; or
  - B. Conflict with State or Federal Regulation (Preemption): Conduct of the development in compliance with the County standard would result in an irreconcilable operational conflict with a state or federal regulation, condition or requirement. For purposes of this regulation, an irreconcilable operational conflict includes any circumstance in which the County is prohibited from imposing its standard because of the existence and applicability of a state or federal law or regulation addressing the same standard.
- 

## **Article IV Review and Notice Procedures Minor Developments**

---

### **Section 1. General**

Applications for a Specific Development Agreement for proposed minor developments, as defined herein, shall be processed administratively by the Planning Department (Planning) upon approval of the Board, provided the information in the application establishes that the proposed use complies with the minimum performance standards for such developments as are set forth in these Regulations.

---

### **Section 2. Administrative Determination of Compliance**

Upon submittal, the Planning Staff shall review the application for completeness, containing all information, fees, and/or documentation required by these Regulations. This review shall be done within ten (10) working days. If the application is found to be complete, Planning shall then review the application for compliance with applicable standards and requirements, and also notify adjacent property owners and relevant review agencies as outlined in Article IV, Section 4 below. Planning shall complete this review within twenty (20) working days after an application has been found to be complete. Developments within the Highway 92 and Highway 50 Overlay Districts, as delineated by the Overlay District maps attached to Appendix 2, shall be reviewed as Minor Developments. Should the information in the application and any accompanying documentation establish that the proposed minor development will be constructed and operated in compliance with all applicable standards and requirements of these Regulations, then Planning shall request administrative approval of the application from the Board and permission to sign a Development Agreement with the applicant. Within ten (10) days of administrative approval for a minor development, Planning shall provide written notification of the decision to the applicant or its designated agent. Should Planning determine that the proposed minor development will not or cannot be constructed and operated in compliance with all applicable standards and requirements of these Regulations, and then it shall issue a written denial of the application, stating with specificity the grounds for its decision. Planning shall issue such written notifications within ten (10) days of administrative approval or denial and provide a copy of such approval or denial to the Board of County Commissioners, the County Attorney and the applicant. Within ten (10) days after notification of approval, Planning shall issue a Development Agreement for signature to the applicant. If it is determined after review of comments from adjacent property owners or other review agencies that there are

substantial impacts from the proposed development, then Planning shall review the application as a major development as outlined in Article V of these regulations.

---

### **Section 3. Appeal of Administrative Decision**

Any person aggrieved by the administrative decision on a minor development application may appeal the administrative decision to the Board by filing a written appeal with the Board within ten (10) days of the written notification of the Planning Department. For purposes of this regulation, a person aggrieved by an administrative decision shall include the applicant, the owner of the subject property, any person who is entitled notice under the provisions of Article IV, Section 4, below, or any member of the public who is able to demonstrate to the satisfaction of the Board that he, she, or it has been negatively impacted by such administrative decision. Such an appeal shall state with specificity the grounds for appeal. The Board shall consider and decide the appeal within thirty (30) days of its receipt, unless the aggrieved party requests a hearing, in which case it shall issue a decision within 14 days of the hearing.

Upon request of the aggrieved party, the Board shall provide it with an opportunity to be heard on such appeal. Should the aggrieved party request a hearing on its appeal, Planning shall be notified and given an opportunity to present evidence at the hearing. If the applicant has appealed an administrative denial, and during the course of the appeal provides satisfactory evidence that the proposed minor development complies with all applicable requirements of these Regulations, the Board shall approve the application forthwith. If the applicant under such circumstances fails to provide such evidence to the satisfaction of the Board, the Board shall deny the appeal.

---

### **Section 4. Public Notice Requirements**

Upon receipt of a completed application for a proposed minor development:

- A.** The Planning Department shall notify, by regular first class mail, all owners of property adjacent to the property upon which the proposed minor development is located, as well as any owners of property within 1,000 feet of the proposed development. In the case of “linear” developments, including by example gas and electrical transmission lines, only the owners of the properties over or in which the developments are located and property owners adjacent to those properties shall be notified. Substantial compliance is required with respect to this notification provision; minor oversights, errors or omissions shall not be considered grounds for nullifying the specific development review process.
- B.** A public notice with dates of any scheduled meetings shall be published in a newspaper of general circulation in Delta County that describes the proposed minor development and the property affected. The property shall be described by street address, or relationship to a street, other property with an address, or other landmarks, and not solely by a legal description.
- C.** Unless determined infeasible by the County Planner, the applicant shall obtain signage prepared by the Planning Department and post it on or near the proposed specific development no later than two (2) weeks prior to any scheduled public meeting. The sign shall be posted as to be visible from public roads adjoining or serving the proposed specific development.

---

### **Section 5. Development Agreement**

- A. Upon approval or approval subject to conditions of the proposed specific development, the Delta County Planner shall sign a Development Agreement. The Development Agreement shall be recorded in the records of Delta County and shall run with the land. The rights, obligations and limitations arising from or contained within the development agreement shall inure to and be binding upon the applicant and all successive owners of the subject property.
- B. When a development is approved subject to conditions, and some or all of those conditions must be fully complied with prior to the commencement of the actual specific development, the applicant/developer shall not begin construction or operation of the specific development until such time as the Delta County Planner or its designee informs the applicant/developer that they have complied with the requirements of the development agreement and they may proceed
- C. A Development Agreement may only be vacated by the Board of County Commissioners at the request of the original applicant or the current property owner upon a showing that the approved development will not take place, or that the development has been removed and abandoned.

---

## **Article V Review and Notice Procedures All Other Developments**

---

### **Section 1. Scheduling of Public Hearings/Meetings**

Upon receipt of a completed application, the Planning Department shall schedule the application for public meetings. Completed applications must be received at least twenty one (21) days prior to the appropriate Advisory Planning Committee meeting; applications received within twenty one (21) days of the Advisory Planning Committee meeting will be placed on the next month's agenda. All applications will be placed on the Planning Commission agenda in the same month as the Advisory Planning Committee meeting and on the Board of County Commissioners agenda within fourteen (14) days of the Planning Commission meeting if possible. If not possible, the application will be scheduled for the next available meeting after the fourteen (14) day time period.

---

### **Section 2. Public Notice Requirements** Upon receipt of a completed application:

- A. The Planning Department shall notify owners within 1,000 feet of the outside boundaries of the subject property and appropriate reviewing agencies by mail at least fourteen (14) days prior to the scheduled Advisory Planning Committee and/or Planning Commission meeting. In the case of "linear" developments, including by example gas and electrical transmission lines, only the owners of the properties over or in which the developments are located and property owners adjacent to those properties shall be notified. Substantial compliance is required with respect to this

notification provision; minor oversights, errors or omissions shall not be considered grounds for nullifying the specific development review process.

- B.** Unless determined infeasible by the County Planner, the applicant shall obtain signage prepared by the Planning Department and post it on or near the proposed specific development at least fourteen (14) days prior to the Advisory Planning Committee and/or Planning Commission meeting. The sign(s) shall be posted as to be visible from public roads adjoining or serving the proposed specific development.
- C.** A public notice shall be published in a newspaper of general circulation in Delta County at least ten (10) days prior to the Advisory Planning Committee and/or Planning Commission meeting that describes the specific development and the property affected. The property shall be described by street address, or relationship to a street, other property with an address, or other landmarks, and not solely by a legal description.
- D.** For Oil and Gas Gathering System and Transmission Pipeline Specific Development applications the following information shall be included in the public notice sent to the owners of the properties over or on which the developments are located, property owners adjacent to those properties, and owners of land within an area extending 220 yards on either side of the center line of the pipelines. Oil and Gas Gathering System Transmission pipeline locations are classified using the following two criteria:
  - (1) A “class location unit” is an area that extends 220 yards on either side of the centerline of any continuous one (1) mile running length of pipeline; and (2) Each separate dwelling unit in a multiple dwelling unit building is counted as a separate building intended for human occupancy.
  - 1. A Class 1 location is any class location unit that has 10 or fewer buildings intended for human occupancy.
  - 2. A Class 2 location is any class location unit that has more than 10 but fewer than 46 buildings intended for human occupancy.
  - 3. A Class 3 location is any class location unit that has 46 or more buildings intended for human occupancy. A Class 3 location is also an area where the pipeline lies within 10 yards of either a building or a small, well-defined outside area, outdoor theater, or other place of public assembly that is occupied by 20 or more persons on at least 5 days a week for 10 weeks in any 12 month period. (The days and weeks need not be consecutive.)
  - 4. A Class 4 location is any class location unit where buildings with four (4) or more stories above ground are prevalent.

The design requirements of the proposed gathering system/transmission pipeline could impact the nature and extent of any future development within the class location unit.

---

---

### **Section 3. Review and Approval Procedures**

#### **A. Advisory Planning Committee Review**

The application and comments generated by the Planning Department shall be forwarded to the appropriate Advisory Planning Committee for review at its next scheduled meeting. All applications received by the Planning Department shall be reviewed by the appropriate Advisory Planning Committee. The applicant or representative shall be required to attend the meeting and present the proposed specific development. Informal negotiations may take place under the direction of the Advisory Planning Committee. The Advisory Planning Committee shall submit its findings of the issues/impacts and possible impact mitigation measures to the Delta County Planner prior to the next regularly scheduled meeting of the Planning Commission.

#### **B. Planning Commission Review**

1. The Planning Commission shall receive a copy of the application, comments generated by the Planning Department and the findings of the Advisory Planning Committee.
2. The Planning Commission may place the application on the consent agenda and recommend the application to the Board of County Commissioners if the County Planner and the Planning Commission find that the development has minimal or no impact on adjacent properties.
3. The applicant or representative shall attend and present the application to the Planning Commission at a public meeting.
4. If the application presented to the Planning Commission substantially differs from the application previously submitted to the Advisory Planning Committee, the Planning Commission may refuse to review the application and instead send the application back to the appropriate Advisory Planning Committee for a second review.
5. The Planning Commission shall make a recommendation to the Board of County Commissioners to approve, approve with conditions or deny the application within fourteen (14) days of the public meeting or a time mutually agreed upon with the applicant. The Planning Commission may take the application under advisement for no longer than fourteen (14) days after the date of the public hearing before making a recommendation to the Board.

#### **C. Board of County Commissioner Review**

1. Within fourteen (14) days after receipt of the Planning Commission's recommendation the Board of County Commissioners shall review the proposed specific development at a public meeting. The applicant or representative shall be in attendance to present and answer any questions.
2. The Board of County Commissioners shall render a decision to approve, approve with conditions or deny the proposed specific development within fourteen (14) days of the public meeting held by the Board, unless extended by mutual agreement. A written resolution shall be adopted as its final action or decision on the application. This written resolution shall set forth findings based upon competent evidence on the record of proceedings before the Board and any applicable federal, state or County statutes, rules, regulations or policies. For purposes of judicial review, the Board's final action or decision on an application

shall be deemed to have been made as of the date upon which the Board executes this written resolution, which shall constitute the Board's final action or decision.

**3. Reconsideration. [Reserved]**

**D. Development Agreement**

1. Upon approval or approval subject to conditions of the proposed specific development, the Board of County Commissioners shall sign a Development Agreement. The Development Agreement shall be recorded in the records of Delta County and shall run with the land. The rights, obligations and limitations arising from or contained within the development agreement shall inure to and be binding upon the applicant and all successive owners of the subject property.
2. When a development is approved subject to conditions, and some or all of those conditions must be fully complied with prior to the commencement of the actual specific development, the applicant/developer shall not begin construction or operation of the specific development until such time as the Board or its designee informs the applicant/developer that they have complied with the requirements of the development agreement and they may proceed.
3. A Development Agreement may only be vacated by the Board of County Commissioners at the request of the original applicant or the current property owner upon a showing that the approved development will not take place, or that the development has been removed and abandoned.

---

**Article VI Performance Standards**

---

**Section 1. Scope**

The applicant and Board of County Commissioners shall use the performance standards contained herein and the Delta County Master Plan in designing, reviewing, evaluating and constructing new and expanding specific developments as listed in Article II, Section 4 in the unincorporated area of Delta County.

---

**Section 2. Performance Standards**

- A. Compatibility with Adjacent Land Uses** – Comments received from surrounding property owners, other interested persons and existing land use shall be among the factors considered to determine compatibility. The specific development must be consistent with the Delta County Master Plan and Advisory Planning Committees' addenda to the Delta County Master Plan. Density shall be computed using Section 2.7 C of the Delta County Subdivision Regulations and be compatible with surrounding land uses and densities.



- B. Federal, State and Local Regulations** - All developments shall comply with federal, state and local regulations applicable to the proposed development including, but not limited to, water quality (stormwater, point and non-point source, Clean Water Act), wetlands, air quality, noise, municipal solid waste, hazardous waste or any other industrial or commercial waste. The same is true for developments that require a state and/or federal process or permits.
- C. Financial Assurance** – The developer may be required to post a bond, letter of credit or other approved collateral mechanism if the Board of County Commissioners deems that financial assurance is required to complete reclamation or the construction of improvements or infrastructure related to issuing a Development Agreement.
- D. Financial Cost of Services Expected of the County Government** – Growth shall pay its own way; therefore developers shall be required to pay their appropriate share of the impact created on public facilities and infrastructure. The share of the impact and cost shall be determined according to standards and formulas designed to estimate the cost of growth in Delta County.
- E. Floodplains** – Developments within floodplains shall comply with Delta County Floodplain Regulations.
- F. Geology and Soils** – The proposed development shall be properly designed to avoid geologic hazards. Unless waived by the County, a geologic and soils report which identifies all potential geological problems shall be prepared by a Registered Professional Engineer in the State of Colorado or qualified geologist. The report shall address ground subsistence, expansive soils and rock analyses, as well the following potential issues: avalanche, landslide, rockfall, mudflow, debris fan, unstable and potentially unstable slopes, seismic effect, radon and radioactivity. If required by the county, the suitability of the site shall be assessed for individual sewage disposal systems, impacts and limitations for structures and any unusual drainage characteristics.
- G. Hooded Lighting** – Outdoor lighting shall be designed, installed and maintained to preclude and eliminate “light” pollution. In general only the premises of the development and access points relating thereto shall be illuminated.
- H. Irrigation Water and Ditch Easements** – Where irrigation and waste water ditches, pipelines, waterways or any other means of conveyance cross or adjoin the land proposed to be developed, adequate provisions shall be made to ensure that their use, including the maintenance thereof, will continue uninterrupted. Ditch rights of way shall be recognized and/or granted if not already established. Existing historical easements utilized to gain access to ditches, headgates and fences for maintenance shall be preserved or replaced with alternate easements suitable for a continuation of historic use. No development shall channel storm water or snowmelt runoff into any irrigation system without the written consent of the responsible irrigation entity.
- I. Noxious Weed Control** – It shall be the responsibility of developers to control noxious weeds on their land. The developer shall submit a noxious weed mitigation plan when infestations of noxious weeds are present or a potential for infestation exists.

**J. Nuisances –**

1. Proposed developments that may create noise, odor, glare or dust shall be required to have an adequate setback and be screened so as not to adversely affect surrounding property owners. Mitigation shall be accomplished through use of fences, planted berms, landscaped areas, hours of operation, residential mufflers, or a combination of these and/or other nuisance abatement techniques.
2. All industrial developments shall be located, designed, constructed, screened and conducted in such a manner that resultant cinders, dust, fumes, odors, smoke, liquid and solid waste, noise and other nuisances do not unreasonably impact surrounding lands.

**K. Off Road Parking and Loading Areas** – Developments shall be designed and constructed so that all parking shall be onsite. Off road loading areas shall be designed to be located on the same lot and under the same ownership as the use or building they serve.

**L. Open Space** – Where appropriate, the use of a cluster development as defined in Article VII, Section 2. shall be encouraged.

**M. Protection of Agricultural Operations** - Development shall not interfere with the normal operation of existing agricultural operations including, but not limited to, dairies, feed lots, fruit orchards, onion sheds, crop and livestock production and other agricultural activities.

**N. Provision of Adequate Water Supply, Sewage Disposal, Fire Protection, Access, Roads and Utilities.**

1. **Access** - An access permit from Delta County to access county roads and from the Colorado Department of Transportation to access state highways shall be required for all new development.
  2. **Water** - Evidence shall be provided that a potable water supply that is adequate in quantity, quality and dependability is available for the proposed development. Applicant shall identify and mitigate all negative impacts resulting from the proposed development with respect to the quality and quantity of water belonging to others.
  3. **Sewer** - Individual sewage disposal systems shall be approved by the Delta County Health Department or be connected to a public wastewater treatment facility.
  4. **Fire Protection** - The proposed development shall not create any undue risk of fire hazard. Fire protection measures shall comply with the recommendations of the local fire protection district and be in compliance with county regulations.
  5. **Roadways and Driveways** - Roadways and driveways in developments subject to review hereunder shall be constructed in compliance with the Delta County Roadway Design & Construction Standards.
  6. **Utilities** - Applicant shall identify and specify all utilities and associated utility easements to the site as specified by the utility providers.
- O. Runoff, Stormwater and Erosion Control** – A Registered Professional Engineer in the State of Colorado or a qualified hydrogeologist shall prepare a stormwater, drainage and erosion control plan to be implemented by the developer when;
1. A cumulative total of more than one acre of land with a slope of 8% or greater will be disturbed; or



2. More than 20,000 square feet of impervious surfaces will be created.

A Stormwater Discharge Permit issued by the State of Colorado is required for any development that disturbs more than one (1) acre of land, a copy of which shall be submitted to the Planning Department prior to commencement or construction of any specific development.

**P. Scenic Views –**

1. Developments within the view shed as defined by the West Elk Scenic Byway Corridor Management Plan for the West Elk Scenic Byway and within the view shed of Grand Mesa Scenic Byway shall be reviewed by the respective scenic byway committee. The comments received from the scenic byway committee shall be advisory only for use by each Advisory Planning Committee and the Planning Commission to incorporate in their findings and/or recommendations.

2. Development (building placement) on ridgelines with a direct effect on the skyline and/or blockage of view sheds from adjoining properties shall be mitigated.

**Q. Slopes –** No development shall be permitted on slopes of 30% or more, or other slopes identified as unstable, unless a Registered Professional Engineer in the State of Colorado or qualified geologist certifies that such development creates no significant hazard of slope failure or accelerated soil erosion.

**R. Streams/Rivers/Creeks –** A minimum of a twenty-five (25) foot setback measured from the existing banks shall be required unless extenuating circumstances call for more or less setback. Removal of vegetation along natural stream, river and creek banks within this setback will be discouraged.

**S. Wildfire Hazards –** Development in wildfire hazard areas shall be reviewed by the State Forester and local fire protection district. The developer shall create and implement a fire mitigation plan based on the recommendations received. All developments shall comply with all state and county regulations.

**T. Wildlife Corridors –** Development shall minimize the impediment of seasonal migration patterns of wildlife. A wildlife mitigation plan shall be required for an area identified as a critical wildlife corridor.

**U. Time Frame –** A mutually agreed upon time frame shall be established between the Applicant and Delta County to determine the time line for the completion of the construction and development including the installation of all infrastructures. One or more extensions may be granted by the Board of County Commissioners if extenuating circumstances have occurred which have resulted in substantial delays in completing the required improvements.

---

## **Article VII Definitions**

---

### **Section 1. General**

Definitions contained in the Delta County Subdivision Regulations, Article I, Section 9 and in Sections 24-65-102, 103 and 104, C.R.S., as amended, are hereby incorporated into this regulation. The following definitions are to be used in addition to or, where there are duplicates, in lieu of those definitions.

---

---

## **Section 2. Additional Definitions**

**Abandonment.** Presumption of permanent abandonment of a development shall be based upon non-use or operation for two years without notification to the Planning Department or manifestation of the owner/operators intent to resume operations under specified conditions.

**Antenna.** Equipment designed to transmit or receive electronic signals.

**CDOT.** Colorado Department of Transportation.

**Cluster Development.** A development design technique that concentrates buildings in specific areas on a site to allow the remaining land to be used for agriculture, common open space, recreation or preservation of environmentally sensitive areas.

**Commercial Feedlot.** A facility designed for the finishing of purchased livestock or finishing purchased livestock for others. For the purposes of this regulation, privately owned and operated livestock rearing operations, where offspring raised on the ranch or farm are fed out prior to sale, are considered an agricultural use and not commercial.

**Compatible.** Able to exist or act together harmoniously, considering noise levels, odors, potential fire hazard, visual impacts, effects to surface water and groundwater quality/quantity, adequacy of the road system, air quality and surrounding land uses.

**Compressor Station.** An installation consisting of one or more individual compressors located on a gathering or transmission line, or at a well site, or any combination of the three.

**Confinement Animal Operation.** A confined corral, pen, enclosure, building and/or structure in which animals are concentrated. For purposes of this regulation, rearing of livestock, where offspring raised on the ranch or farm fed out, is not considered a confinement animal operation.

**Cottage Industry:** See Article I Section 5.D.

**County Road.** Any road the County has legal title thereof and/or is responsible for the maintenance thereof.

**Developer.** The legal or beneficial owner(s) of a lot, parcel, or tract of land proposed for inclusion in a new or expanding specific development as listed in Article II, Section 4, including the holder of an option or contract to purchase.

**Development.** Development includes, but is not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating or drilling operations including, but not limited to, any of the foregoing specified activities, or combination thereof only to the extent as further defined and limited by the list of specific developments contained in Article II, Section 4 of this regulation.

**Development Agreement.** A written resolution or permit issued by the Board of County Commissioners and recorded in the records of Delta County setting forth in detail the terms and conditions of the Board of County Commissioner's approval of an application for specific new or expanded development.

**DOT.** The United States Department of Transportation.

**Facilities.** Any equipment, buildings, or combination thereof.

**Facility Site.** A site large enough to sufficiently contain the equipment, structures, and buildings needed for a specific type of activity.

Flowlines. Those segments of pipe from the wellhead downstream through the production facilities ending at:

In the case of gas lines, the gas metering equipment or,

In the case of oil lines, the oil loading point or LACT unit; or In the case of water lines, the water loading point, the point of discharge to a pit, or the injection well head.

Fur Farms. The raising of any animal for the purpose of producing pelts to be sold commercially or the raising of breeding stock for such commercial fur pelts.

Gas Facilities. Any collection of equipment that processes or compresses natural gas after production related activities are conducted at or near the well head and prior to a point where the gas is transferred to a carrier for transport.

Gathering System. A system consisting of gas/oil lateral and trunk pipelines (excluding flowlines) transporting oil and gas or other products derived from individual wells or an oil and gas collection system to a central facility or transmission pipeline.

Haul Route. A travel route designated to provide ingress and egress to the lot, parcel and/or track of land of the development within Delta County.

Hazardous Waste. Those substances and materials defined or classified as such by the Hazardous Waste Commission pursuant to 25-15-302, C.R.S.

Home Occupation/Business. See Article I Section 5.D.

Junk and rubbish, as used herein, shall include only junk, which for purposes of this regulation shall be defined as:

- (a) Outside storage of used tires (except as otherwise regulated pursuant to the Solid Wastes Disposal Sites and Facilities Act, Part I of Article 20 of Title 30, C.R.S., and any rules and regulations promulgated thereunder).
- (b) Abandoned or junk vehicle, defined as a vehicle that is inoperable or missing parts so that it is not maintained for driving and which by virtue of its condition cannot be or is not restored to an operable condition within ninety (90) days from the date of the rubbish complaint, but not including a vehicle which is stored within a completely enclosed building or screened.
- (c) Abandoned or junk mobile home and/or recreation vehicle that is inoperable or is missing parts so that it is not maintained as habitable living quarters and which by virtue of its condition cannot be or is not restored to habitable living quarters within ninety (90) days.
- (d) Worn out or discarded articles or materials, e.g. bottles, glass, cans, scrap metal, used/worn out vehicle parts, rubber, disposable packages or containers, paper, card board, furniture, carpet, construction debris, appliances and any combination thereof, disposed of on the ground and not stored within a completely enclosed building or screened. This material is not permitted to be stored in an abandoned or junk mobile home, recreation vehicle or vehicle.

Kennels. A facility in which four or more adult animals of the canine and feline species are housed, groomed, bred, boarded, trained or sold in return for compensation.

Land Use. The purpose for which any land, building or structure is designed, maintained, occupied or utilized; the basic character or nature of the occupation or utilization of land or a building.

Mining. The development or extraction of a mineral (including sand and gravel) from a naturally occurring deposit. The term shall include, but is not limited to, underground mining, open pit mining, strip mining, quarrying, dredging, surface operations, transportation of mineral, the disposal of refuse from mining, concentration of ores, milling, evaporation and other processing. Mining does not include the removal of loose surface stone that does not disturb the surface of the land.

Oil and Gas Collection System. A system consisting of gas/oil pipelines and flowlines for the transport and consolidation of oil, gas, and other hydrocarbon products from individual oil and gas wells and well production facilities to a gathering system or transmission pipeline, as defined herein.

Oil and Gas Lease. A document providing the legal right for exploration and development of oil and gas resources.

Oil and Gas Operations. The exploration for oil and gas, including the conduct of seismic operations and the drilling of test bores, the siting, drilling, deepening, recompletion, reworking, or abandonment of an oil and gas well, underground injection well, or gas storage well, production operations related to any such well including the installation of flowlines and gathering systems, the generation, transportation, storage, treatment, or disposal of exploration and production wastes; and any construction, site preparation, or reclamation activities associated with such operations.

Oil and Gas Operator. Any legal entity or person registered with the COGCC for oil and gas operations through COGCC forms 1 and 1A.

Pollution. The contamination or other degradation of the physical, chemical or biological properties of water, soil, or air, including change in temperature, taste, color, turbidity or odor, or such discharge of any liquid, gaseous, solid, radioactive or other substance into water, soil, or air as will, or is likely to, create a nuisance (see Article VI, Section 2.J.2.) or render such water or air harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

Poultry. Domestic fowl, including but not limited to chickens, turkeys, ducks, or geese raised for flesh, feathers or eggs.

Production Facilities. All storage, separation, treating, dehydration, artificial lift, power supply, compression, pumping, metering, monitoring, flowline, and other equipment directly associated with oil wells, gas wells, or injection wells.

Public Facilities. Equipment, buildings, structures, and grounds dedicated specifically for public use and/or to provide a collective public benefit; such as parks, recreation, education, and conductance of government.

Public Road. Any road to which the public has legal access to or the right to use; such as state, county, municipal, and federal roads.

Qualified Geologist and Hydrogeologist. A person who is a graduate of an institution of higher education that is accredited by a regional or national accrediting agency, with a minimum of thirty (30) semester or forty-five (45) quarter hours of course work in geology.

Reclamation. Act or process of restoring land to cultivation or other use.

Salvage Junk Yard. Any lot, site, building, or structure used primarily for any or all of the following purposes;

- A. The collection, storage, keeping, abandonment or sale of junk, whether of value or valueless.

- B. The collection, storage, keeping, abandonment or sale of metal parts or scrap metals or any other scrap materials whether of the same source or kind; and/or
- C. The collection, storage, or keeping for sale, exchange or abandonment of four or more automobiles and other motorized vehicles or parts thereof, or of any other machinery or parts thereof.
- D. Salvage junk yard does not include the storage of implements of husbandry, farm tractors, farm and ranch equipment or vehicles customarily operated in a farm or ranch operation.

Screen, Screened, or Screening. A method of visually shielding or obscuring one use from another by permanent construction and maintenance of six (6) foot high solid fences, earth berms or the use of densely planted landscaping materials to lessen the visual impacts on surrounding properties and roads. Fences (including gates) shall be constructed of materials and colors that blend with the surrounding landscape and whose vertical surface is covered by a solid or opaque material through which no complete visual images can be seen. Plastic and cloth that will deteriorate over time are not permitted as screening material.

Sewer Lines. Any pipe or conduit used to collect and carry away sewage or stormwater runoff from the generating source to treatment plants or receiving streams.

Site. A piece of land used for the placement of equipment and/or designated for a specific purpose.

Solid Waste. Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, air pollution control facility, or other discarded material; including solid, liquid, semisolid, or contained gaseous material resulting from industrial operations, commercial operations or community activities. Solid waste does not include any solid or dissolved materials in domestic sewage, or agricultural wastes, or solid or dissolved materials in irrigation return flows, or industrial discharges which are point sources subject to permits under the provisions of the "Colorado Water Quality Control Act", Title 25, Article 8, C.R.S., or materials handled at facilities licensed pursuant to the provisions on "Radiation Control Act" in Title 25, Article 11, C.R.S.

Solid Waste Disposal Site and Facility. All land and structures, other appurtenances, and improvements on the land used for disposal and final treatment of solid waste.

Structure. Anything constructed or erected that requires location on the ground or attached to something having location on the ground.

Transmission Line. Any electrical transmission line of 46 kilovolts or over and appurtenant facilities which emanate from a power plant or substation and terminate at a substation.

Transmission Pipeline. A pipeline transporting oil, gas or other products derived from oil and gas production, generally classified under DOT regulations.

Unincorporated Area. Land within Delta County that is not located within the corporate boundaries of a town or city.

Utility Facilities. Equipment and means of transportation necessary for providing utility services, such as electrical, consumer natural gas, telephone, other electronic transmission equipment, domestic water, septage or sewer. Linear development includes, but is not limited to, transmission pipelines, transmission lines, oil and gas gathering systems, flow liens, water collection systems, public sewer lines, public and private domestic distribution water lines and high pressure natural gas distribution pipelines.

Water Collection System. Flowlines from an oil or gas well designed to collect produced or waste water and transport it to central storage tanks (battery) or disposal area (evaporation pit or injection well).

Well Site. A site having areas directly disturbed during the drilling and subsequent operation of or affected by production facilities directly associated with any oil well, gas well, or injection well.

Wetland. Those areas that are inundated or saturated by surface or ground water (hydrology) at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation (hydrophytes) typically adapted for life in saturated soil conditions (hydric soils). Wetlands generally include swamps, marshes, bogs and similar areas.

---

## **Article VIII Other Provisions**

---

### **Section 1. Variances**

Variances from the listed specific new developments stated in Article II., Section 4, A. shall not be permitted. All other variances shall be administered as per the Delta County Subdivision Regulations, Article II, Section 12.

---

### **Section 2. Fees**

The fees required to process a specific development application shall be established annually by the Board of County Commissioners through a separate resolution.

---

### **Section 3. Enforcement and Penalties**

- A. It is the responsibility of the county attorney, under the direction of the Board of County Commissioners ("the Board"), to enforce the provisions of this regulation. In the event that there is no county attorney or in the event that the Board deems it appropriate, the Board may appoint a special county attorney or district attorney of the judicial district to perform such enforcement duties in lieu of the county attorney.
- B. In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered, or used, or any land is or is proposed to be developed or used, in violation of this regulation, the county attorney, 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, use, or development.



- C. It is unlawful to erect, construct, reconstruct, alter, or use or develop any building, structure, or land in violation of this regulation. Any person, firm, or corporation violating this regulation may be subject to the imposition, by order of the county or district court, of a civil penalty in an amount of not less than five hundred dollars nor more than one thousand dollars. Each day after the issuance of the order of the county court during which such unlawful activity continues shall be deemed a separate violation and shall, in accordance with the provisions of Section 30-28-124.5, C.R.S., as amended, be the subject of a continuing penalty in an amount not to exceed one hundred dollars for each such day. Until paid, any civil penalty ordered by the county court and assessed under this subsection (C) shall, as of recording, be a lien against the property on which the violation has been found to exist. In case the assessment is not paid within thirty (30) days, it may be certified by the county attorney to the county treasurer, who shall collect the assessment, together with a ten (10) percent penalty for the cost of collection, in the same manner as other taxes are collected. The laws of this state for assessment and collection of general taxes, including the laws for the sale and redemption of property for taxes, shall apply to the collection of assessments pursuant to this subsection (C). Any lien placed against the property pursuant to this subsection (C) shall be recorded with the clerk and recorder of Delta County.
- D. The Delta County Planner, or his designee, shall, upon personal information and belief that a violation of this regulation has occurred, give written notice to the violator to correct such violation within thirty days after the date of such notice. If the violator fails to correct the violation within such thirty-day period or within any extension period granted by the planner, the planner or his authorized representative may request that the county attorney issue a summons and complaint to the violator, stating the nature of the violation with sufficient particularity to give notice of such charge to the violator. One copy of the summons and complaint shall be served upon the violator in the manner provided by law for the service of a county court civil summons and complaint in accordance with the Colorado rules of county court civil procedure. The summons and complaint shall be filed with the clerk of the county or district court and thereafter the action shall proceed in accordance with the appropriate Colorado rules of civil procedure and Section 30-28-210, C.R.S., as amended.
- 

#### **Section 4. Expiration of Application**

- A. Applications are valid for a period of one (1) year from the date of submittal. If final approval or denial of a proposed development has not occurred within the one (1) year time frame due to the applicant's failure to complete the process, the application is deemed to be null and void unless an extension has been granted. The Planning Department will notify the applicant thirty (30) days prior to the expiration of the application. Applications that have expired will be required to be resubmitted with the appropriate fees to be reconsidered for approval.
-

---

**APPENDIX 1**  
**TO**  
**DELTA COUNTY REGULATION FOR SPECIFIC DEVELOPMENTS**  
AS AMENDED (Effective Date: April 4, 2005)

---

**PERFORMANCE STANDARDS FOR OIL AND GAS  
FACILITIES/OPERATIONS**

---

**INTRODUCTION**

The Board's decision to approve, conditionally approve, or deny an application for an oil or gas facility/operation in Delta County shall be made and determined based upon the compliance of the applicant with the following performance standards, to the extent applicable and relevant, and not waived based upon technical infeasibility. The burden shall be on the applicant to meet these standards to the satisfaction of the Board. These standards have been adopted in lieu of, and not in addition to, the standards of Article VI of the Master Regulation.

Any proposed oil and gas facility/operation, excluding well sites, must be compatible with existing uses and those which can be projected in the area in which the oil and gas facility is proposed. A facility's compatibility with land uses in the surrounding area, which the Board finds will be affected by its operation, shall be determined by the operator's ability to mitigate the impacts which it generates, as set forth in the facility operation plan, and in accordance with applicable county, state and federal rules, regulations and standards. Compatibility does not necessarily mean that a proposed use must be identical with neighboring uses.

The Board understands that based upon state and federal law, there are areas in which it does not have the legal right to establish and enforce performance standards, primarily where those standards are duplicative of state or federal regulations. In those cases, to require compliance with the standards does not presume the right of Delta County to enforce state or federal regulations, or County regulations which duplicate those of the federal or state government.

---

**OIL AND GAS FACILITY/OPERATIONS  
PERFORMANCE STANDARDS**

---

**A. Oil and Gas Wells and Well Sites:**

The following performance standards apply to the siting, construction and operation of oil and gas wells within Delta County.

---



---

**1. Access by Delta County Local Government Designee**

The Delta County Local Government Designee (LGD) shall have access to an oil and gas facility/operation for the purpose of determining compliance with these conditions. The Local Government Designee shall comply with all safety requirements and shall preserve the confidentiality of any proprietary information which becomes known to him. Delta County shall also comply with confidentiality requirements, as defined and to the extent stated in the Colorado Oil and Gas Conservation Commission (COGCC) rules and regulations.

---

**2. Emergency Response Requirements**

- a. Each operator with oil and gas facilities/operations in Delta County is required to provide an emergency response plan. The plan shall be filed with the County and updated on an annual basis or as conditions change (responsible field personnel change, ownership changes, etc.). The emergency plan shall consist of the following information, as a minimum:
- (1) Name, address and telephone number, including a 24-hour emergency number of at least two persons responsible for emergency field operations.
  - (2) An as-built facilities map showing the name, location, and description of all oil and gas facilities, including the size and type of all pipelines and isolation valves (note: isolation valves shall not be operated by anyone except the owner of the pipeline). The map shall be prepared either manually on U.S.G.S. 7.5 Minute Series maps (1"=2000'), or digitally on the County Geographic Information System Parcel Maps, if available. The as-built facilities map which includes the information regarding the location of isolation valves shall be held confidentially by the County's Emergency Management Staff and shall only be disclosed in the event of an emergency. The County's Emergency Management Staff shall deny the right of inspection of the as-built facilities map to the public pursuant to Section 24-72-204(3)(a)(IV), C.R.S. An operator who is new to Delta County and has no facility shall supply the information in this paragraph within six (6) months of commencement of operations.
  - (3) Provide a written response plan for the potential emergencies that may be associated with the operation of the facilities. This may include any or all of the following: explosions, fires, gas or water pipeline leaks or ruptures, hydrogen sulfide or other toxic gas emissions, or hazardous material vehicle accidents or spills.
  - (4) Project specific emergency response plans are required for any project that involves drilling or penetrating through known zones of hydrogen sulfide gas, as determined by the County's Emergency Management Staff. This plan shall be coordinated with and approved by the County's Emergency Management Staff prior to beginning field operations.

- b. Oil and gas facilities shall be located and designed so as to provide access by fire or other emergency response personnel and vehicles.
  - c. All storage tank batteries shall be bermed, subject to requirements placed on oil and gas facilities according to Colorado Oil and Gas Conservation Commission (COGCC) rules and regulations.
  - d. The operator shall obtain an address from the county before beginning any work on the site other than site analysis and surveying. The well site shall be incorporated into the E911 Emergency Reporting System.
  - e. The operator shall provide special training and on-site orientation at the drill site for personnel from the Fire District and/or the Delta County Hazardous Material Team. The operator agrees to furnish equipment (spill kit) to contain spills including drilling, completion and testing fluids on land and in watercourses to the Fire District personnel and/or the Delta County Hazardous Material Team in the event of a truck accident, spill and/or fire.
  - f. The operator shall become a member and pay any necessary fees of the applicable Ambulance Service prior to commencing operations to drill the well.
- 

### **3. Federal, State and Local Regulations**

- a. All oil and gas operations shall comply with federal, state and local regulations applicable to the proposed operations. An applicant is required to obtain federal or state permit approval(s) before the County can grant final approval. The County will process such an application under the County's normal procedures and timetable, but County approval will not become effective until all requisite state and federal permits are obtained.
  - b. An applicant shall inform the County of any notice of non-compliance by the appropriate authority concerning a state or federal permit within a reasonable time, not to exceed thirty (30) days from the applicant's receipt of such notice. The County may not, however, take any action with regard to a pending or existing development agreement different than the state or federal agency as a result of the alleged non-compliance with approvals issued by those agencies. The County may only suspend or revoke a development agreement as a result of a notice of non-compliance if the applicable federal or state agency has suspended or revoked its corresponding permit approval as a result of the alleged non-compliance. In the event that the County has suspended or revoked a development agreement in this circumstance, it must reinstate the development agreement when the applicable state or federal agency reinstates its corresponding permit for whatever reason.
  - c. By requiring such compliance herein, Delta County does not presume any absolute right to enforce state or federal regulations.
-

---

#### **4. Fire Protection**

- a. If the oil and gas facilities are located in a wildfire hazard area, the fire mitigation plan shall include detailed information as to fuel location, hazardous materials and proposed methods of fire suppression, including the use of foam. The operator shall comply with the recommendations (if any) of the Fire District to mitigate any fire hazards at the facilities.
- b. The operator shall comply with any state and local fire restrictions applicable to the property upon which oil and gas facilities will be located. If there is a County fire ban, no open flames should be allowed without additional approval of the Board of County Commissioners or its designee.
- c. For oil and gas facilities located outside the boundaries of a Delta County Fire Protection District, the operator shall agree to reimburse each Fire District for all costs of responding to and fighting any fire and/or emergency situation requiring the presence of the Fire District.

---

#### **5. Flood Plain**

- a. Oil and gas facilities that are located within, or partially within, a special flood hazard area shall comply with the requirements of the Delta County Flood Plain Regulations.
- b. No oil and gas operation shall result in the handling or storage of hazardous materials in a special flood hazard area. Any other outdoor storage permitted in a special flood hazard area shall be of materials that will not float, or that are confined by a fence or other means to prevent flotation.

---

#### **6. Impact on Agriculture**

- a. Irrigation Water and Ditch Easements. Where irrigation and waste water ditches, pipelines, waterways or any other means of conveyance cross or adjoin the land proposed to be developed, adequate provisions shall be made to ensure that their use, including the maintenance thereof, will continue uninterrupted. Ditch rights of way shall be recognized and/or granted if not already established. Existing historical easements utilized to gain access to ditches, headgates and fences for maintenance shall be preserved or replaced with alternate easements suitable for a continuation of historic use. No operator shall channel storm water, produced water or snowmelt runoff into any irrigation system without the written consent of the responsible irrigation entity.
  - b. Oil and gas facilities/operations shall not interfere with the irrigation of neighboring lands or alter any irrigation system without the written consent of the affected entity.
-

---

**7. Insurance and Financial/Performance Security**

- a. Liability Insurance. Each operator shall maintain general liability insurance for property damage and bodily injury to third parties as required by the COGCC, and such policy shall include Delta County as a certificate holder so that the County may receive advance notice of cancellation.
- 

**8. Notice/Exchange of Information**

The operator shall notify the County with respect to the following events:

- a. Upon the commencement of final reclamation of each well site or upon a request for waiver of final reclamation pursuant to Section 1001.C. of the Rules of the Oil and Gas Conservation Commission.
  - b. With respect to any sale, lease or other reassignment of the operating interest in the oil and gas facility/operation to another party, within thirty (30) days after the transfer.
  - c. Any permits obtained by operator from federal and state agencies pursuant to their regulations, e.g., stormwater discharge permit, including copies of said permits, as well as copies of written notices of any alleged violations of federal or state law received by operator concerning oil and gas operations in Delta County.
- 

**9. Off-Site Staging Area**

If an off-site staging area is required during the drilling, completion, and production of an oil and gas facility, the area shall be constructed and protected in the same manner as the access to the County road. Provided, however, if such staging area is accessed off a County road in a different location from the access to the oil and gas facility then an additional access permit shall be obtained prior to the use of the area. The staging area will be authorized for a period of one (1) year, but if required beyond that period, the operator shall file an application for its continuation under the Specific Development Regulations at least ninety (90) days before the year expires.

---

**10. Roads and Access (Applicable to roads over which Delta County has jurisdiction, such as public roads, but not to private, internal roads.)**

- a. Prior to commencing operations, the operator shall apply for and receive approval of a Delta County Access Permit and Road Use Permit for each oil and gas facility accessed off a County road.
- b. No other haul route than the route approved by the Board of County Commissioners or its designee may be used without written consent of the Board.

- c. Delta County shall determine the current condition of the County roads and if the roads will be able to handle the number and weight of proposed truck traffic. The operator shall agree to bond these designated haul routes in an amount determined necessary by the Board and return the road surfaces in equal or better condition after completion of drilling. The operator shall further comply with any regulations in place in Delta County which require a special use permit or a road use permit to cover the proposed operations of the operator. If Delta County determines the existing haul routes, or a portion thereof, are not able to handle the weight and number of truck traffic, the operator and Delta County will negotiate an agreement to determine the operator's share of any needed improvements.
  - d. With respect to roads over which the County may exert jurisdiction, the operator will endeavor to insure that texture and composition of any disturbed areas will be similar to that of the surrounding undisturbed ground. Exhumed rock that cannot be backfilled will be disposed of in a manner that is compatible with the surrounding area. Any areas that may be compacted or rutted by wheeled traffic, and other areas disturbed by construction, will be re-contoured and reseeded in a manner that minimizes the possibility of erosion.
  - e. The operator will avoid scheduling heavy truck traffic on County roads between October 1 and May 1 because of muddy conditions and frost heave. Operator will seek approval from the local Road & Bridge Foreman to use the roads during this period of time. If the operator cannot avoid using County roads for heavy truck traffic during this period of time, the Board may impose additional bonding requirements to remediate anticipated road damage.
  - f. To the extent that heavy truck traffic resulting from the operations of the operator will impact residential neighborhoods, the applicant will use its best efforts to minimize such heavy truck traffic between the hours of 11:00 p.m. and 6:00 a.m.
  - g. Operator shall control fugitive dust emissions from oil and gas operations on all access and County roads used as haul routes as part of oil and gas operations.
  - h. A drainage plan relating to the access roads will be prepared and submitted to the County.
- 

## **11. Security**

- a. Security arrangements, including fencing and locked gates for oil and gas facilities shall be as mutually agreed between the operator and the surface owner.
- b. Operator may be required by the County to construct a gate at the point of access to the County Road, so long as emergency vehicle passage is not restricted.
- c. Open-ended discharge valves on all storage tanks, pipelines, and other containers shall be secured where the facility site is unattended and/or accessible to the general public.

---

**12. Trash and Waste Removal**

- a. Oil and gas operations shall be conducted in such a manner that liquid and solid wastes and other nuisances are confined to the site or disposed of in compliance with any applicable county regulations so as to avoid any adverse impact on adjoining lands. An adequate container is required at each facility to handle municipal solid waste and construction debris. All other solid waste if intended for disposal at the Delta County Landfill will require approval of the Delta County Solid Waste Coordinator prior to disposal.
- b. Chemical toilets shall be required and shall be pumped and maintained in a sanitary condition by a contractor licensed by Delta County.

---

**13. Utilities and Utility Easements**

All utilities and associated utility easements required for oil and gas facilities/operations shall be provided to the site as specified by the utility providers.

---

**14. Visual Impact Mitigation**

The County may require reasonable vegetative screening requirements on well sites and associated infrastructure. In addition, permanent oil and gas facilities shall be located to avoid crossing hills and ridges or silhouetting to the extent reasonably possible.

---

**15. Noxious Weed Control**

- a. The operator shall be responsible for noxious weed control on oil and gas facility sites and roadways during construction and operation of the facility, until the COGCC reclamation bond is released or operation of the facility is terminated.
- b. The appropriate noxious weed control methods and species to be controlled shall be determined through review and recommendation by the Delta County Weed Coordinator.

---

**16. Time Frame**

A mutually agreed upon time frame shall be established between the applicant and Delta County to determine the timeline for the completion of the construction and development including the installation of all infrastructure. In the absence of a specific agreement otherwise, the applicable time frame shall be deemed to be two (2) years from the date of the approval by the Board of County Commissioners. One or more extensions may be granted by the Board.

---

---

## **B. Oil and Gas Gathering Systems and Transmission Pipelines:**

The following performance standards apply to the siting, construction and operation of gathering systems and transmission pipelines within Delta County, as defined in Article 7, Section 2 of the Regulation for Specific Developments.

---

### **1. Access by Delta County Local Government Designee**

The Delta County Local Government Designee (LGD) shall have access to an oil and gas facility/operation for the purpose of determining compliance with these conditions. The Local Government Designee shall comply with all safety requirements and shall preserve the confidentiality of any proprietary information which becomes known to him. Delta County shall also comply with confidentiality requirements, as defined and to the extent stated in the Colorado Oil and Gas Conservation Commission (COGCC) rules and regulations.

---

### **2. Emergency Response Requirements**

- a. Each operator with oil and gas facilities/operations in Delta County is required to provide an emergency response plan. The plan shall be filed with the County and updated on an annual basis or as conditions change (responsible field personnel change, ownership changes, etc.). The emergency plan shall consist of the following information, as a minimum:
  - (1) Name, address and telephone number, including a 24-hour emergency number of at least two persons responsible for emergency field operations.
  - (2) An as-built facilities map showing the name, location, and description of all oil and gas facilities, including the size and type of all pipelines and isolation valves (note: isolation valves shall not be operated by anyone except the owner of the pipeline). The map shall be prepared either manually on U.S.G.S. 7.5 Minute Series maps (1"=2000'), or digitally on the County Geographic Information System Parcel Maps, if available. The as-built facilities map which includes the information regarding the location of isolation valves shall be held confidentially by the County's Emergency Management Staff and shall only be disclosed in the event of an emergency. The County's Emergency Management Staff shall deny the right of inspection of the as-built facilities map to the public pursuant to Section 24-72-204(3)(a)(IV), C.R.S. An operator who is new to Delta County and has no facility shall supply the information in this paragraph within six (6) months of commencement of operations.



- (3) Provide a written response plan for the potential emergencies that may be associated with the operation of the facilities. This may include any or all of the following: explosions, fires, gas or water pipeline leaks or ruptures, hydrogen sulfide or other toxic gas emissions, or hazardous material vehicle accidents or spills.
  - (4) Project specific emergency response plans are required for any project that involves the handling or transport of hazardous material, as determined by the County's Emergency Management Staff. This plan shall be coordinated with and approved by the County's Emergency Management Staff prior to beginning field operations.
  - b. Oil and gas facilities shall be located and designed so as to provide access by fire or other emergency response personnel and vehicles.
  - c. All storage tank batteries shall be bermed, subject to requirements placed on oil and gas facilities according to Colorado Oil and Gas Conservation Commission (COGCC) rules and regulations.
  - d. The operator shall obtain an address from the county before beginning any work on the site other than site analysis and surveying. The oil and gas facility shall be incorporated into the E911 Emergency Reporting System.
  - e. The operator shall provide special training and on-site orientation at the project site for personnel from the Fire District and/or the Delta County Hazardous Material Team. The operator agrees to furnish equipment (spill kit) to contain spills including the testing of fluids on land and in watercourses to the Fire District personnel and/or the Delta County Hazardous Material Team in the event of a truck accident, spill and/or fire.
  - f. The operator shall become a member and pay any necessary fees of the applicable Ambulance Service prior to commencing operations to construct the facility or pipeline.
- 

### **3. Erosion Control**

- a. Upon the specific request of the County Planner or Board, in the exercise of its reasonable discretion, a Registered Professional Engineer in the State of Colorado or qualified geologist shall certify that any oil and gas facilities constructed on slopes of 30% or more shall not create any significant hazard or slope failure or accelerated soil erosion and submit a report to Delta County..
  - b. The operator will endeavor to insure that texture and composition of any disturbed areas will be similar to that of the surrounding undisturbed ground. Exhumed rock that cannot be backfilled will be disposed of in a manner that is compatible with the surrounding area. Any areas that may be compacted or rutted by wheeled traffic, and other areas disturbed by construction, will be re-contoured and reseeded in a manner that minimizes the possibility of erosion.
-



---

#### **4. Federal, State and Local Regulations**

- a. All oil and gas operations shall comply with federal, state and local regulations applicable to the proposed operations. An applicant is required to obtain federal or state permit approval(s) before the County can grant final approval. The County will process such an application under the County's normal procedures and timetable, but County approval will not become effective until all requisite state and federal permits are obtained.
- b. An applicant shall inform the County of any notice of non-compliance by the appropriate authority concerning a state or federal permit within a reasonable time, not to exceed thirty (30) days from the applicant's receipt of such notice. The County may not, however, take any action with regard to a pending or existing development agreement different than the state or federal agency as a result of the alleged non-compliance with approvals issued by those agencies. The County may only suspend or revoke a development agreement as a result of a notice of non-compliance if the applicable federal or state agency has suspended or revoked its corresponding permit approval as a result of the alleged non-compliance. In the event that the County has suspended or revoked a development agreement in this circumstance, it must reinstate the development agreement when the applicable state or federal agency reinstates its corresponding permit for whatever reason.
- c. By requiring such compliance herein, Delta County does not presume any absolute right to enforce state or federal regulations.

---

#### **5. Fire Protection**

- a. If the oil and gas facilities are located in a wildfire hazard area, the fire mitigation plan shall include detailed information as to fuel location, hazardous materials and proposed methods of fire suppression, including the use of foam. The operator shall comply with the recommendations (if any) of the Fire District to mitigate any fire hazards at the facilities.
  - b. The operator shall comply with any state and local fire restrictions applicable to the property upon which oil and gas facilities will be located. If there is a County fire ban, no open flames should be allowed without additional approval of the Board of County Commissioners or its designee.
  - c. For oil and gas facilities located outside the boundaries of a Delta County Fire Protection District, the operator shall agree to reimburse each Fire District for all costs of responding to and fighting any fire and/or emergency situation requiring the presence of the Fire District.
-

---

**6. Flood Plain**

- a. Oil and gas facilities that are located within, or partially within, a special flood hazard area shall comply with the requirements of the Delta County Flood Plain Regulations.
- b. No oil and gas operation shall result in the handling or storage of hazardous materials in a special flood hazard area. Any other outdoor storage permitted in a special flood hazard area shall be of materials that will not float, or that are confined by a fence or other means to prevent flotation.

---

**7. Geologic Hazard**

Oil and gas operations shall not cause a significant risk of geologic hazards.

---

**8. Impact on Agriculture**

- a. Irrigation Water and Ditch Easements. Where irrigation and waste water ditches, pipelines, waterways or any other means of conveyance cross or adjoin the land proposed to be developed, adequate provisions shall be made to ensure that their use, including the maintenance thereof, will continue uninterrupted. Ditch rights of way shall be recognized and/or granted if not already established. Existing historical easements utilized to gain access to ditches, headgates and fences for maintenance shall be preserved or replaced with alternate easements suitable for a continuation of historic use. No operator shall channel storm water, produced water or snowmelt runoff into any irrigation system without the written consent of the responsible irrigation entity.
- b. Oil and gas facilities/operations shall not interfere with the irrigation of neighboring lands or alter any irrigation system without the written consent of the affected entity.

---

**9. Insurance and Financial/Performance Security**

- a. Liability Insurance. Each operator shall maintain general liability insurance for property damage and bodily injury to third parties as required by the COGCC, and such policy shall include Delta County as a certificate holder so that the County may receive advance notice of cancellation.

- b. Performance Security. In addition to the requirements of Section 12.c., concerning road bonds, the operator shall provide one form of the following security to assure compliance with mitigation requirements set forth in these regulations and specific conditions of approval for oil and gas gathering lines and transmission lines. Five thousand dollar (\$5,000.00) performance bond for each oil and gas facility up to a maximum of fifty thousand dollars (\$50,000.00) Countywide blanket bond for all facilities operated by the applicant within the County; irrevocable letter of credit; or equivalent financial security acceptable to the County.
  - c. For purposes of this section a “facility” is defined as: (1) Any collection of equipment that processes or stores produced oil and/or gas after production related activities are conducted at or near the well head, or (2) Each five (5) miles, or a fraction thereof, of a transmission pipeline which is part of the gathering system for oil and/or gas production. A combined oil and gas facility shall be counted as a single facility.
- 

#### **10. Notice/Exchange of Information**

The operator shall notify the County with respect to the following events:

- a. Upon the commencement of final reclamation of each project or facility installation or upon a request for waiver of final reclamation pursuant to Section 1001.C. of the Rules of the Oil and Gas Conservation Commission.
  - b. With respect to any sale, lease or other reassignment of the operating interest in the oil and gas facility/operation to another party, within thirty (30) days after the transfer.
  - c. Any permits obtained by operator from federal and state agencies pursuant to their regulations, e.g., stormwater discharge permit, including copies of said permits, as well as copies of written notices of any alleged violations of federal or state law received by operator concerning oil and gas operations in Delta County.
- 

#### **11. Off-Site Staging Area**

If an off-site staging area is required during the construction and operation of an oil and gas facility, the area shall be constructed and protected in the same manner as the access to the County road. Provided, however, if such staging area is accessed off a County road in a different location from the access to the oil and gas facility then an additional access permit shall be obtained prior to the use of the area. The staging area will be authorized for a period of one (1) year, but if required beyond that period, the operator shall file an application for its continuation under the Specific Development Regulations at least ninety (90) days before the year expires

---

---

## **12. Roads and Access**

- a. Prior to commencing operations, the operator shall apply for and receive approval of a Delta County Access Permit and Road Use Permit for each oil and gas facility accessed off a County road.
- b. No other haul route than the route approved by the Board of County Commissioners or its designee may be used without written consent of the Board.
- c. Delta County shall determine the current condition of the County roads and if the roads will be able to handle the number and weight of proposed truck traffic. The operator shall agree to bond these designated haul routes in an amount determined necessary by the Board and return the road surfaces in equal or better condition after completion of drilling. The operator shall further comply with any regulations in place in Delta County which require a special use permit or a road use permit to cover the proposed operations of the operator. If Delta County determines the existing haul routes, or a portion thereof, are not able to handle the weight and number of truck traffic, the operator and Delta County will negotiate an agreement to determine the operator's share of any needed improvements.
- d. The operator will avoid scheduling heavy truck traffic on County roads between October 1 and May 1 because of muddy conditions and frost heave. Operator will seek approval from the local Road & Bridge Foreman to use the roads during this period of time. If the operator cannot avoid using County roads for heavy truck traffic during this period of time, the Board may impose additional bonding requirements to remediate anticipated road damage.
- e. To the extent that heavy truck traffic resulting from the operations of the operator will impact residential neighborhoods, the applicant will use its best efforts to minimize such heavy truck traffic between the hours of 11:00 p.m. and 6:00 a.m.
- f. Operator shall control fugitive dust emissions from oil and gas operations on all access and County roads used as haul routes as part of oil and gas operations.
- g. A drainage plan relating to the access roads will be prepared and submitted to the County.

---

## **13. Security**

- a. Security arrangements, including fencing and locked gates for oil and gas facilities shall be as mutually agreed between the operator and the surface owner.
- b. Operator may be required by the County to construct a gate at the point of access to the County Road, so long as emergency vehicle passage is not restricted.
- c. Open-ended discharge valves on all storage tanks, pipelines, and other containers shall be secured where the facility site is unattended and/or accessible to the general public.

---

**14. Trash and Waste Removal**

- a. Oil and gas operations shall be conducted in such a manner that liquid and solid wastes and other nuisances are confined to the site or disposed of in compliance with any applicable county regulations so as to avoid any adverse impact on adjoining lands. An adequate container is required at each facility to handle municipal solid waste and construction debris. All other solid waste if intended for disposal at the Delta County Landfill will require approval of the Delta County Solid Waste Coordinator prior to disposal.
- b. Chemical toilets shall be required and shall be pumped and maintained in a sanitary condition by a contractor licensed by Delta County.

---

**15. Utilities and Utility Easements**

All utilities and associated utility easements required for oil and gas facilities/operations shall be provided to the site as specified by the utility providers.

---

**16. Visual Impact Mitigation**

- a. Gathering systems and transmission pipelines shall be located to avoid crossing hills and ridges or silhouetting, to the extent reasonably possible.
- b. When clearing trees and vegetation for construction of oil and gas facilities, the operator shall feather and thin edges of vegetation.
- c. The operator shall align access roads to follow existing grades and minimize cuts and fills.
- d. The operator shall minimize damage to existing trees and vegetation.
- e. Utilities
  - (a) For utility corridors: varying the visual line created in the landscape to match the existing terrain and vegetation.
  - (b) New utility distribution lines serving oil and gas facilities shall be underground. EXCEPTION: This requirement may be waived where geologic or hydrologic conditions prohibit underground installation.

---

**17. Noxious Weed Control**

- a. The operator shall be responsible for noxious weed control on oil and gas facility sites and roadways during construction and operation of the facility, until the COGCC reclamation bond is released or operation of the facility is terminated.
- b. The appropriate noxious weed control methods and species to be controlled shall be determined through review and recommendation by the Delta County Weed Coordinator.

---

## **18. Wildlife**

When an oil and gas facility is located within a critical wildlife habitat or wildlife migration corridor, the following mitigation measures shall be considered in the site-specific wildlife mitigation plan required under Article III, Section 2.H. :

- (1) Avoid construction activities during critical use periods. (Examples: near eagle nests during nesting, on big game winter ranges during winter, and during big-game hunting seasons.)
- (2) Avoid conducting on-site operation and maintenance activities during critical use hours.
- (3) Confine vehicular access to established roads except under emergency circumstances.
- (4) Install gates that can be locked at first property boundary crossed when accessing facility from closest public road.
- (5) Conduct work in streams in a manner that minimizes siltation and erosion and at a period of little or no flow.
- (6) Place pipe below channel scour depths in streams and rivers to avoid partial diversion or channel discharges.
- (7) Stabilize excess material at stream and river crossings in place or remove offsite.
- (8) Complete fueling and lubrication of construction equipment away from aquatic environments.

---

## **19. Time Frame**

A mutually agreed upon time frame shall be established between the applicant and Delta County to determine the timeline for the completion of the construction and development including the installation of all infrastructure. In the absence of a specific agreement otherwise, the applicable time frame shall be deemed to be two (2) years from the date of the approval by the Board of County Commissioners. One or more extensions may be granted by the Board.

---

## **20. Construction Standards/Disclosure**

Upon completion of the project, but prior to placing it in service, the applicant shall provide a certification signed by the individual applicant or, if the applicant is a company, by one of its officers, that the improvements were constructed in accordance with the plans, specifications and drawings submitted with the application (as the same may have been amended), and that any natural gas gathering or transmission pipelines conform to the requirements of the equivalent class location units as defined by DOT CFR 49, Part 192.5.

---

---

**APPENDIX 2  
TO  
DELTA COUNTY REGULATION FOR SPECIFIC DEVELOPMENTS  
AS AMENDED (EFFECTIVE DATE: August 1, 2009)**

---

**DELTA COUNTY CORRIDOR DEVELOPMENT STANDARDS**

---

**INTRODUCTION**

The purpose of these development standards is to ensure the health, safety, and welfare of the citizens of Delta County as development occurs along major highways leading into the City of Delta. The following standards apply to developments within those areas delineated by the Overlay District maps attached to this Appendix 2 and by reference made a part hereof.

---

**Section 1. Standards**

**a. General Conditions**

1. All new structures constructed within the overlay districts shall comply with these standards. Single-family residential homes on lots greater than one acre exclusive of easements, agricultural buildings, and structures less than 200 square feet in size are exempt from these standards.
  2. All structures, except those exempt in 1. above, shall be constructed in compliance with the 2003 International Building Code or the 2003 International Residential Code, whichever is applicable, as required by Delta County Resolution 2006-09, as amended.
- 

**b. Site Considerations**

1. A minimum 40 foot setback is required from all right-of-ways along highways and arterial streets and 25 feet from all other property lines. Greater setback distances are encouraged.
2. Internal drives shall be designed to avoid traffic stacking and promote smooth flow throughout the development.
3. Signs may be located within the landscaped area but shall be located outside of site triangles. No sign may exceed fifteen (15) feet in height and may not exceed 150 square feet in size nor utilize more than 2 sign faces. Signs on buildings are limited to one per building facade.
4. The use of berms and landscaping is preferred over walls and fences for screening purposes. Fencing may be used to screen developments from view of the public right-of-way, but no fence or wall may exceed six (6) feet in height.
5. Outdoor storage areas shall be located so that they are not visible from the public right-of-way or shall be screened from view by utilizing either walls, fencing and/or landscaping.

---

**c. Utilities**

1. All utilities are to be installed underground.
2. All developments that have a structure within 400 feet and a property line with 200 feet of a main sewer line must connect to the City of Delta municipal sewer system at the developer's expense. Single-family residential developments with a density greater than one (1) dwelling unit per acre are required to connect to the municipal sewer system. Developments may utilize a septic system with County approval if no sewer is available but shall be required to connect to the municipal system at such time as services are available.
3. All developments must connect to an existing Domestic Water System.
4. All developments are required to submit a Fire Mitigation Plan to Delta County. Fire hydrants are required if there are adequate water lines to the development. If no water lines are available at the time of development, then the developer will be required to escrow a specified sum of money until such time that the hydrant can be installed.

---

**d. Building Elements**

1. All buildings that face public right-of-ways shall have at a minimum 25% of the façade constructed of masonry, stucco, or stone veneer. Sides of the building shall have at a minimum 20% of the façade constructed of the same material. If the rear of the building faces a residential development or public right-of-way, 20% of the façade shall also be constructed of the same material as the front and sides. This standard shall not apply to the rear of the building if the rear of the building does not face a residential development or public right-of-way.
2. Roof breaks must occur on all pitched roofs in the form of gables or dormers and must have a two (2) foot minimum eave.
3. All mechanical equipment must be screened from view from the public right-of-way by either incorporating the equipment into the overall form of the building or by screening material consistent with the rest of the building.
4. Windows shall not utilize more than 60% of any building façade and shall not be reflective in nature.
5. All building colors shall be earth tone. Accent colors will be considered on an individual basis but shall not be the primary focus of the building color scheme. Colors and building styles as part of an overall project design will be permitted after review.
6. All trash containers shall be screened from view by enclosures or screen walls utilizing materials consistent with the primary material of the building.
7. Loading areas and docks shall be located at the rear of buildings and should be screened from view to the greatest extent possible.



8. All outside lighting shall be hooded and directed towards the ground so that there will be no off-site glare. All lighting in parking areas shall be directed towards the ground and shall not exceed 1 candle power of illumination measured at 5 feet above ground level.
- 

**e. Access and Parking Areas**

1. No new accesses or direct access from State Highways to developments will be allowed unless no other access is available and an Access Permit is issued by CDOT. All developments must access from frontage, backage or County roads. An access permit from Delta County is required for all new developments.
  2. Shared access to adjacent developments is encouraged. Internal traffic designs are required for larger developments and shall be designed so as to allow future development to utilize the road if possible. Connecting accesses between developments is required to allow for movement between projects without utilization of County roads.
  3. All access roads shall be paved to Delta County Standards as stipulated by the Delta County Roadway Design and Construction Standards. Approval for all new roads is required from the Delta County Engineering Department.
  4. All parking areas are to be paved and striped. The number of parking spaces required shall be appropriate for the proposed use and will be determined during the review process.
  5. All parking areas shall be located behind a landscaped area and not immediately adjacent to any street or highway.
  6. Handicap parking spaces are required for all commercial/retail developments at a rate of 1 handicap space per every 25 spaces provided or any part thereof.
  7. Parking islands may be utilized but are required to be either landscaped or constructed to blend in with the material the main building is constructed of (pavers, bricks, etc.).
- 

**f. Landscaping**

1. Landscaping shall be installed to a minimum 15 foot depth along all highways, frontage roads, and all other streets excluding driveways and sidewalks. Sidewalks and walkways may be incorporated into the landscape area but may not reduce the width of the required landscaping.
2. Water conservation and Xeriscape landscape techniques are encouraged. Use of native species of trees, shrubs and grasses are strongly encouraged. Non-living ground cover such as rock or gravel may be used on no more than 40% of the required landscape area.
3. All landscape areas are required to be irrigated with an automatic watering system.

4. All planted trees must be at least four (4) feet in height at the time of planting and shall be planted at an average minimum of 1 tree for every 35 feet of linear highway or street frontage. Trees may be clustered but must meet the average minimum requirement. At least three (3) shrubs shall be planted for every 500 sq. ft. of landscaped area in addition to trees.
5. Berms are encouraged to add screening and add dimension to the landscaped area, slopes of berms should be no greater than 4:1.
6. Retaining walls, when required due to site considerations by the developer or as part of the overall design of a project, shall be constructed of materials and colors consistent with the primary material of the building, other materials will be reviewed on a case by case basis, no retaining wall shall be more than four (4) feet in height.
7. All plants must be maintained in a living condition for the duration of the development. All non-living plants must be replaced within the current or next growing season, whichever is applicable.



# ***DELTA COUNTY MASTER PLAN***

***FINAL DRAFT***

***OCTOBER, 1996***

Over the past two years, the citizens of Delta County have been involved in a grassroots planning process to revise the 1990 Delta County Master Plan. The primary purpose of this effort was to address the impacts of growth on the rural lifestyle and natural resource base of Delta County. The approach considered resource conservation and management as the basis for planning in Delta County rather than traditional urban planning models.

The process divided the County into seven planning areas based on watersheds and communities within each watershed. Citizens within each planning area volunteered to serve on a resource team. Each team defined its community vision, identified its natural and human resources and recommended strategies to achieve the vision for its desired social and physical landscape. Public meetings were held throughout the process in each planning area to get input from area residents.

The revised Delta County Master Plan is the result of this grassroots effort and addresses the five concerns shared by all seven planning areas. The Plan may not incorporate all of the desires and recommendations of each planning area, but it does represent the common ground among them.

The revised Delta County Master Plan will serve as an advisory document to guide both public and private entities in making sound decisions, based on a shared community vision for the future growth and development of Delta County.

## ***PUBLIC HEARING SCHEDULE***

The Delta County Planning Commission, Future Growth Steering Committee and Planning Area Committees will host public hearings on the draft of the Revised Delta County Master Plan on the following dates.

<i><b>Area</b></i>	<i><b>Date</b></i>	<i><b>Time</b></i>	<i><b>Location</b></i>
Escalante Planning Area	Tues., Nov. 12, 1996	7:00 p.m.	Delta High School Commons
Peach Valley Planning Area	Tues., Nov. 12, 1996	7:00 p.m.	Delta High School Commons
Uncompahgre Planning Area	Tues., Nov. 12, 1996	7:00 p.m.	Delta High School Commons
Crawford Country Planning Area	Wed., Nov. 13, 1996	7:00 p.m.	Crawford Town Hall
Surface Creek Planning Area	Tues., Nov. 19, 1996	7:00 p.m.	Cedaredge Com. Center
Leroux Creek Planning Area	Wed., Nov. 20, 1996	7:00 p.m.	Memorial Hall, Hotchkiss
Upper North Fork Planning Area	Thurs., Nov. 21, 1996	7:00 p.m.	Paonia Town Hall

## **INTRODUCTION**

The Delta County Master Plan is a blueprint for the County's future. It is a tool for providing coordinated guidance and direction for meeting such challenges as population and economic growth, provision for public services and natural resource protection. The Master Plan provides a look at the natural resources and infrastructure of Delta County; at the issues, needs and opportunities the County and its citizens are facing; and recommended activities the County can undertake to implement citizens' visions for the future of this area.

In 1990, Delta County adopted a Master Plan to guide future growth and development in the unincorporated area of Delta County. At that time, the County's population was less than in 1980. The County's economy is just beginning to recover from the mining bust and agricultural decline of the mid-80's. The 1990 Master Plan set forth broad based goals and objectives addressing the future growth and development but it did not suggest or recommend implementation strategies to realize the goals or objectives of the Plan.

Since 1990, Delta County has experienced considerable growth. In 1994, a citizens' ad hoc committee conducted two series of meetings throughout the County to discuss the impacts of growth on the rural landscape and quality of life. At the conclusion of the meetings, the ad hoc committee submitted recommendations to the Board of County Commissioners. One recommendation was to review and revise the 1990 Master Plan to address the County's current issues and to provide a framework for planning the future of Delta County.

Any plan is only a prologue. Its usefulness lies in its implementation. What is essential therefore, is the willingness of the community to concern itself with its own future. Building on that concern, the Master Plan can be a catalyst for responsible and productive measures to guide the changes that inevitably will come.

Finally, a master plan is an advisory document only and has no regulatory or restrictive powers. It is not written in stone but is meant to be evaluated by the community at large at least every five years to reflect changing circumstances within the community.

## **PART ONE**

### **COMMUNITY PROFILE AND PLANNING PROCESS**

Part I contains a general profile of Delta County as it exists today and a description of the planning process that was utilized to revise the 1990 Delta County Master Plan. The community profile provides a very broad snapshot of the current conditions and resources within the County and describes some of the current growth trends. The planning process outlines the two year citizen-based process that addressed three questions: (1) what does the County look like today? (2) what does the County want to look like in the future? and (3) how will the County accomplish its vision for the future?

### **COMMUNITY PROFILE**

#### **Geographic Resources**

Delta County is located in the west central part of Colorado and has a land area of 1,157 square miles. The County has unique and diverse land forms and a varied topography: flattop mesa and "adobe" badlands, river canyons, flat irrigated farm lands, and high mountain peaks. Elevations range from 4,750 feet in the Gunnison River Valley to well over 11,000 feet in the West Elk Mountains. Escalante and Dominguez Canyons are outstanding landscape features to the west, and Grand Mesa dominates the northern landscape at an elevation of 10,000 feet.

The North Fork of the Gunnison River enters the County from the east, the Gunnison River and the Uncompahgre River flow from the south. These rivers and their tributaries provided a force that helped shape and enrich the character of the unique land forms cut from the geologic landscape of Delta County.

#### **Economic Resources**

Traditionally, Delta County's economy has been based on agriculture and mining. Earnings: from mining employment within Delta County have declined by more than 50% within the past decade as a result of mine closures and the implementation of technological efficiencies within the industry. Agriculture has cushioned the busts of the mining industry and agriculture remains the mainstay of the County's economy. But it is challenged by declining cattle market prices and pressures from population growth.

Delta County now is facing a transition from its traditional resource-based industries of agriculture, mining and timbering to the "New West" economy of tourism and recreation. Wedged between the resort areas of Aspen, Crested Butte, and Telluride, the County is experiencing an in-migration of urbanites and more tourists. This is bringing economic opportunities, but at a price: it will inevitably change the County's social fabric and rural landscape.

### **Population Resources**

The County experienced its first significant population growth in the 1970s. This was followed by a decline in the latter half of the 1980s caused by mine shutdowns in the North Fork Valley. Now the County is growing again: Since 1990 its population has shot up by nearly 20 percent, to 25,023 from 20,980. The new residents are retirees, "lone eagle" telecommuters, service employees who cannot afford to live where they work, and "baby boomers" seeking a better quality of life.

The County's Hispanic community also is growing. About 6,000 Hispanic farm workers now reside in the Delta and Montrose areas. Farm workers used to come for the harvest season and then return to Mexico. Now, they stay because of the growth of the winter job market in the region's ski resorts.

#### **Natural Resources**

Delta County has a variety of natural resources which have been the basis for its economy over time. 55 percent of the County's 740,000 acres of land is federally owned and managed by the Grand Mesa, Uncompahgre and Gunnison National Forest and the Uncompahgre Resource Area of the Bureau of Land Management. Early settlers in Delta County developed and improved the land in order to irrigate fields for produce, fruit orchards and cattle ranching: Over the years other farm products (sugar beets, barley, broccoli, and poultry) have been introduced. Today, of the 330,900 privately owned acres, most remain in some form of agricultural production - either fruit orchards, row crops or pasture. This has led to an agricultural diversity within the County and has allowed the County to be a major producer of agricultural products within the State.

Two other natural resources have played an important role in the history of Delta County: forests and coal. National forestry began in 1893 with the establishment of the Battlement Mesa Forest Reserve. This area was later divided to establish the Grand Mesa National Forest and the Gunnison National Forest. Today, controlled grazing, lumber production and a multitude of recreational opportunities abound on the national forests within Delta County. Coal mining has been cyclical in nature, but current mine production in the North Fork Valley is at its highest production level, although mining employment has declined due to technological efficiencies within the industry.

Wildlife is another natural resource that adds value to the rural character of Delta County and contributes significantly to the local economy particularly during hunting seasons: The Division of Wildlife has estimated that the total economic value of wildlife exceeds \$18 million annually for Delta County.

## **Cultural Resources**

Delta County has a history rich in Indian lore, mining, railroads and agriculture. Preservation of the cultural heritage of this area has been identified as an important value and is ensured by a variety of initiatives: Delta County has two state designated Scenic and Historic Byways. Both Scenic Byways are developing corridor management plans to provide for the protection and interpretation of the cultural heritage and natural resources of the areas.

Local communities are trying to capture tourists by marketing the history and cultural heritage of the area. Pioneer Town in Cedaredge is a collection of historical buildings that provides a replica of early living in the Surface Creek Valley. Fort Uncompahgre in Delta is a living history museum that captures the early fur trading days at the confluence of the Gunnison and Uncompahgre rivers. All communities host annual summer festivals that highlight the heritage unique to their community.

## **Government Resources**

Delta County is comprised of six Incorporated municipalities, each with its own governing body. The County's current philosophy of governance relies heavily upon citizen participation and advisory groups. The County Commissioners convene quarterly meetings with the elected officials of each community to discuss common issues and seek cooperative solutions. In addition, the County has actively initiated and supported regional coalitions to address issues of regional concern and impact, e.g. air quality, public lands policy and management, housing, transportation and growth issues.

## **Community Infrastructure and Services**

Each of the incorporated municipalities is responsible for providing basic infrastructure and services to their residents. Most residents in the unincorporated areas of the County are served by small domestic water companies and individual sewage disposal systems. With the exception of the City of Delta, communities are experiencing pressure on their existing water and sewer systems and have either imposed moratoriums on water taps or are making substantial improvements to their water and wastewater systems to accommodate the new growth.

Electrical services are provided by both Delta-Montrose Electric Association and the City of Delta. Telephone service is provided by Delta County TeleComm in part of the County and US West in the greater Delta area. Both electrical and telephone providers say they have the capacity for a moderate rate of growth.

Health care services are provided by area physicians, medical clinics, three independent ambulance services, area nursing homes and the Delta Memorial Hospital. Educational needs are addressed by the public school system and the Delta/Montrose Area Vocational-Technical Center. The Delta County Library system has libraries in the communities of Cedaredge, Crawford, Delta, Hotchkiss and Paonia.

The residential growth pattern has increased demand for public safety, fire protection, rural health care, social services, transportation, housing and road systems. A variety of local and regional efforts are underway to address many of the impacts on the various community systems that are not the direct responsibility of local governments or special districts.

## **PLANNING PROCESS**

### **Background**

Delta County currently has no zoning or land use plan in place that guides land use decisions on a county-wide basis. There are three existing special planning districts within the County that have adopted zoning regulations for properties within their boundaries. In addition, the County does have regulations that govern the subdivision of land, development in floodplains, mobile home parks and utility and access permits.

In 1993, a diverse group of citizens approached the County Commissioners to sponsor a series of community meetings on the impacts of growth and how citizens would like to address the issues. The Commissioners supported this citizen effort because they believed that any new planning initiative should come from the people of Delta County. The Ad Hoc Growth Committee conducted two series of meetings in each of six geographic areas of the County during late 1993 and 1994. In the summer of 1994 the Committee presented its recommendations to the County Commissioners.

In response to the Committee recommendations, the Commissioners appointed a Growth Steering Committee to work with the County Planning Commission and the County Commissioners to rewrite the County's Master Plan. The Growth Steering Committee is comprised of about 25 members who represent not only different interests but different geographic areas of the County and each municipality. Its primary function is to help with the public process and to act as a sounding board for the staff, and Planning Commission as the Master Plan is rewritten.

The County was then divided into seven planning areas based on watersheds and social communities within each planning area. The seven areas are Escalante (north Delta area), Uncompahgre (river valley floors and mesas lying to the east, west and south of the City of Delta from 1800 Road to Delta/Montrose County line),

Peach Valley, Surface Creek Valley, Leroux Creek (Hotchkiss and Redlands mesa area), North Fork (Paonia area), Crawford County (see Appendix A for a map of the planning areas).

At public meetings held throughout the County in the spring of 1995, each planning area was presented with 14 issues related to growth and development that had been identified within the region since 1992. The areas were asked to prioritize the issues they felt were most important. The results of those public meetings identified the following as the most important county-wide issues:

- 1) Preservation of agricultural lands and open space
- 2) Protection of private property rights
- 3) Maintaining the rural lifestyle
- 4) Scarcity of availability of domestic water
- 5) Lack of land use planning

Following the public meetings, each planning area identified a work team to work with County staff and technical resource persons, e.g. DOW, water companies, Soil Conservation, irrigation companies, to begin to define their vision for the future social and natural landscape of their area. Over 350 people attended the various public planning area meetings and some 75 citizen volunteers have worked with the Future Growth Steering Committee and Planning Commission.

During the spring and summer of 1995 the planning area resource teams defined their future visions, identified natural and manmade community resources, and developed strategies to recommend to the County Commissioners to achieve their goals. In November 1995 the planning areas met with the Future Growth Steering Committee and Planning Commission to report on the progress in each planning area and to identify any common concerns. The planning areas listed five:

- Preservation of agriculture
- Maintaining the rural lifestyle
- Require new development to pay its own way and be directed to areas with adequate infrastructure
- Protection of private property rights
- Economic development

During the winter and spring of 1996 representatives of each planning area and the Planning Commission have met in monthly work sessions to develop goals, objectives and implementation strategies that provide a framework for addressing those common concerns.

The five common concerns noted above represent the basis for the rewriting of the 1990 Delta County Master Plan. The Plan may not incorporate all of the desires and recommendations of each planning area, but it does provide a starting point and it represents a minimum level of standards to be considered for the County.

Individual planning areas may wish to develop more comprehensive plans for their area that address the concerns specific to their area. The County Commissioners have agreed to consider the level of planning each community wants when reviewing development proposals within the respective planning areas. When and if each planning area elects to develop a separate plan to achieve its vision for the future, the plan will be incorporated as an appendix to this County Master Plan. The revised Delta County Master Plan and individual planning area plans, as developed and adopted by the residents of each planning area, will serve as the basis for future land use decisions.



# DELTA COUNTY MASTER PLAN

## PART TWO

### GOALS, POLICIES AND IMPLEMENTATION STRATEGIES

PART II contains the goals to realize Delta County's vision for the future and represent the common concerns that were identified by the seven planning areas. These goals reflect the values that are important to the citizens of Delta County. They establish the direction to be followed in the future to protect and enhance our quality of life.

The specific policies provide a framework for achieving the goals. The implementation strategies are recommended actions that can be taken by the County's citizens, community and business leaders, and elected officials. They are not regulations or a final commitment but could lead to the adoption of the necessary regulatory tools after the Master Plan is approved.

#### **MASTER PLAN GOALS:**

#### **I. Preservation of Agricultural Land and Agricultural Operations**

##### **Introduction**

Delta County is an agricultural County where the importance of the agricultural economy is real and not merely a symbol of a western life style. In 1995 the market value of agricultural products grown in Delta County was \$44,593,000. The total economic impact of agriculture and related industries was an estimated \$134,760,840. Agriculture, including forestry, and agricultural related business directly employ an estimated 23 percent of the total County workforce. Agriculture accounts for approximately 40 percent of the total workforce, when indirect employment is included.

Agriculture is critical to the economy of Delta County. The seven planning area committees all recognized that any threats to the agricultural base resulting from development could be a major detriment to the overall economic well being of the County. They also recognized that agriculture, more than any other factor, defines the rural character of the County. The planning area committees want a viable agricultural economy. In addressing this concern, these issues emerged.

##### **Issues**

- **Equity.** The preservation of agricultural land through land use regulation puts the economic burden of preservation on the farmer or rancher. An agricultural preservation program must also provide voluntary incentives and flexible land use approaches that recognize and fairly compensate landowners for keeping land in agriculture.

**Definition.** Not all open space is agricultural land, nor is all agricultural land prime agricultural land as defined by the Natural Resource Conservation Service. An agricultural preservation program must focus on agricultural land and identify the land that can support a viable agricultural operation.

- **Interrelationships.** The economic viability of agriculture is dependent, in part, upon the continued multiple use philosophy of the public lands that have historically provided summer grazing lands for Delta County's cattle and sheep ranchers. This interdependency between agriculture and public lands has been a cultural tradition and custom within Delta County. Any weakening of the current multiple use philosophy will threaten the viability of this agricultural community. The County also should promote businesses and industries that support agricultural land use. This would include activities that add value to existing raw products as well as the promotion of new marketing mechanisms.
- **Incompatibility.** If maintaining a critical mass of agricultural land use is the County's highest priority, the County must be willing to restrict other uses that are incompatible with agriculture and related business. This means residential subdivisions and other types of development adjacent to agricultural operations may have to be denied or required to mitigate adverse impacts on existing agricultural land use.

The concern over the future of agriculture in Delta County and the issues that are associated with that concern resulted in a goal statement that went beyond the land preservation issue.

##### **Goal Statement**

**Maintain Delta County as an agricultural community by preserving agricultural land, enhancing the viability of agricultural operations and encouraging a social, economic and political environment that reflects a positive attitude toward agriculture.**

##### **Policies**

- An agricultural preservation program must identify the lands that are important to agriculture and focus on the preservation of land that is critical to the agricultural economy of Delta County.**

##### **Implementation Strategy**

Establish the criteria for identification of important agricultural land and, perform the analysis necessary to identify and map the important agricultural lands and agricultural uses within each planning area.

**B. An agricultural preservation program should be equitable by providing a variety of options and incentives to landowners who keep lands in agriculture.**

**Implementation Strategies**

1. Fully explore the potential for a successful Transferable Development Rights (TDR) program for the County that includes the possible sources of funding for both pilot programs and a TDR Bank.
2. Establish a strong liaison with the private and public agencies that advocate agricultural land preservation in order to fully utilize conservation easements and other tools to preserve agricultural land.
3. Provide flexibility in the subdivision review process for those landowners who are willing to cluster development to preserve agricultural lands.

**C. An agricultural preservation program must include efforts to preserve and enhance the overall agricultural economy through programs that promote the County's agricultural products and provide support to those related industries and businesses' critical to agriculture.**

**Implementation Strategies**

1. Provide financial support for promotional and marketing programs.
2. Identify the economic contribution of those industries and businesses that are agriculturally related and publicize their contributions.
3. Conduct research and develop programs that will add value to existing agricultural products.
4. Encourage local economic development organizations to support and recruit value-added processing and food and fiber manufacturing opportunities.

**D. An agricultural preservation program must include provisions that protect viable agricultural operations from development that would have adverse impacts on the operation.**

**Implementation Strategies**

1. The County Commissioners should recognize that preserving agricultural land and sustaining the agricultural economy have primary status in the adoption or revision of County regulations.

2. The County staff should work with agricultural organizations and representatives of agricultural related businesses to identify those types of land uses that have or may have a direct and negative impact on agriculture, agricultural infrastructure and agricultural industries. Methods of mitigating the adverse impacts of new development on agriculture should be developed as part of the regulation and review of new development.

3. The County should utilize its authority under state laws to develop a local planning area review process for any change in land use from agricultural use to residential, commercial or industrial use, and to develop mitigation standards to minimize the potential negative impacts on agricultural lands.

4. The County should consider including preservation of agriculture in the "Purpose" or "Intent" sections of existing regulations.

5. The County should direct growth and infrastructure development to protect productive agricultural lands.

6. The County should strengthen its Right-to-Farm policy by adopting a Right-to-Farm ordinance.

7. The County should educate people moving in next to ranches and farms about agricultural practices.

**E. An agricultural preservation program should discourage the conversion of irrigation water for agricultural use to domestic or municipal use.**

**Implementation Strategy**

Explore alternative mechanisms and methods to ensure that development of water for municipal, or domestic uses does not adversely affect irrigation water resources.

**II. Preservation of the Rural Lifestyle and Landscape. The Natural Environment and Unique Physical Characteristics of Delta County.**

**Introduction**

Delta County is a rural community as defined by both objective and subjective measurements. 23 percent of the County workforce is employed in agriculture. 54 percent of the County residents live in the unincorporated area which has a population density of 26 persons per



square mile. All of these are objective criteria for defining a rural community.

But a rural lifestyle is not measured solely by objective criteria. There is a sense of community, e.g. how people view the community in which they live, their relationships with their neighbors, their philosophy of how community interrelationships work and the pace of their daily activities. The residents of Delta County perceive themselves as living in a community that values hard work, self-reliance, honesty, involvement in civic activities and a caring attitude about their neighbors.

A rural lifestyle also includes the natural resources that are associated with a rural landscape. The planning areas identified wildlife habitat and migration corridors, open space, agricultural lands, clean air, scenic viewsheds, wetlands and riparian areas. In addition, Delta County has unique and diverse land forms and a topography that varies from high mountain peaks to semi-arid adobe badlands. The two major rivers, the Gunnison and the Uncompahgre, add to this unique landscape through the constant reshaping of the land.

### Issues

The area planning committees were virtually unanimous in their desire to preserve and maintain the County's rural character. The major issues are:

- **Density.** A rural community is defined, in part, by its population density. The current population density in the unincorporated areas of Delta County is 26 persons per square mile. However, given the different resources and values within each of the planning areas, opinions differ as to what the density level should be. What density level can be supported by the County road system and services? What is the carrying capacity of the local landscape and natural resource base?
- **Natural Resources.** Development can change the rural landscape and natural resources if measures are not taken to protect these resources. Does the County have the tools and resources available to preserve the environmental character of the County and still accommodate a reasonable rate of growth and respect individual property rights?
- **Rural Sprawl.** Few things change the rural character or affect its natural resources more than the conversion of the natural areas to development. Although most residents take such resources for granted in their daily lives, they are strongly affected when such lands and resources begin to sprout buildings and parking lots. Rural sprawl impacts agricultural viability, reduces open space and increases wildlife pressure on remaining agricultural lands. It is difficult and expensive for local governments to provide services for rural sprawl.

### Goal Statement

**Preserve the rural character and natural environment, and protect the unique physical resources of Delta County through programs that provide an equitable balance of preservation and respect for individual property rights**

### Policies:

- A. Establish a range of densities appropriate for each planning area within the County.**

#### Implementation Strategies

1. Undertake the research and analysis necessary to objectively define a rural population and recommend that each planning area establish density levels appropriate for its community vision and the carrying capacity of its natural and manmade resources.
2. Prepare an objective public information program on the advantages and disadvantages of a density limitation for Delta County. Use reasonable growth rates or target year population limits (year 2020?) as a basis for the density calculations. Present alternatives including, (a) no new regulations, (b) voluntary growth management strategies and (c) additional and more restrictive land use regulations such as zoning.
3. Undertake infrastructure (capital improvements) planning and service delivery programs for the designated rural areas that are tailored to meet only rural needs.

- B. Inventory and classify the physical features and environmental resources of the County..**

#### Implementation Strategies

1. Collect and analyze the data necessary to map the significant physical features and environmental characteristics of the County. The data base should include, at a minimum; areas of steep or unstable slopes, soils, floodplains, wetlands and riparian areas, critical watersheds, wildlife migration paths and (critical) winter habitat, important scenic viewsheds and areas with a high potential for wildfires.

2. Develop criteria for assessing the impact of new development on the significant physical features and critical environmental resources. Utilize mapped data and impact assessments to designate areas as “more” and “less” suitable for development.

**C. Identify the developmental pressures that could threaten the preservation of the important physical features and environmental resources of the County.**

**Implementation Strategies**

1. The County staff should work with agencies and/or groups associated with the different resources to identify those types of land uses that may have direct and negative impact on the significant physical features or resources.
2. Develop mitigation standards or development restrictions to minimize the adverse impact of development on each specific resource.

**D. Develop programs and resources that provide compensation and/or incentives to landowners who preserve resources and restrict development.**

**Implementation Strategies**

1. Prepare a resource manual that includes the full range of incentives and compensation available to landowners who withhold land from development. This would include programs from other agencies such as: the Colorado Division of Wildlife, federal and state agricultural programs, land trusts, the Nature Conservancy and private foundations.
2. Develop a Resource Preservation Program to provide landowners who elect to preserve specific natural resources an expedited development review process.
3. Develop a Landowner Outreach Program that is designed to educate landowners about all the development options before they proceed to develop their land.

**E. Utilize existing regulations to preserve and protect the significant physical features and environmental resources of Delta County,**

**Implementation Strategies**

1. Inventory and review existing regulations, i.e., subdivision, floodplain, Area of State Interest (1041 powers), to determine their effectiveness in preventing or mitigating the adverse impacts of new development.

2. Develop a local planning area review process for any change of land use or new development and develop mitigation standards to minimize the potential negative impacts on resources identified as important to maintaining a rural character, e.g. wildlife, agricultural lands, riparian areas and open space.

**III. Encourage New Development to Locate In Areas with Adequate Infrastructure and Require that Development Pay Its Own Way**

**Introduction**

This position is derived from concerns that were reflected in the planning area committees' meetings and draft plans. The intent is to deal with the pace and impact of growth as it relates to public infrastructure and services, and, to identify the real costs of growth in order to require that those who cause or benefit from growth also pay the costs.

The concern over the impacts of growth and the financial responsibility for those impacts is supported by the costs of corresponding improvements to the infrastructure and the increased demand for County services. According to current information released by the Census Bureau, the County's 1995 population has increased by 19.6 percent since 1990 or an average annual growth rate of 4 percent. The State Demographer's office has projected that Delta County's average annual growth rate will be at 2.5 percent through the year 2010. For the past several years, however, Delta County has exceeded the State Demographer's estimates. The planning area committees have expressed major concerns over the impacts of an annual growth rate that exceeds 2 percent.

**Issues:**

- **County Infrastructure and Services.** The increasing population and residential development is outstripping the County's ability to improve and maintain the County road system. A road system designed to accommodate traditional farm-to-market demands is now expected to accommodate commuter traffic. The Sheriff's Department, staffed to deal with the level and complexity of rural crime, is now expected to respond to calls that are more urban in character. Emergency services are finding it more and more difficult to access and properly fight fires that are occurring in areas attractive for new development but isolated from adequate infrastructure.
- **Domestic Water.** The unincorporated areas of the County are mostly served by small water providers that are designed to serve a rural, farm or ranch community. They have limited available water resources and lack financial capability to expand services. Most cannot meet current minimum water pressures for fire protection. The result has been moratoriums or limitations on domestic water taps, which has resulted in requests to approve sources of domestic water that are generally not acceptable.

- **Sewage Disposal.** The common sewage disposal method in the unincorporated area is individual septic tank/leach field systems. This is adequate for areas of low density and suitable soils. The growing demand for smaller lots without regard to soils suitability is creating concern about the possibility of groundwater and surface water contamination. Compounding this, problem is the inability of some municipalities to expand their municipal sewer service.
- **Fire Protection.** The inability of many water providers to supply adequate pressure, and undersized water lines place unusual burdens on the local Fire Protection Districts. In addition, some County roads are not always able to handle modern fire trucks because they are too narrow, are not constructed to meet all-weather road standards and have steep grades.
- **Schools.** The school enrollment in Delta County increased by 838 students between 1990 and 1995. This is an annualized rate of over 4.2 percent which exceeds the population growth rate. The School District presently has classroom capacity for 444 students. The overall system is at 91 percent of capacity but there are several schools that are in excess of 96 percent. Garnet Mesa and Delta High School are over their rated capacity.
- **Housing.** Affordable housing and safe housing were issues that were raised at the County level. At this time there is a county-wide housing task force that is addressing the lack of affordable housing, senior housing and safe housing issues. This was not seen as an issue to be addressed at this time in the Master Plan.

The lack of standards for mobile homes in Delta County and the influx of older mobile homes that have been restricted from neighboring counties was raised in most planning areas. Mobile homes were recognized as an acceptable form of affordable housing that should be integrated into a community rather than segregated in mobile home parks, if health and safety standards are met.

- **Transportation.** The automobile is the primary source of transportation in Delta County and is likely to remain so. Public transportation is unlikely to become a significant factor in the County within the near future. Delta County participates in the Gunnison Valley Transportation Planning Region. The Region has developed a 20 year plan for addressing public transit and intermodal transportation issues, and meets regularly to review and implement the local and regional objectives of the Plan.

The County's current transportation issues concern the County road system. The County road system is managed by three separate Road and Bridge Districts that are responsible for road improvements and road maintenance. Transportation as an issue separate from the County road system and capital improvements program is not addressed in this Master Plan.

### Goal Statement

**The growth policies of Delta County should ensure that the financial impacts of new development are paid by those who benefit, and that development is directed to those areas where there is adequate infrastructure and services.**

### Policies

- A. New development must be fiscally equitable in that the investment in public facilities and services is an obligation of the developer and not subsidized by existing residents.**

#### Implementation Strategies

1. Develop a fiscal impact model that assesses the costs and benefits of new development and the cumulative effect of all subdivisions on rural services and facilities.
2. Require that any fiscal inequities be addressed as part of the development review process.

- B. Development should occur in and near municipalities where adequate infrastructure is available and services can be efficiently provided.**

#### Implementation Strategies

1. the County and the municipalities should establish joint planning areas that define the urban service boundaries around each town.
2. Municipalities should be encouraged to allow the expansion of their water and sewer service areas, to accommodate a reasonable rate of growth.
3. The County should require that residents who benefit from any extension of municipal utility services must pay the costs of those extensions.
4. Utility service districts should be formed to finance the improvements necessary for the expansion of municipal utility services.
5. The County should explore an "Adequate Public Facilities" requirement for new development.

- C. The County Capital Improvement Plan should help implement the Master Plan by directing capital investment in ways that encourage sound growth management and by ensuring that the population standards for public infrastructure and services are adequate.

#### **Implementation Strategies**

1. Develop a county-wide road improvement plan with input from local planning areas to prioritize road improvements and develop a long-range schedule for such improvements.
2. Develop a county-wide water and sewer plan that contains an inventory of existing domestic water and sewer resources and identifies opportunities and constraints for expansion of such systems throughout the County.
3. Update the existing County Capital Improvements Plan to ensure that existing public infrastructure, e.g. parks, libraries, roads, water, sewer, fire protection, administrative and maintenance facilities meet the standards for current and projected population growth.

- D. In areas of less intensive development emphasis should be placed on the adequacy of the existing County roads and fire protection services.

#### **Implementation Strategies**

1. Develop a county road classification system that establishes minimum travel safety and grade thresholds for existing County roads. New development should keep within these thresholds. If not, such development should pay for upgrading the road(s).
2. Where water main sizes, storage or pressure is inadequate for minimal fire safety standards, alternative mitigation standards should be established.

### **IV Protect Private Property Rights**

#### **Introduction**

All of the Planning Area Committees call for the preservation of property rights for all property owners. This is a value strongly embraced by the citizens of Delta County. Land use planning and land use controls, however, limit property rights. Land use planning reflects community goals that may conflict with property rights. The Planning Area Committees, in recognizing this conflict, have identified these issues.

#### **Issues**

- How can the County ensure the preservation of basic property rights and still engage in responsible planning and management of growth?
- How can the right of a property owner to use and enjoy his property be balanced with the rights of neighboring property owners to be protected against potentially adverse impacts on their property or their property values?
- How can individual property owners' rights to use and enjoy their land be balanced against the need and desire to protect and preserve the physical, economic and environmental resources that are valued by the majority of the residents of Delta County?
- How can individual property owner be protected against land use controls that demand unrealistic compliance and processing requirements?
- How can the County ensure that land use regulations that are designed to implement the Master Plan are responding to a real problem or the high potential of a real problem?

#### **Goal Statement**

**The right to use, enjoy and protect property should not be diminished by policies and regulations that are not consistent with the goals and objectives of this Master Plan**

#### **Policies**

- A. Any land use regulation or restriction adopted by the County must necessarily either:
- (a) protect the public health and safety,
  - (b) make fair and efficient use of public funds or
  - (c) provide for the orderly division, sale, development and financing of private property consistent with the goals and objectives of this Master Plan.

#### **Implementation Strategies**

1. **Burden of Proof.** Implementation of the subdivision regulations and other County land use regulations will assume that a particular division or use of land should be authorized unless the division of land or use would violate existing regulations, would adversely impact neighboring property owners or residents, or contradict the goals and objectives of the Master Plan.



2. The County should offer a variety of development options and incentives to landowners who develop, or who pursue the goals and objectives of this Plan.

**B. The right to develop and improve private property does not constitute the right to physically damage or adversely impact the property or property value or neighboring landowners.**

**Implementation Strategies**

1. In the implementation of the County's land use regulations the compatibility of a new development with the existing land uses should be given priority consideration.
2. In cases where there is incompatibility between an existing and a proposed land use, the property right of the existing use should be given priority.

**C. The right to own and use private property should not be adversely affected by unreasonably complex land use regulations or an unreasonable time frame for review.**

**Implementation Strategies**

1. All land use regulations should have a precise statement of intent and purpose and should be written clearly and concisely.
2. Land use cases should include findings and be processed within a reasonable time frame. This time should be directly proportional to the complexity of the case and available staff resources.
3. The County should develop a faster mechanism for property transfers within families, yet provide for the eventuality, that such parcels may be sold on the open market.

**V. Promote an economic climate that increases job opportunity and overall economic well being.**

**Introduction**

The preservation and enhancement of the County's economic base is a prerequisite to achieving the goals of the Master Plan. The environment and rural lifestyle valued by the County residents depend on the availability of employment, jobs that pay a "living wage", and an economy that can provide basic goods and services. Experience has shown that the planning vision of a community suffers in economic downturns when planning standards are sacrificed for economic reasons.

The planning area committees recognize the critical interrelationship between the planning vision and the economy, and have identified these issues.

**Issues**

- Colorado's Western Slope economy has a history of "boom and bust" caused primarily by the cyclical nature of resource extraction industries such as mining. Delta County has been more fortunate than some areas because its strong agricultural base has cushioned the impact of these cycles. While mining will continue to be an important part of the County's economy, technological advances have increased production with fewer miners. Recently, the timbering and wood products industry in Delta County have declined. So the future of the traditional natural resource industries in the County is unpredictable and will be influenced more by national policy decisions and global economic trends than local efforts.
- There can be conflicts between the County's landscape and environmental goals and its economic development. Care must be taken to balance sound physical planning to protect environmental resources with realistic economic development.

**Goal Statement**

**Promote and maintain a stable and diversified economic base that builds on local resources to sustain and expand existing businesses and create new business opportunities that are compatible with the quality of life valued by the residents of Delta County.**

**Policies**

- A. Encourage retention and expansion of existing businesses. Encourage new and different business opportunities and commercial, industrial and recreational activities that enhance existing resources and support and stimulate the County's economic base.**

**Implementation Strategy**

The County should support the research necessary to determine how small local businesses can be assisted in their expansion efforts and how new enterprises could be started. The County should also support the business outreach programs designed to assist existing or potential new businesses.

- B. Recognize that economic, development planning requires different skills and experience from land use planning, and that the primary responsibility for economic development lies with the focal and regional economic development organizations and the private sector.**

### **Implementation Strategy**

The County should give clear direction to the area planning committees and County staff that the responsibility for economic development planning lies with those local organizations that possess the necessary skills and experience.

- C. Provide for cooperation between those involved in the planning process and the economic development organizations in order to coordinate economic development with the goals of the Master Plan.**

### **Implementation Strategies**

1. Provide for liaison between those involved in economic development planning and the planning area committee involved in the Master Plan.
2. Provide the economic development planners with the general criteria that has been established by the planning area committees concerning what types of economic growth to encourage and what types to avoid.

## PART THREE: IMPLEMENTATION SCHEDULE

Part III contains a suggested implementation schedule for completing the strategies recommended in Part II to accomplish the goals of the Master Plan. The strategies are condensed and listed under each major goal. The page number is noted where each strategy is stated in more specific detail. A time frame suggested to complete each strategy. For strategies that are on-going, no specific date is noted. The Implementation schedule suggests entities or organization that may be responsible for implementing each strategy. The Implementation schedule is not carved in stone and is only a suggested schedule to provide guidance to the County, its citizens and other entities that have a stake in the implementation of this Master Plan.

### GOAL 1: PRESERVATION OF AGRICULTURAL LANDS AND AGRICULTURAL OPERATION

	RECOMMENDED STRATEGIES	PAGE	TIME FRAME	RESPONSIBILITY
1.	Identify and map important agricultural lands in each planning area	4	1997-1998	County/Planning Areas
2.	Explore the feasibility of a Transferable Development Rights Program/ Pilot Project	4	When funding/ grant allows	County/Planning Area
3.	Establish liaison with agencies that advocate agricultural land preservation	5	1997-1998	Land Trust/GOCO/County
4.	Provide flexibility in subdivision review process	5	1996-1997	County
5.	Provide financial support for promotional and marketing programs	5	On-going	County/Ec. Dev. Orgs. /Try River Extension
6.	Identify & publicize economic contributions of agricultural related businesses	5	On-going	County/Ec. Dev. Orgs. /Tri River Extension
7.	Conduct research/develop programs to add value to agricultural products	5		
8.	Encourage local economic development organizations to support value-added industries	5	On-going	DADI, Region 10
9.	County should recognize primary status of agriculture in adopting or revising County regulations	5	On-going	County
10.	Work with ag organizations to identify land uses that have negative impact on agriculture	5	Immediate	County/local agricultural assns.
11.	Develop local review process for a change of land use or new development	5	Immediate	County, Planning Areas
12.	Include preservation of agriculture in the "Purpose" of existing regulations	5	Immediate	County
13.	Direct growth and infrastructure to protect productive agricultural lands	5	Immediate	County
14.	Adopt a "Right to Farm" ordinance and educate newcomers about agricultural practices	5	Immediate	County

### GOAL 2: PRESERVATION OF RURAL LIFESTYLE AND RURAL LANDSCAPE

	RECOMMENDED STRATEGIES	PAGE	TIME FRAME	RESPONSIBILITY
1.	Define a rural population and establish density levels for each planning area	6	1997-1999	Planning areas/County
2.	Prepare an objective public information program on density limitations in Delta County	6	1997	County
3.	Undertake capital improvements planning for rural areas that meets rural needs	6	On-going	County/Planning areas
4.	Map the significant physical features and natural resources of each Planning Area	6	1997-1998	County/Planning Areas
5.	Develop criteria for assessing impact of new development on physical features/environmental Resources	6	1997-1998	County/Planning Areas
6.	Work with resource representatives to identify land uses that may have adverse impact on resources,	6	1997-1998	County/Area Resource & Public Agencies
7.	Develop mitigation standards to minimize adverse impact of development on resources	6	1997-1998	County/Planning Areas/Resource Agencies
8.	Prepare resource manual of incentives available to landowners who protect resources	7	1998	County Planning
9.	Develop a Resource Preservation Program to provide expedited review process	7	1996-1997	County
10.	Develop a Landowner Outreach Program to educate landowners of development options	7	1997-1998	County
11.	Review existing regulations to determine effectiveness in mitigating impacts on resources	7	1997	County Planning/Staff/Attorney
12.	Develop local review process for any change of land use/new development	7	1998	County/Planning Areas

### GOAL 3: ENCOURAGE NEW DEVELOPMENT TO LOCATE IN AREAS WITH ADEQUATE INFRASTRUCTURE/PAY OWN WAY

	RECOMMENDED STRATEGIES	PAGE	TIME FRAME	RESPONSIBILITY
1.	Develop a fiscal impact model to assess costs/benefits of new development	8	1998	Planning Staff
2.	Address fiscal inequities as part of development review process	8	Ongoing	County
3.	Establish joint planning areas with County and municipalities	8	1997-2000	Planning Commission/Municipalities
4.	Encourage municipalities to allow expansion of water and sewer service areas to accommodate reasonable rate of growth	8	On-going	County/Municipalities
5.	Require residents who benefit from utility extensions pay for the extensions	8	On-going	County
6.	Establish utility service districts to finance improvements for municipal extensions	8	As needed	Residents/Developers
7.	Consider an "Adequate Public Facilities" ordinance to direct new development	8	1998	Attorney/Planning Staff
8.	Develop a county-wide road improvement plan		1997-1998	Road and Bridge/Commissioners/Planning Areas
9.	Develop a county-wide water and sewer plan	8	1998-1999	Planning Staff/Water/Sewer Providers
10.	Update the existing County Capital Improvements Plan	8	1997	County/Planning Areas
11.	Develop a County road classification system	9	1997	Road & Bridge/Commissioners
12.	Establish minimum mitigation standards for fire safety in areas with inadequate water supply	9	1996-1997	FireDept/Planning/Commissioners

### GOAL 4: PROTECT PRIVATE PROPERTY RIGHTS

	RECOMMENDED STRATEGIES	PAGE	TIME FRAME	RESPONSIBILITY
1.	Assume new development/change of land use is permissible unless it violates regulations, adversely impacts neighboring property owners or contradicts goals of the Master Plan	9	Ongoing	Planning Commission/Commissioners
2.	Offer a variety of development options and incentives to landowners	9	Ongoing	Planning Commission/Commissioners
3.	Give priority consideration to the compatibility of new development with existing development	9	Ongoing	Planning Commission/Commissioners
4.	Give priority to property right of existing land use when there is incompatibility with new	9	Ongoing	Planning Commission/Commissioners
5.	Land use regulations should have statement of intent and purpose and be written clearly and concisely	9	Ongoing	Planning Commission/Commissioners
6.	Provide findings and process land use cases in a timely manner	10	Ongoing	Planning Commission/Commissioner
7.	Develop a faster mechanism for property transfers within families	10	1996-1997	County

### GOAL 5: PROMOTE AN ECONOMIC CLIMATE THAT INCREASES OVERALL ECONOMIC WELL BEING

	RECOMMENDED STRATEGIES	PAGE	TIME FRAME	RESPONSIBILITY
1.	Support new and existing business development to stimulate the County's economic base	10	Ongoing	Government/Private Sector/Education/SBDC
2.	Acknowledge that economic development planning lies with organizations with those skills	10	Ongoing	County/Planning Area/EcDevAssn
3.	Provide for liaison between economic development organizations and planning areas	10	Ongoing	County/Planning Area/EcDevAssn.
4.	Provide economic development planners with economic development criteria established by planning areas	10	On-going	County/Planning Area/EcDevAssn.

# Proposed Delta County Planning Areas

- Planning Area Boundary
- County Boundary
- Roads
- Highways
- Major Rivers
- Lakes
- Towns

